

Civil Court of the City of New York

County of New York

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In the Matter of the Application of |

Frank Joseph Guido Jr. |

for Leave to Assume the Name of |

Cynthia Alexandria Frank |

-----X

PETITION FOR
INDIVIDUAL
ADULT
CHANGE OF NAME

Index No. _____

PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR INDIVIDUAL ADULT CHANGE OF NAME

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PRELIMINARY STATEMENT

Frank Guido filed a petition for leave to assume the name of Cynthia Alexandria Frank with this Court in August 2002. Her application was denied. See Sept. 25, 2002 Decision attached as Exhibit B. She now reapplies through counsel. The civil court lacks jurisdiction over marriage, divorce, annulment, and gender designation changes; the only issue before it is a name change. Ms. Guido's application must be granted because she is an adult who has no fraudulent purpose for her name change petition and no third parties have objected to it. Her right to identify and present herself as a gender different than the one legally assigned to her at birth is protected by New York City law.

STATEMENT OF FACTS

Ms. Guido is a transgender woman. She was assigned male at birth and she identifies and presents as a woman. Because of her female gender identity, she wishes to express her gender through using a traditionally feminine name rather than the traditionally masculine name that is currently legally hers. She told her spouse about her decision to change her name and her spouse expressed full support of that decision. Accordingly, she filed a petition for leave to assume the name of Cynthia Alexandria Frank with this Court in August 2002.

Ms. Guido is an adult New York City resident who has never been arrested and has never declared bankruptcy. No judgments or liens are of record against her and she is not a party to any other legal proceeding. No third parties objected to the petition. On September 25, 2002, the Court denied her petition, indicating that evidence of a divorce and gender reassignment surgery could cure the petition. It stated that granting the petition would be inconsistent with the lack of legal recognition of same sex marriages. Decision attached as Exhibit B.

Since that time, Ms. Guido has continued to use and to strongly prefer the name Cynthia Alexandria Frank. Since January, she has lived as a woman full-time and her traditionally male legal name has caused embarrassment, confusion, and other unnecessary problems in her personal and professional life. After retaining counsel, she made this reapplication for leave to assume the name of Cynthia Alexandria Frank.

ARGUMENT

I. PETITIONER’S REAPPLICATION FOR AN INDIVIDUAL ADULT CHANGE OF NAME IS PROCEDURALLY CORRECT

This court denied petitioner’s initial application to change her name on September 25, 2002 with leave to renew the application. In re Rivera lays out the appropriate procedure for reapplying for a name change after an initial denial. 165 Misc.2d 307, 627 N.Y.S.2d 241 (Civ. Ct. Bx. Co. 1995). In Rivera, the petitioner applied for a name change in the Civil Court of Queens County in 1992 and was denied. Id. at 308, 242. She did not appeal. Almost two years later, she submitted the same application in Bronx County Civil Court, stating that no previous application had been made. Id. The Bronx County Civil Court also initially denied her application; she resubmit the application to that court again, this time revealing the original Queens County decision. The court considered the petition a motion to reargue the denial of the original application in Queens County. Id. at 309, 243. While the court acknowledged that the petitioner should have made her reapplication to the original judge in Queens County, it decided the merits of the application, reasoning that the civil court is a single court and that the Civil Rights Act permits a petitioner to bring an application in any county. Rivera at 309-10, 243.

Ms. Guido has used the method Rivera indicates is most procedurally correct; she has reapplied to the judge who issued the original denial. In *Rivera* the fact that the original application had been made almost two years earlier did not bar the new application; similarly,

here Ms. Guido's second application may be heard by the court, notwithstanding the denial of her first application in September 2002. Also, the original decision permitted a renewed application. Therefore, the court must hear petitioner's reapplication for leave to assume the name of Cynthia Alexandria Frank.

II. GRANTING THE PETITION WOULD ONLY AFFECT PETITIONER'S NAME, NOT HER GENDER.

The only issue before the court is a name change. See N.Y. Civ. Rights Law § 60 (McKinney 2003). The order that the court would issue if it granted Ms. Guido's petition would give her leave to assume another name. It would be silent as to her gender. In Rivera, the Civil Court emphasized the separateness of a name change from a gender change when it granted the petition of a transsexual woman who had not had surgery to change her legal first name from William to Veronica, upon the condition that she could not rely on the order as any evidence whatsoever or judicial determination that her sex had been changed anatomically. 165 Misc.2d at 312, 627 N.Y.S.2d at 244.

A person's name does not suffice for legal purposes to indicate one's gender. For example, the names of the members of a couple do not determine whether or not they are considered a same-sex or different-sex couple for purposes of acquiring a marriage license. Thus, under the current state of the law, even if a woman were named George, she would not be permitted to legally marry a woman named Linda; she would however be permitted to legally marry a man, whether his name was Robert or Julie.

If Ms. Guido wishes to change her gender designation on legal documents, she will need to follow separate procedures with no relationship to her name change. A name change order is not even relevant evidence in the administrative procedures in place to permit gender designation changes. For example, to change one's gender designation with the New York Department of

Motor Vehicles, one must bring a letter signed by a physician on the physician's letterhead that states that one gender predominates over the other. Memorandum from Patricia B. Adduci, Commissioner, State of New York Department of Motor Vehicles to all issuing offices (Apr. 29, 1987) (on file with author).

To change one's gender designation with the Social Security Administration one needs documentation that one has had sex reassignment surgery. Social Security Administration's Program Operations Manual System, RM 00203.210 (c). In New York, one can have the gender designation on one's birth certificate removed with a similar letter from a surgeon. See Anonymous v. Mellon, 91 Misc.2d 375, 398 N.Y.S. 2d 99 (Sup. Ct. N.Y. Co. 1977).

The Court lacks the power to determine whether a new gender designation for official purposes is in order for Ms. Guido. See in re Anonymous, 57 Misc.2d 813, 293 N.Y.S.2d 834 (Civ. Ct. N.Y. Co. 1968) (refusing to hear merits of petition to change gender that appears on birth certificate because the civil court lacked jurisdiction). The only issue before the court today is a name change. Because the court would not be ordering a gender change, the lack of recognition of same-sex marriage does not present a bar to the petition and medical evidence is unnecessary. See Rivera, 165 Misc.2d at 312, N.Y.S.2d at 244 (ordering a name change for a transgender person who had not had gender reassignment surgery).

III. THE CIVIL COURT DOES NOT HAVE JURISDICTION OVER MATRIMONIAL MATTERS.

The civil court is a court of limited jurisdiction. N.Y. City Civ. Ct. Act § 201 (McKinney 2003) ("The court shall have jurisdiction as set forth in this article and as elsewhere provided by law."). The Civil Courts Act grants the civil court jurisdiction over money actions and actions involving chattels and real property where the amount to be recovered or value of the property does not exceed \$25,000; small claims; and summary eviction proceedings. N.Y. City Civ. Ct.

Act §§ 202 - 204, 207. The Civil Rights Law grants the civil court jurisdiction over name change petitions as well. N.Y. Civ. Rts. § 60. The civil court does not, however, have jurisdiction over other matters, such as divorce or annulment.

The Supreme Court and, in certain cases, the Family Court have jurisdiction over matrimonial cases, including divorce. N.Y. Const. Art. 6, § 13. Those courts alone may decide when a divorce or an annulment is appropriate. The only issue before this Court is a name change. The civil court does not have jurisdiction to decide whether or not a marriage between a transgender woman and a non-transgender woman remains valid, nor is that issue before it. Should that issue ever present itself in New York, it must be before the Supreme Court. Permitting Ms. Guido to change her first name certainly could not invalidate her marriage in and of itself, since the court is granting only a name change, not a gender change.

The Civil Rights Act does not make any indication that marital status is relevant to a name change, except of course for an individual's right to change her name upon marriage, divorce or annulment at her option. N.Y. Civ. Rts § 65. Petitioner's spouse has been informed of the proposed name change and supports the petition. It would be an inappropriate intrusion on petitioner's right to privacy to insist that she obtain a divorce before permitting her to exercise her right to change her name.

Linda Ann A. does not indicate otherwise. 126 Misc.2d 43, 480 N.Y.S.2d 996 (Sup. Ct. Queens Co. 1984). In that case, the court was convinced that a woman wished to assume the last name of her married male lover. *Id.* at 44, 997. It declined to grant the petition because it saw granting the name change as furthering the criminal act of adultery and permitting interference with the rights of third parties in that it would enable her to hold herself out as her lover's wife, to the detriment of his actual wife. Id. Here the name change would not further any criminal act.

It is no crime for a person to have a first name not typically associated with the gender she was assigned at birth; nor does any law criminalize a transgender person presenting herself in accordance with her gender identity. Furthermore, the name change would not facilitate Ms. Guido's holding herself out as a third party whose rights could be infringed upon.

The court has no control over whether or not Ms. Guido and her spouse will be perceived as a married same-sex couple. Ms. Guido is already presenting as a woman and will continue to do so regardless of the court's order. Ms. Guido and her spouse have the right to express their genders without experiencing discrimination. N.Y.C. Local Law No. 3 Int. 24. The way the couple may be perceived is irrelevant to the determination of whether her name change petition must be granted.

IV. MS. GUIDO'S PETITION FOR A NAME CHANGE SHOULD BE GRANTED BECAUSE ADULT NAME CHANGE APPLICATIONS SHOULD GENERALLY BE GRANTED WHERE, AS HERE, NO THIRD PARTIES HAVE OBJECTED.

At common law every person has a broad right to change his or her name without court intervention, as long as she or he does so in good faith and for an honest purpose. Smith v. U.S. Casualty Co., 197 N.Y. 420, 425, 90 N.E. 947, 949 (1910); see also In re Halligan, 46 A.D.2d 170, 171, 361 N.Y.S.2d 458, 459 (N.Y. App. Div. 4th Dep't 1974) ("Under the common law a person may change his or her name at will so long as there is no fraud, misrepresentation or interference with the rights of others.") The statutory method of name change set forth in the Civil Rights Act permits a similarly broad ability to change one's name; the function of court intervention is largely ministerial. "The statute affirms this [the common law] right and the two procedures exist side by side supplementing each other ... The statutory procedure differs only in the speed and certainty of the change and in the restriction that once the name is changed the

applicant shall thereafter be known ‘by no other name’ except with the permission of the court.” Halligan, 46 A.D.2d at 171, 361 N.Y.S. at 459.

The scope of review for a name change petition is quite limited. The Civil Rights Act provides that if the court is satisfied that a petition is true and that there is “no reasonable objection to the change of name,” it “*shall* make an order” granting the petition. N.Y. Civ. Rts. § 63 (emphasis added). “In exercising this limited power of review, the court should bear in mind that an individual possesses a broad right to assume a new name at common law and in most instances denial of the application will accomplish little except delay the change and add to the confusion of records until a new name is established by usage. A court may properly assume that most petitions by adults should be granted until the contrary appears, particularly where, as here, the change is unopposed by interested third persons.” Halligan, 46 A.D.2d at 171, 361 N.Y.S. at 460; see also In re Eck, 245 N.J.Super. 220, 223, 584 A.2d 859, 861 (1991) (“[J]udges should be chary about interfering with a person’s choice of first name.”) Because Ms. Guido is an adult and no interested third parties have objected, therefore, it is appropriate to assume that it should be granted.

V. MS. GUIDO’S ASSUMPTION OF HER CHOSEN NAME WOULD NOT BE FRAUDULENT.

A. Fraud is primarily of a financial nature and would not be furthered by this petition.

The Supreme Court of Pennsylvania recently considered the forms that fraud relevant for a name change application may take. In re McIntyre, 552 Pa. 324, 715 A.2d 400 (1998). In that case, a transgender woman who had not had surgery applied to change her first name from Robert to Katherine. Id. at 326, 401. The court stated that the primary purpose of the name change statute was to prohibit fraud by those attempting to avoid financial obligations. Id. at 328,

402. It also gave the example of assuming the name of a person who had gained renown in the petitioner's profession as a fraudulent purpose for a name change. In the case before it, though, it reasoned that "[h]ere, it was undisputed that Appellant was judgment free and was not seeking a name change to avoid financial obligations or commit fraud. The fact that he is a transsexual seeking a feminine name should not affect the disposition of his request." Id. at 328-29, 402-03. The court granted the name change petition.

Justice Nigro wrote separately to note that fraud need not necessarily be financial in nature, giving the example of changing one's name to receive preference as a candidate on a university or employment application. The Justice, however, concurred with the judgment and agreed that "the record does not reflect that Appellant is seeking to change his name in order to perpetrate any type of fraud, financial or otherwise." Id. at 331, 403. The New York Court of Appeals has previously looked to Pennsylvania precedent for guidance in name change cases, see Smith, 197 N.Y. at 428, 90 N.E. at 950 (discussing at length and following Pennsylvania cases, for example, Laflin & Rand Co. v. Steytler, 146 Pa. St. 434, on the right to a common law name change and its relationship to the statutory name change process).

When presented with similar facts (a transgender woman who had not had surgery applied to change her name from John to Tina), the Superior Court of New Jersey stated, "We perceive no fraudulent purpose in petitioner's application. Absent fraud or other improper purpose a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants to change from a traditional "male" first name to one traditionally "female," or vice versa." Eck, 245 N.J.Super. at 223, 584 A.2d at 860-61.

The Ohio Supreme Court also reversed a lower court's denial of a name application to a transgender woman who had not had surgery. In re Maloney No. CA2000-08-168, 2001 WL 908535 (Ohio App. 12 Dist.), *rev'd by* 96 Ohio St.3d 307, 774 N.E.2d 239 (Ohio 2002).

B. A transgender person expressing her gender identity is not deceitful.

It is not deceitful for a transgender person to express her gender identity. Living as a woman is a personally truthful and important act for someone who understands herself as a woman. It is also strongly recommended by medical professionals and required before many health care providers will perform gender reassignment surgery. Thus, refusing to grant a petition for a name change because a transgender person has not had surgery may actually impede that person from receiving the surgery the court requires. See Maloney at *7 (Valen, J., dissenting).

Being transgender or expressing one's gender in an unconventional way is not illegal in New York. In fact, it is illegal to discriminate against someone in New York City on the basis a person's gender, which includes "actual or perceived sex" and "a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth." N.Y.C. Local Law No. 3 Int. 24. In this law, the City Council recognized the severe gender-based discrimination that confronts individuals like Ms. Guido, "whose gender self-image and presentation do not fully accord with the legal sex assigned to [her] at birth," and declared that the ability of all New Yorkers to live free from "invidious discrimination based on gender is the guiding principle of public policy and law." *Id.* This public policy strongly weighs in favor of granting Ms. Guido's petition.

While some people may make erroneous assumptions about a transgender person's anatomy, those assumptions are the result of a lack of awareness of transgender people and inaccurate gender stereotypes, not the result of any fraudulent intent or action on the part of the transgender person. They are also not the concern of the court when considering a name change. In Halligan the lower court denied the name change petition of a married woman, citing the confusion that would ensue if a husband and wife were known by different names. The Appellate Division reversed, dismissing the Supreme Court's concern over public confusion: "While we appreciate the court's apprehension over the confusion which may result, confusion is a normal concomitant of any name change. It will be minimized in this case by petitioner's consistent usage of her maiden name in the past. No reasonable objection appearing, appellant is entitled to her requested order..." Halligan, 46 A.D.2d at 172, 361 N.Y.S. at 460.

There is no authoritative list of "male" names and "female" names. It is not unusual for some people to have names that are commonly associated with a gender different from their own. For example, "Cameron," "Glenn," and "Drew" are often considered men's names, but some women have them (e.g., actresses Cameron Diaz, Glenn Close, and Drew Barrymore). The gendered connotations of names change over time (e.g. Ashley and Beverly, which used to be considered men's names but are now used more often by women). Some names are not particularly associated with any gender (e.g. Chris, Jamie, Robin, Pat). Nonetheless, people are regularly permitted to name their children and to change their names to these gender ambiguous and therefore potentially confusing names. See Maloney at *5 (Valen, J., dissenting) ("Consider original names that seem to have no gender associated with them by the general public, names such as Echo, Leaf, Trula, Oasis, Touche, Especuliar, Hasini, Shake, Moon, Seven, Ry-sing, Extree and so on. ... Should the courts not allow individuals adopt these names because they

might confuse the public?”). These are matters of culture and individual preference, not a system for the judiciary to regulate, sorting every name and every person as either pink or blue.¹

Ms. Guido’s gender identity and expression is beyond the reach of this case. The court cannot, through its decision, keep Ms. Guido from being transgender or change her gender identity from female to male. It will not prevent her from continuing to present herself as woman and to be perceived as a woman. It has the power only to refuse to allow her to change her name to match her gender identity and expression, which would only cause more confusion about her gender among others. As Judge Valen explained, “Because the trial court’s decision will not affect this transsexual’s sexual manner and dress, it will be even more confusing to the public not to allow appellant to change his name to Susan. While saddled with a male name and a female visage, appellant must constantly convince the public that his name is ‘Richard.’ Should appellant be permitted to change his name to ‘Susan,’ the general public’s outward perception of appellant would be consistent with appellant’s legal name.” Maloney at *5.

In Halligan, the Appellate Division cited with disapproval instances where judges made personal judgments on the propriety of proposed name changes. The cases it mentioned specifically involved denials of petitions to assume “Americanized” names in the place of names that show ancestral heritage or to assume names indicative of petitioners’ heritage deemed “un-American” by the judge. 46 A.D.2d at 171, 361 N.Y.S. at 460.

In each of these cases that the Appellate Division characterized as instances of “judicial caprice,” Halligan, 46 A.D.2d at 171, 361 N.Y.S. at 460, a court denied a name change because it did not think the new name matched some aspect of the person’s “true” identity (as an American, as a person of Jewish or Italian descent). In re Filoramo, 40 Misc 2d 598, 243 N.Y.S. 2d 339,

¹ While the civil court did inquire into the gender of the petitioner in *In re Anonymous*, 57 Misc.2d 813 (Civ. Ct. N.Y. Co. 1968), that case is distinguishable because the petitioner asked the court to order a gender change as well

Cohen, 163 Misc. 795, 297 N.Y.S. 905; Middleton, 60 Misc.2d 1056, 304 N.Y.S.2d 145; in re Jama, 51 Misc.2d 9, 272 N.Y.S.2d 677; see also in re Kastenbaum, 44 N.Y.S.2d 2 (Sup.Ct. Kings Co. 1943) (granting petition for a name change despite the court’s doubt that petitioner did not intend to deceive people as to his identity, as he sought to assume the name of an Englishman and did not assert that he was English). The Appellate Division’s disapproval of these decisions shows that the Civil Rights Act enacts a public policy of permitting individual self-determination of appropriate names and expressions of identity. Thus, in re Anonymous, 153 Misc.2d 893 (Civ. Ct. Queens Co. 1992) was erroneously decided and should not be followed.

C. A person may not be lawfully refused a name change merely because she is transgender.

It is inappropriate to deny a name change petition simply because of a person’s transgender status, as courts in other states have recognized. “The details surrounding Appellant’s quest for sex-reassignment surgery are not a matter of governmental concern. As the name change statute and the procedures thereunder indicate a liberal policy regarding change of name requests, we see no reason to impose a restriction which the legislature has not. Accordingly, because Appellant has satisfied the statutory requirements, the trial court abused its discretion in denying his name change petition.” McIntyre, 552 Pa. at 330, 715 A.2d at 403. “[W]e perceive that the judge was concerned about a male assuming a female identity in mannerism and dress. That is an accomplished fact in this case, a matter which is of no concern to the judiciary, and which has no bearing upon the outcome of a simple name change application.” Eck, 245 N.J.Super. at 223, 584 A.2d at 861.

Nothing appears in the Civil Rights Act that limits the right to a name change to non-transgender people, nor would the legislature have had any rational basis to create such a

as a name change and requested it to attach its order to her birth certificate.

limitation. Gender is not listed as a relevant consideration in the statute. Ms. Guido has satisfied the statutory requirements and therefore is entitled to a name change, just as any non-transgender petitioner would be.

Thus, regardless of the court's opinion of the petitioner's true gender, Ms. Guido may choose to express her gender however she sees fit in her choice of name. Such choices are not fraudulent. She is not attempting to assume another individual's identity to unjustly enrich herself, economically or otherwise; nor is she is not attempting to evade creditors or law enforcement. Instead, she is merely trying to live her life in a way that is truthful to her own self-image and petitioning to assume a name that she prefers over the one she was given, like any other petitioner for a name change. Her request cannot justifiably be denied.

CONCLUSION

Ms. Guido respectfully requests that the Court grant her petition for an individual adult change of name and grant her leave to assume the name of Cynthia Alexandria Frank.

Dated: New York, New York
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