

Matter of Islam

2002 NY Slip Op 30142(U)

March 11, 2002

Sup Ct, NY County

Docket Number: 118284/01

Judge: Jacqueline W. Silbermann

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. HON. JACQUELINE W. SILBERMANN

PART 502

Justice

TERESA HAVEL

INDEX NO.

11828461

MOTION DATE

- v -

MOTION SEQ. NO.

001

AFTAB ISLAM

MOTION CAL. NO.

The following papers, numbered 1 to 10 were read on this motion ~~to~~/for other relief

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1-3

Answering Affidavits — Exhibits _____

4

Replying Affidavits _____

5-9, 10

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Handwritten signature

Dated: 3/11/02

HON. JACQUELINE W. SILBERMANN
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
IN THE MATTER OF THE APPLICATION OF

**GEORGINA ARABELLE SANAM ISLAM,
TRISTAN AMBROSE ALEXANDER NASIM ISLAM,
CLARISSA ISABELLE FERIAL ISLAM,
CHLOE ELECTRA SAIRA MCNERNEY ISLAM**

Index No. 118284/01

**infants, by their mother and natural guardian,
THERESA HAVELL**

**FOR LEAVE TO CHANGE THEIR RESPECTIVE
NAMES TO**

**GEORGINA ARABELLE McNERNEY,
TRISTAN AMBROSE McNERNEY,
CLARISSA ISABELLE McNERNEY,
CHLOE ELECTRA McNERNEY**

-----X
Jacqueline W. Silbermann, J:

In this special proceeding, the petitioner, as mother and natural guardian of the four minor children, Georgina, Tristan, Clarissa and Chloe, moves for an order directing that the children may change their names as indicated above. The petitioner alleges the requested name changes are required as the children's father, Aftab Islam, violently assaulted their mother on April 22, 1999 by hitting her on the head with a barbell, in the presence of three of the minor children. As a consequence, the children no longer wish to carry the same last name as their father, and also wish to discard their Persian middle names given to them by their father, who pleaded guilty to first degree assault and currently is serving a prison term. Instead, the children wish to adopt their mother's maiden name, McNERney, as their last name in place of their father's last name. In addition, the children fear that carrying the name "Islam" in the wake of the events of September 11, 2001 will subject them to further possible harm.

The children's Law Guardian is in support of the name change. She indicates it is in the children's best interest to disassociate themselves from their father's name as they try to move ahead with their lives. She indicates it will do all of the children good to distance themselves from their father, the attack, and the past. In addition, she indicates the children derive comfort and strength from associating themselves with their mother's maiden name.

The children's father, of course, vehemently opposes the proposed name change. He asserts there is no basis for the name change as the petitioner has failed to establish that the requested name change will prevent embarrassment, harassment, or confusion, associated with their present last name. See *Application of Robinson*, 74 Misc.2d 63 (Civ. Ct. N.Y. County 1972) or that the name change is in the children's best interests. *Id.*; Civ. Rts. L. §63. In addition, Mr. Islam asserts there is no basis for granting a name change to the children different from either their mother or their father's last name.

Pursuant to Section 63 of the Civil Rights Law, it is appropriate to grant a petition to change the name of a minor when the court finds that "the interests of the infant will be substantially promoted by the change." Civ. Rts. L. §63. This statute has been interpreted as requiring that courts apply the "the best interests of the child" standard in deciding a petition to change the name of a minor. See, e.g., *Application of Sakaris by Sakaris*, 160 Misc.2d 657 (Civ. Ct. N.Y. Co. 1993); *Application of Robinson*, 74 Misc.2d 63 (Civ. Ct. N.Y. Co. 1972); *Application of DeJesus*, 44 Misc.2d 833 (Civ. Ct. N.Y. Co. 1964).

Petitions to change the name of a minor have been granted where the child's continued use of his/her former name will cause him/her embarrassment, harassment, or confusion [see, *Application of Robinson*, 74 Misc.2d 63; *In the Matter of Learn by Houck*, 194 A.D.2d 859 (3d Dept. 1993); *In the Matter of Goldstein*, 104 A.D.2d 616 (2d Dept. 1984)], especially where the reason the child seeks to change his/her name is that the parent from whom the name came has been convicted of a serious crime. In those cases, the court reasoned that the granting of the petition will

relieve the infant of the scorn, opprobrium or derision that may have attached to his name through no fault of his own, and will permit him to face the future with greater ease and comfort, free of the destructive hand of the past.

Application of Yessner, 61 Misc.2d 174 (Civ. Ct. Kings Co. 1969). See also, *In the Matter of Fein*, 51 Misc.2d 1012, 1018 (Civ. Ct. N.Y. Co. 1966).

This court is familiar with the facts and circumstances surrounding the requested name change in this matter, as the court presided over the matrimonial action which resulted in the dissolution of the marriage of the petitioner and Mr. Islam. The court is aware of the details of the brutal attack upon the petitioner on April 22, 1999, and the impact that attack had on the parties' children, three of whom witnessed their father attempting to beat their mother to death. As a result of the attack, the children's father remains incarcerated. He has no visitation rights with his children at this time, and has had no contact with the children for the previous three years.

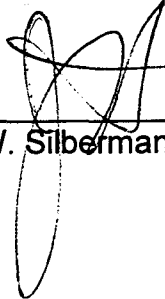
In light of the foregoing, this court is of the opinion it is in the children's best interests to allow them to change their names as requested. Although it is unusual for children to adopt a surname other than that of one of the children's parents, the court believes that

under these circumstances the requested name change is in the children's best interests, as they have positive associations with their mother's maiden name, and no such positive association with their father's name.

Accordingly, the petition is granted in accordance with the annexed order.

All matters not decided herein are hereby denied.

Dated: New York, New York
 March 11, 2002



Jacqueline W. Silbermann, J.S.C.

At an Ex Parte Motion Part of the Supreme Court of the State of New York, held in and for the County of New York, at 60 Centre Street, on the 1th day of March, ~~2001~~.
2002.

PRESENT: Hon. Justice Jacqueline W. Silbermann

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN THE MATTER OF THE APPLICATION OF

GEORGINA ARABELLE SANAM ISLAM,
TRISTAN AMBROSE ALEXANDER NASIM ISLAM, ORDER
CLARISSA ISABELLE FERIAL ISLAM,
CHLOE ELECTRA SAIRA MCNERNEY ISLAM

INDEX NUMBER 118254/01

infants, by
their mother and natural guardian,
THERESA HAVELL

FOR LEAVE TO CHANGE THEIR RESPECTIVE
NAMES TO

GEORGINA ARABELLE McNERNEY,
TRISTAN AMBROSE McNERNEY,
CLARISSA ISABELLE McNERNEY,
CHLOE ELECTRA McNERNEY

-----X

Upon the petition of Georgina Islam, Tristan Islam, Clarissa Islam, and Chloe Islam, minors, by their mother and natural guardian, Theresa Havell, verified the 28th day of September, 2001, seeking leave to change their names as follows:

<u>Present Name:</u>	<u>Desired Name:</u>
Georgina Arabelle Sanam Islam	Georgina Arabelle McNerney
Tristan Ambrose Alexander Nasim Islam	Tristan Ambrose McNerney
Clarissa Isabelle Ferial Islam	Clarissa Isabelle McNerney

Chloe Electra Saira Mcnerney Islam Chloe Electra McNerney,
and the court being satisfied thereby that the petition is true
and that there is no reasonable objection to the change of name
proposed,

Now, on motion of Georgina Islam, Tristan Islam, Clarissa
Islam, and Chloe Islam by their mother and natural guardian,
Theresa Havell, it is

ORDERED, that the petitioners, whose dates and places of
birth and birth certificate numbers are as follows:

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>	<u>BC#</u>
Georgina Islam:	August 5, 1989	Torrington, CT	H0806684
Tristan Islam:	December 27, 1987	New York, NY	15687138301
Clarissa Islam:	August 11, 1986	Torrington, CT	G112615
Chloe Islam:	April 22, 1984	New York, NY	15684110436

are hereby authorized to assume their desired names in place of
their present names upon compliance with the provisions of this
order as follows:

<u>Present Name:</u>	<u>Desired Name:</u>
Georgina Arabelle Sanam Islam	Georgina Arabelle McNerney
Tristan Ambrose Alexander Nasim Islam	Tristan Ambrose McNerney
Clarissa Isabelle Ferial Islam	Clarissa Isabelle McNerney
Chloe Electra Saira Mcnerney Islam	Chloe Electra McNerney,

and it is further

ORDERED, that this order shall be entered and the papers on which it was granted filed, prior to the publication hereinafter ordered, in the office of the Clerk of the County of New York, wherein petitioners reside, and it is further

ORDERED, that at least once within twenty days after entry of this order, a notice shall be published in the New York Law Journal, substantially in the following form prescribed by Section 63 of the New York Civil Rights Law:

Notice is hereby given that an order ^{signed} ~~entered~~ by the Supreme Court, New York County, on the 11th day of March, 2002, bearing Index Number 118284/01, a copy of which may be examined at the office of the clerk, located at 60 Centre Street, in room number 103B, grants us the right, effective on the 11th day of March, 2002, to assume the names of Georgina Arabelle McNerney, Tristan Ambrose McNerney, Clarissa Isabelle McNerney, and Chloe Electra McNerney. Our present address is care of Theresa Havell, Havell Capital Management, One Rockefeller Plaza, Suite 1609, New York, NY 10020; our respective dates and places of birth and present names are as follows:

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
Georgina Arabelle Sanam Islam:	August 5, 1989	Torrington, CT
Tristan Ambrose Alexander Nasim Islam:	December 27, 1987	New York, NY
Clarissa Isabelle Ferial Islam:	August 11, 1986	Torrington, CT
Chloe Electra Saira Mcnerney Islam:	April 22, 1984	New York, NY,

and it is further

ORDERED, that within forty days of the making of this order,

an affidavit of publication as of the aforesaid notice shall be filed in the office of the Clerk of the County of New York, and it is further

ORDERED, that upon full compliance with the above provisions of this order, the petitioners shall be known by their desired names as follows:


<u>Present Name:</u>	<u>Desired Name:</u>
Georgina Arabelle Sanam Islam	Georgina Arabelle McNerney
Tristan Ambrose Alexander Nasim Islam	Tristan Ambrose McNerney
Clarissa Isabelle Ferial Islam	Clarissa Isabelle McNerney
Chloe Electra Saira Mcnerney Islam	Chloe Electra McNerney,

which they are hereby authorized to assume, and by no other name, and it is further

ORDERED that a copy of this order be served by mail upon Aftab Islam or his attorneys, if any, within 10 days after this order is filed and that proof of service be filed within 20 days thereafter.

Dated: March 11, 2002

E N T E R:



 J.S.C.
 JUSTICE, SUPREME COURT OF
 THE STATE OF NEW YORK
 FIRST JUDICIAL DISTRICT