

Estate of Rombom v. N.Y.C. Dep't of Health & Mental Hygiene

2021 N.Y. Slip Op. 31787
Decided May 25, 2021

INDEX NO. 161076/2020

05-25-2021

IN THE MATTER OF THE APPLICATION OF
ESTATE OF ABRAHAM ROMBOM and
STEVEN ROMBOM, Petitioners, for leave to
correct the records of the Bureau of Vital
Statistics, New York City Department of Health
And Mental Hygiene, v. NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, Respondent.

Hon. EILEEN A. RAKOWER Justice

NYSCEF DOC. NO. 50 **PRESENT: Hon.
EILEEN A. RAKOWER Justice** MOTION
DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.

Petitioners Steven Rombom ("Steven"),
individually and as Executor of the Estate of
Abraham Rombom ("Abraham") (collectively,
Petitioners") bring this action pursuant to Article
78 of the New York Civil Practice Laws and Rules
("Article 78"), seeking the Court to compel
Respondent the New York City Department of
Health and Mental Hygiene ("Respondent") to
correct the Birth Certificate of Abraham to change
Abraham's mother's maiden name as Theresa
Fattore. Respondent opposes the application

Factual Background/Parties'
Contentions

Petitioners contend that Steven's Birth Certificate
shows that Abraham is Steven's father. Abraham's
Death Certificate shows that Abraham died on
December 24, 2018. Petitioners assert that Steven
was "appointed the Executor of Abraham's estate
on June 2, 2020." Petitioners contend that
"Abraham was born on June 26, 1932, in New
York City." Petitioners assert that "Abraham's
2 birth *2 certificate incorrectly shows his mother's
maiden name as Sarah Petoria, when her correct
maiden name was Theresa Fattore ('Theresa')."

Petitioners contend that "Theresa was born on
March 26, 1908, in New York City." Petitioners
further contend that "Theresa's first name was
misspelled as 'Tersica' or 'Tersicia' on her birth
certificate as she was always known as, and used
the first name Theresa." Petitioners assert that
Theresa's father, Domenico Fattore ("Domenico")
and mother, Luisa Galdi ("Luisa") were married in
September 1905 in New York City. Petitioners
contend that "[o]n July 30, 1920, Domenico
became a naturalized citizen of the United States."

Petitioners contend that Abraham's father is listed
on his birth certificate as Charles Rombom
("Charles"). Petitioners assert that on July 5, 1930,
Charles and Theresa were married in New York
City, the marriage license and certificate shows
"Theresa's first name is spelled correctly, however
her last name is spelled 'Fattery' instead of
Fattore." Petitioners contend that Charles and
Theresa separated sometime in 1933. Petitioners
assert that "[o]n December 30, 1933, Charles had
a Public Notice published in the New York Times
indicating that Theresa and he were not living

together. Petitioners further contend that a second Public Notice was placed in the New York Times on January 8, 1934. Petitioners assert that Charles and Theresa divorced on March 9, 1936. Petitioner contends that on April 26, 1943, Charles and Theresa got married for a second time. Petitioners assert that the Marriage Licenses and Certificate list the Groom as Charles Rombom and the Bride as Theresa Rombom. Petitioner contends that "[o]n June 1, 2016, Abraham applied to have his birth certificate corrected by Respondent to show his mother's maiden surname as Fattore." On September 26, 2016, Respondent denied Abraham's request.

Petitioners seek to make the following correction to Abraham's Birth Certificate: "Mother's Name Before Marriage" to read "Theresa Fattore" instead of "Sarah Petoria." Petitioners submit the following exhibits to the Petition: Steven's Birth Certificate (Exhibit "A"); Abraham's Death Certificate (Exhibit "B"); Appointment of Executor (Exhibit "C"); Abraham's Birth Certificate (Exhibit "D"); Theresa's Birth Certificate (Exhibit "E"); Domenico's Birth Certificate (Exhibit "F"); Domenico's Naturalization Certificate (Exhibit "G"); Charles and Theresa's Marriage Certificate (Exhibit "H"); Notices in New York Times (Exhibit "I"); Charles and Theresa's Judgment of Divorce (Exhibit "J"); Charles and Theresa's Marriage Certificate (Exhibit "K"); Abraham's Birth Certificate Application (Exhibit "L"); Respondent's denial letter of Abraham's application (Exhibit "M"); and Steven's Driver License (Exhibit "N").

In opposition, Respondent argues that "Petitioners have not provided sufficient documentation to establish that the Certificate erroneously indicates that *3 the mother's maiden name was Sarah Petoria." Respondent asserts that "[s]pecifically, petitioner Steven Rombom relies on Exhibit F, G and H to establish Theresa Fattore, born March 26, 1908, was the daughter of Dominick Fattore and Luisa Fattore." Respondent further asserts that Petitioner "then relies on Exhibits I and L to

establish that Charles Rombom married Theresa Fattore, daughter of Dominick and Luisa Fattore, in 1930 and 1943." Respondent contends that "exhibit I indicates that Theresa Fattore's father was Giuseppe Fattore and that her mother's maiden name was Margaret Roberts." Respondent further contends that "Exhibit L indicates Theresa Fattore's father was Joseph Fattore and her mother's maiden name was Margaret Roberts." Respondent argues that "[i]n addition to the marriage certificates, it should be noted that the age of the mother listed on the subject birth certificate (23 years old) does not coincide with what Theresa Fattore's age would have been at the time of the birth." Respondent contends that "Theresa Fattore's birth certificate indicates she would have been 24 years old at the time of Abraham Rombom's birth."

Respondent contends that Petitioners "averred that Theresa Fattore 'was never known by the first name Sarah' and he had 'no idea why that name got placed on his father's birth certificate.'" Respondent asserts that Petitioners state in Steven's "Affidavit of Support, he asserts for the first time that Theresa Fattore converted to Judaism, and he appears to suggest that her conversion to Judaism could explain the use of the name 'Sarah' on the subject birth certificate." Respondent argues that "Petitioners' exhibits fail to demonstrate that the Theresa Fattore that married Charles Rombom in 1930 and in 1943 was the daughter of Dominick and Luisa Fattore."

Discussion

"Review of the governing regulation indicates that the granting of an application to amend a birth certificate requires some measure of discretion." *Matter of Decamps ex rel. Cedenio v. New York City Dept. of Health*, 15 Misc 3d 1101(A) [Sup Ct, NY County 2007]. The New York City Health Code provides that "[t]he Commissioner or other personnel of the Department designated by him

may approve the amendment of [a] birth ... certificate" (N.Y. City Health Code [24 RCNY] § 207.01 [a] [emphasis added]). *Id.*

New York City Health Code, 24 RCNY § 207.01 provides for the correction of, among other things, birth certificates, and reads, in relevant part:

(a) ... Application for amendment of a birth certificate shall be made by the parents or surviving parent, or by the

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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.

(b) Every application shall be accompanied by supporting documentary evidence ...

(c) No application shall be approved unless the Commissioner or the Commissioner's designee is satisfied that the evidence submitted shows the true facts and that an error was made at the time of preparing or filing of the certificate ...

Here, Petitioners have provided insufficient documentation to establish that Theresa was indeed Sarah Petoria, and that Sarah Petoria was not Abraham's mother's maiden name. Furthermore, Respondent has stated that Petitioners have failed to provide sufficient documentation to correct the Birth Certificate of Abraham to change Abraham's mother's maiden name as "Theresa Fattore." The reasons Respondent gave were not arbitrary and capricious.

Wherefore it is hereby,

ORDERED that the Petition is denied and the proceeding is dismissed. The Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied. **Dated: May 25, 2021**

ENTER: /s/

J.S.C.