

<b>Fiorentino v New York City Dept. of Health &amp; Mental Hygiene</b>
2022 NY Slip Op 31365(U)
April 28, 2022
Supreme Court, New York County
Docket Number: Index No. 151622/2022
Judge: Arlene Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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WILLIAM FIORENTINO, LOIS NICOLETTI,
Petitioners,

INDEX NO. 151622/2022

MOTION DATE 04/22/2022

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE,

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 47
were read on this motion to/for ARTICLE 78- CHANGE RECORDS.

The petition to direct respondent to change the birth, marriage and death certificates of
various ancestors of petitioners is denied.

Background

Petitioners claim they are in the process of seeking dual citizenship with Italy and want
respondent to make changes to various vital documents because there are many, many
discrepancies. They also want the Court to issue "one and the same orders" for various ancestors
and direct respondent to provide certified copies of the vital records. Petitioners contend that
they want these changes made only for dual citizenship and not for "the establishment of rights
of inheritance or for any other purpose" (NYSCEF Doc. No. 1, ¶ 33).

Curiously, respondent offers a "response" in which it claims it does not oppose certain
requests and takes "no position" with respect to other demanded actions.

## Discussion

The New York City Health Code (24 RCNY § 207.01) provides that the “[a]pplication for amendments of a birth certificate shall be made by the parents or surviving parent, or by the legal guardian of the person whose birth certificate is to be corrected or by the person if such person is 18 years of age or over.” It also provides that an “[a]pplication for amendment of a death certificate, or of a confidential medical report of death shall be made by the person in control of disposition as defined in Article 205 of this Code or by the person identified on the death certificate as providing the personal particulars pursuant to Article 205 of this Code” (*id.*).

Here, the application is not made by a *parent, guardian, or the certificate holder* or the person *in control of disposition* (with respect to the death certificate change request). Instead, petitioners are seeking to change references to their parents, grandparents and great-grandparents in the vital records of their ancestors. Simply put, a plain reading of the applicable statute does not contemplate someone seeking to make changes to their ancestors’ documents long after they have passed away. And petitioners cited no case law to support an interpretation of this law to permit the Court to order the relief they demand.

In other words, this Court views the statute to provide a process for changing the vital records of someone’s own records, the records of their child or a child to whom they are legal guardian. This Court has reviewed many similar applications and the reasons for these changes are often similar. Sometimes the birth certificate simply contains misspellings, dates are incorrect, there is a miscommunication at the hospital, or there is a flat-out mistake. And while those are not the only reasons people seek to change records, they are all made by the parent or the person herself.

The situation here is quite different. Petitioners are applicants for dual citizenship and are unfortunately confronted with the fact that various ancestors' records do not match up. It could be that names were "Americanized." For example, petitioner Fiorentino wants to change his mother's birth certificate to amend the names of his grandfather and grandmother. He also wants to amend the death certificate of his grandfather to change the names of multiple ancestors. These requested changes and the others demanded in this proceeding present numerous problems.

Changing the records of a parent, grandparent or great-grandparent affects not only the requester but every other record that person might touch. It would affect marriage certificates, birth certificates of other children and death certificates that might mention these ancestors. If the Court were to change the death certificate of petitioner's grandfather, then, presumably, every birth, marriage and death certificate for every one of his grandfather's children would have to be changed. Otherwise, all of those records would contain contradictory information. The Court declines to create such chaos.

The petition is silent about how these requested changes might affect those records and whether he has named all necessary parties (other individuals who might object to having these changes made). For instance, if petitioners have siblings, cousins, aunts and uncles, then their birth certificates would contain incorrect information if the changes requested here were approved. Nor have petitioners – or the respondent - explained how the Court can interpret the Health Code to permit petitioners standing to request these changes.


Put another way, if the Court were to grant the request to make all of these changes to the records of petitioners' ancestors, it would have "downstream" effects on every person in the family. The vital records of those people would be inaccurate and inconsistent because there

would be a Court order changing the names of their parents, grandparents and great-grandparents. And while petitioners stress that they are only seeking these changes for purposes of acquiring dual citizenship and not for getting an inheritance, a vague promise in these papers does not alleviate the Court’s concerns about the ramifications of these changes. At the very least, it could create all types of issues ripe for litigation because there would be official records (sanctioned by this Court) with posthumous changes. Which name would be valid in a fight over an estate’s assets?

The Court recognizes that petitioners merely want these changes in order to get dual citizenship. But that does not mean this Court can abdicate its responsibility to ensure that vital records are accurate. Many of these records are over a century old and attempting to recreate the past is a fraught process better suited for genealogists. And petitioners failed to identify a statute upon which this Court can change ancestors’ records as part of a dual citizenship application.

Accordingly, it is hereby

ADJUDGED that the petition is denied and the Clerk is directed to enter judgment in favor of respondent and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

<u>4/28/2022</u> <b>DATE</b>			 <b>ARLENE BLUTH, J.S.C.</b>	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE