

Matter of Severo v New York City Dept. of Health & Mental Hygiene

2019 NY Slip Op 31921(U)

July 5, 2019

Supreme Court, New York County

Docket Number: 153304/2019

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of

LUCAS SEVERO and DIANA SEVERO WALLER,

Index No.

153304/2019

Petitioners,

**DECISION AND
ORDER**

For an Order to Show Cause,

Mot. Seq. #001

- against -

NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE,

Respondent.

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HON. EILEEN A. RAKOWER, J.S.C.

Petitioners Lucas Severo (“Lucas”) and Diana Severo Waller (“Diana”) (collectively, “Petitioners”) bring an Order to Show Cause requesting a declaratory judgment pursuant to CPLR § 3001 that Intrepita Libera Serpentini, Victoria Serpentini, and Victoria Severo are “one and the same person” and directing New York City Department of Health and Mental Hygiene (“Respondent”) to provide the certified extended/long form Birth Certificate with Letter of Exemplification of their grandmother Intrepita Serpentini.

Respondent has submitted an Affirmation in Response to Petitioners’ Order to Show Cause and Verified Petition. Respondent does not oppose Petitioners’ request for a long form birth certificate and letter of exemplification but states that that Respondent is without authority to issue it without an order from the Court. With respect to Petitioners’ request for a “one and the same person,” Respondent “takes no position and defers to the Court’s discretion as to whether Petitioner (sic) presents sufficient evidence to support the granting of the request.”

According to the Verified Petition, Lucas and Diana are U.S. citizens in the process of certifying dual citizenship with Italy (officially known as the Italian

Republic), by establishing *jure sanguinis* (*Petition* at 3). Applicants for this form of dual citizenship must submit all vital records (Birth Certificates, Death Certificates, and Marriage Licenses) of their own and their ascendants to the Consulate of the Italian Republic in New York, NY. (*Id.* at 4). Petitioners claim to be the grandchildren of Intrepita Serpentini, also known as Victoria Intrepita Serpentini and Victoria Intrepita Severo. (*Id.* at 5). Petitioners formally requested that Respondent release Intrepita Serpentini's Birth Certificate with a Letter of Exemplification. (*Id.* at 6). Respondent advised Lucas and Diana that a New York State Supreme Court Order is required before it can release the records, due to inconsistencies of the name on their grandmother's birth and death certificates. (*Id.* at 7).

In support of their Petition, Petitioners submit affidavits by Lucas (Exhibit B) and Diana (Exhibit C). Petitioners further submit a copy of the Birth Certificate of Intrepita Libera Serpentini (Exhibit D); a copy of the Marriage License for Intrepita Serpentini and Gaspar Severo and the affidavit for the license to marry (Exhibit E); a copy of the Birth Certificate of Anthony Severo, the father of Petitioners and son of Intrepita Serpentini and Gaspar Severo (Exhibit F); a copy of the Birth Certificate of Lucas (Exhibit G) a copy of the Birth Certificate of Diana (Exhibit H), and a copy of the death certificate of Victoria Severo (Exhibit I).

More specifically, Petitioners provide a copy of the State of New York Certificate and Record of Birth of Intrepita Libera Serpentini. The document states that she was born in 1916; her father's name as Plinio; her father's birthplace as Italy; her mother's name as Vincenza; her mother's name before marriage as being Giunta; her mother's birthplace as Italy.

Petitioners also provide a copy of the Marriage License issued by the New York State Department of Health to Gaspar Severo and Victoria Intrepita Serpentini. The document provides the following information for Victoria Intrepita Serpentini: place of residence: 123 Thames St., Bklyn, NY; age: 32; year of birth: 1916; place of birth: Bklyn, NY; father's name: Plinio; country of birth of father: Italy; full maiden name of mother: Vincenza Giunta; country of birth of mother: Italy. The Affidavit for License to Marry provides the same information concerning Victoria Intrepita Serpentini.

Petitioners also provide a copy of a Certificate of Death from New York State Department of Health which states that Victoria Severo died on December 16, 2000 at 84 years of age. Her father's name is listed as Pliny Serpentine. Her mother's maiden name is listed as Vincenza Giunta. The "name of the informant" is listed as Anthony Severo.

Petitioners also provide a copy of Anthony Severo's Certificate of Birth. The document, which is signed on January 29, 1953, lists Gasper Severo and Victoria Serpentine as Anthony Severo's parents.

Petitioners also provide the Certificates of Birth of Lucas Schofield Severo and Diana Schofield Severo. The documents identify Anthony Severo as the name of the father.

DISCUSSION

Long Form Birth Certificate Request

Public Health Law § 4174(1)(b) governs the issuance of certified birth certificate copies. It states:

1. The commissioner or any person authorized by him shall:

(b) issue certified copies or certified transcripts of birth certificates only (1) upon order of a court of competent jurisdiction (2) upon specific request therefor by the person, if eighteen years of age or more, or by a parent or other lawful representative of the person, to whom the record of birth relates include authorized representatives of a local social services district if the person is in the care and custody or custody and guardianship of such district, or (3) upon specific request therefor by a department of a state or the federal government of the United States.

(N.Y. Pub. Health Law § 4174).

Here, the Court therefore grants the portion of the Order to Show Cause which seeks the certified extended/long form birth certificate with letter of exemplification of Petitioners' grandmother Intrepita Serpentine.

"One and the Same" Request

CPLR § 3001 governs declaratory judgments regarding legal relations and states that:

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds.

(N.Y. C.P.L.R. Law § 3001).

After reviewing the content of the documents provided, the Court finds that the following documents submitted by Petitioners all relate to the same person: Certificate and Record of Birth of Intrepita Libera Serpentini (Exhibit D); New York State Marriage License and Affidavit for License to Marry of Victoria Intrepita Serpentini (Exhibit E); and Certificate of Death of Victoria Severo (Exhibit I).

Wherefore it is hereby

ORDERED that the Order to Show Cause is granted only to the extent that Respondent is directed to provide the certified/long form birth certificate with letter of exemplification of their grandmother, Intrepita Serpentini (also known as Victoria Intrepita Serpentini, a/k/a Victoria Intrepita Severo); and it is further

ORDERED that the following documents submitted by Petitioners all relate to the same person: Certificate and Record of Birth of Intrepita Libera Serpentini (Exhibit D); New York State Marriage License and Affidavit for License to Marry of Victoria Intrepita Serpentini (Exhibit E); and Certificate of Death of Victoria Severo (Exhibit I).

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: July 5, 2019



EILEEN A. RAKOWER, J.S.C.