

# In re McIntyre

Supreme Court of Pennsylvania

June 27, 1997, Submitted ; July 21, 1998, Decided

No. 43 M.D. Appeal Docket 1997

## Reporter

552 Pa. 324 \*; 715 A.2d 400 \*\*; 1998 Pa. LEXIS 1468 \*\*\*

IN THE MATTER OF ROBERT HENRY MCINTYRE;  
APPEAL OF ROBERT HENRY MCINTYRE

**Prior History:** [\*\*\*1] Appeal from the Order of the Superior Court dated October 2, 1996, affirming the Order of the Dauphin County Common Pleas Court dated April 1, 1996, at No. 3808 S 1995.

**Disposition:** The trial court abused its discretion in denying his name change petition. The Order is reversed and the petition is granted.

## Counsel: FOR APPELLANTS:

Luther E. Milspaw, Jr., Esquire, Robert Henry McIntyre

Helen Eichenwald Laux, Esquire, Robert Henry McIntyre

**Judges:** CCP - Hon. Richard A. Lewis, J., MR. JUSTICE ZAPPALA. Mr. Justice Saylor did not participate in the consideration or decision of this case. Mr. Justice Nigro files a Concurring Opinion. OLSZEWSKI, JJ.

**Opinion by:** ZAPPALA

## Opinion

### [\*326] [\*\*401] OPINION

#### MR. JUSTICE ZAPPALA

We granted allocatur to determine whether the trial court abused its discretion by denying Appellant's petition to change name. For the following reasons, we reverse.

Appellant, a fifty-three year old male, is a pre-operative transsexual who is undergoing hormonal therapy and psychotherapy in anticipation of sex-reassignment surgery. He has been struggling with personal gender identity issues since the age of ten. Appellant is the father of two adult sons and has been divorced since

1983.

In 1991, Appellant began dressing as a woman and held himself out to the community as a woman in all respects with the exception of his employment as a maintenance worker for the [\*\*\*2] Harrisburg Parking Authority. He is generally known as Katherine Marie McIntyre, the name under which he leases his apartment, maintains various bank accounts and credit cards and is enrolled in membership in local organizations.

On August 25, 1995, Appellant filed a petition to change name from Robert Henry McIntyre to Katherine Marie McIntyre pursuant to 54 Pa.C.S. §§ 701-705. <sup>1</sup> A hearing was held where Appellant presented testimony establishing that a pre-requisite to sex-reassignment surgery is that the patient undergo the "real-life test" whereby he lives for a minimum of one year in all aspects of his life in the gender he desires to [\*327] be. Appellant argued that he is unable to satisfy this requirement because his employer will not recognize him as a female until it receives legal recognition of his name change.

[\*\*\*3] The common pleas court denied the petition

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<sup>1</sup> Sections 701 and 702 provide as follows:

§ 701. Court approval required for change of name

(a) General rule.--It shall be unlawful for any person to assume a different name by which such person is and has been known, unless such change in name is made pursuant to proceedings in court as provided by this chapter.

(b) Informal change of name.--Notwithstanding subsection (a), a person may at any time adopt and use any name if such name is used consistently, nonfraudulently and exclusively.

#### '702. Change by order of court

The court of common pleas of any county may by order change the name of any person resident in the county.

Sections 703 (Effect on children), 704 (Divorced person may resume prior name) and 705 (Penalty for violation of chapter) are not relevant to the instant case.

primarily on the ground that Appellant failed to present testimony or documentation of the statutory requirement that he be free of judgments.<sup>2</sup> See Act of December 16, 1982, P.L. 1309, No. 295, ' 6(b).<sup>3</sup> Appellant filed for reconsideration and submitted proof that he was, in fact, judgment free.

The common pleas court granted reconsideration but again denied the petition holding **[\*\*402]** that it would not grant legal recognition of Appellant's name change until he undergoes sex-reassignment surgery. It found that granting the name change was premature and would be deceptive to the public and to Appellant's co-workers. It relied on prior common pleas court decisions where a similar **[\*\*\*4]** result was reached. In re: Dowdrick, 4 Pa. D. & C. 3d 681 (1978) (granting feminine name change petition of pre-operative transsexual male does not comport with good sense, common decency and fairness to all concerned and the public); In re: Richardson, 23 Pa. D. & C. 3d 199 (1982) (same). The Superior Court affirmed on the basis of the common pleas court's opinion.<sup>4</sup>

Appellant contends that the trial court abused its discretion in denying his petition for name change absent a factual basis for doing so. He asserts that there was no objection to the petition, that the name requested is ordinary and that he is not attempting to avoid financial obligations or commit fraud. He further contends that the trial court's refusal to grant the name change until the sex-reassignment surgery was completed was an arbitrary determination. **[\*\*\*5]** We agree.<sup>5</sup>

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<sup>2</sup> There was no objection to the petition for name change.

<sup>3</sup> This section provides that ". . . the petitioner . . . shall present to the court . . . proof . . . showing that there are no judgments or decrees of record or any other matter of like character against said petitioner. . . ."

<sup>4</sup> Judge Olszewski filed a concurring memorandum wherein he agreed with the denial of the name change petition and noted that the social issue may be best resolved through legislative action.

<sup>5</sup> The Superior Court recently addressed the issue of whether a pre-operative transsexual may legally change his name to reflect the opposite sex in In re: Brian Harris, No. 00729 Pgh 1997, filed December 11, 1997, but a majority of the panel did not agree on the resolution. Judge Olszewski found that the petitioner must establish that he is permanently committed to living as a member of the opposite sex before the name change petition is granted.

## **[\*328]**

**[\*\*\*6]** The trial court has wide discretion in ruling upon a petition to change name and should exercise its discretion in a way as to comport with good sense, common decency and fairness to all concerned and to the public. Falcucci Name Change, 355 Pa. 588, 50 A.2d 200 (1947). Petitions for change of name may be denied upon lawful objection or if the petitioner seeks a name change in order to defraud the public. Id.

We must keep in mind, however, that the primary purpose of the Judicial Change of Name Statute, other than with regard to minor children, is to prohibit fraud by those attempting to avoid financial obligations. Commonwealth v. Goodman, 544 Pa. 339, 676 A.2d 234 (1996); see also In re: Grimes, 530 Pa. 388, 609 A.2d 158 (1992) (necessity for judicial involvement in name change petition centers on governmental concerns that individuals not alter their identity to avoid financial obligations). The penalty provision of the name change statute applies only to persons violating the act for the purpose of avoiding payment of taxes or other debts. 54 Pa.C.S. ' 705.

Here, it was undisputed that Appellant was judgment free and was not seeking a name change to avoid any financial **[\*\*\*7]** obligations or commit fraud.<sup>6</sup> The fact

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Judge Popovich filed a concurring statement wherein he found that the petitioner's commitment to living as a woman was irrelevant to the determination of whether his petition to change name should be granted. He asserted that the court inquiry ends after it is determined that the petitioner has complied with the statutory requirements and that the petitioner has no fraudulent intentions in changing his name.

In his dissenting statement, Judge (now Justice) Saylor opined that a transsexual's name change petition should not be granted until sex reassignment surgery was completed.

<sup>6</sup> In Falcucci Name Change, we observed that if some medical practitioner petitioned for leave to change his name to that of an eminent and successful medical practitioner in the former's vicinity the court would properly deny the petition on the ground that a fraud on the public was intended. The same would be true if some member of the legal profession or some actor or a practitioner of some other profession would seek judicial authority to assume the name of an other person who gained renown in the petitioner's profession. When a petitioner for a change of name is a competitor of a highly successful person whose name he wishes to assume there is reasonable ground for suspicion that his motive in seeking a change of name is an unworthy one, and a due regard for both the public interest and for the person whose name is coveted would

that he is **[\*\*403]** a transsexual **[\*329]** seeking a feminine name should not affect the disposition of his request.

**[\*\*\*8]** The Superior Court of New Jersey espoused a similar view in The Matter of William Eck, 245 N.J. Super. 220, 584 A.2d 859 (1991). The petitioner in Eck was a transsexual who sought to change his name from William to Lisa. The lower court denied the request, concluding that it was inherently fraudulent for a male to assume an obviously female name for the purpose of representing himself to society as a female.

The Superior Court of New Jersey reversed, holding that 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. Many first names are gender interchangeable . . . and judges should be chary about interfering with a person's choice of a first name.

Finally, we 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 **[\*330]** of no concern to the judiciary, and which has no bearing upon **[\*\*\*9]** the outcome of a simple name change application.

Id. at 223, 584 A.2d at 860-861.

Likewise, we find that there is no public interest being protected by the denial of Appellant's name change petition. 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, In re: Grimes, 530 Pa. 388, 609 A.2d 158 (1992), we see no reason to impose restrictions which the legislature has not.

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constrain a court to deny his petition. A court would also properly refuse a request for a change in name if petitioner asked for the privilege of assuming a name that was bizarre or unduly lengthy or which would be difficult to pronounce or would have a ridiculous offensive connotation.

355 Pa. at 592-593, 50 A.2d at 202. Appellant's request is not analogous to these circumstances where the public would be affected by the petitioner's choice of name.

Accordingly, because Appellant has satisfied the statutory requirements, the trial court abused its discretion in denying his name change petition. The Order is reversed and the petition is granted.

Mr. Justice Saylor did not participate in the consideration or decision of this case.

Mr. Justice Nigro files a Concurring Opinion.

**Concur by: NIGRO**

## **Concur**

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### **CONCURRING OPINION**

#### **MR. JUSTICE NIGRO**

I agree with the Majority that Commonwealth v. Goodman, 544 Pa. 339, 676 A.2d 234 (1996), is applicable to this case to the extent that it stands for the proposition that the primary purpose of the **[\*\*\*10]** Judicial Change of Name Statute, other than with regard to minor children, is to prohibit fraud by those attempting to avoid financial obligations. I write separately, however, to emphasize that deterrence against financial fraud may be the primary, but is not the only, purpose behind the Name Change Statute. Rather, there are other types of fraud, besides financial, that the Name Change Statute seeks to prevent.

Courts may face any number of situations, not financial in nature, where an individual is motivated to formally adopt a different name for improper reasons. For example, if evidence discloses that an individual is seeking to change his or her name in order to receive preference as a candidate on a **[\*331]** university or employment application, the Statute would clearly compel the courts to deny that individual's name change petition.

However, under the circumstances of this case, I agree with the Majority 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. Accordingly, I agree with the Majority's conclusion that Appellant's name change petition should be granted.

# In re A.S.D.

Superior Court of Pennsylvania

June 6, 2017, Argued; November 20, 2017, Decided; November 20, 2017, Filed

No. 3719 EDA 2016

## Reporter

175 A.3d 339 \*; 2017 Pa. Super. LEXIS 952 \*\*; 2017 PA Super 369; 2017 WL 5575083

IN RE: A.S.D. A/K/A A.S.D. APPEAL OF: A.S.D. A/K/A A.S.D.

**Prior History:** **[\*\*1]** Appeal from the Order Entered October 23, 2016. In the Court of Common Pleas of Philadelphia County. Civil Division at No(s): No. 2550 August, 2016. Before LINDA A. CARPENTER, J.

In re A.S.D., 2017 Pa. Super. Unpub. LEXIS 3951 (Oct. 24, 2017)

**Counsel:** Elizabeth P. Weissert, Philadelphia, for appellant.

**Judges:** BEFORE: BENDER, P.J.E., BOWES, J., and SHOGAN, J. OPINION BY BENDER, P.J.E. CONCURRING OPINION BY BOWES, J.

**Opinion by:** BENDER

## Opinion

**[\*339]** OPINION BY BENDER, P.J.E.:

A.S.D. a/k/a A.S.D. appeals from the trial court's order, dated October 17, 2016, that denied her petition to change her **[\*340]** name. We vacate and remand for further proceedings.<sup>1</sup>

A.S.D. is a transgender person, who has lived as a female for more than six years. In her petition, she

<sup>1</sup> In its Pa.R.A.P. 1925(a) opinion, the trial court indicated that A.S.D.'s notice of appeal was untimely filed. We disagree, noting that Pa.R.A.P. 108(b) provides that "[t]he date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the day on which the clerk makes the notation in the docket that notice of entry of the order has been given as required by Pa.R.Civ.P. 236(b)." A review of the lower court's docket in this matter shows that notice of the entry of the trial court's order was sent on October 23, 2016, and that the appeal was filed on November 22, 2016. Therefore, we conclude that A.S.D.'s appeal was timely.

avers, in pertinent part, that:

5. There are no outstanding judgments against Petitioner.

6. On August 25, 2009, Petitioner was convicted of a third degree felony, Access Device Issued to Another Who Did Not Authorize Use. Pursuant to 54 [Pa.C.S.] § 702(c)(1), more than two years have elapsed from the completion of Petitioner's sentence, and she is not subject to probation or parole jurisdiction. Petitioner submits her fingerprints to be forwarded to the Pennsylvania State Police in compliance with 54 [Pa.C.S.] § 702(b)(1). ...

7. Petitioner requests that her name be changed from [A.S.D.] to [A.S.D.] for the following reasons:

a. Petitioner has been using the **[\*\*2]** name [A.S.D.] informally since 2009 and now wishes to legally change names,

b. Petitioner's appearance now is consistent with that of a female and Petitioner has been living as a female,

c. Continuing to present official identification with a male name creates confusing and difficult situations for Petitioner on a regular basis since Petitioner's appearance is now female and Petitioner has informally used a female name,

d. Petitioner believes this name change will lessen social stigma against Petitioner and that it will protect Petitioner from potential harassment and even violence.

A.S.D.'s Petition for Change of Name, 8/19/16, at 1-2 (unnumbered).

In her petition, A.S.D. also requested a waiver of publication and a sealing of the record. The court scheduled a hearing on the waiver issue; however, it appears that no hearing was held and no ruling was ever forthcoming on the waiver/sealing of the record request. Moreover, no objections to A.S.D.'s petition were filed and, most importantly, no hearing was held in regard to the petition itself. Subsequently, the court's order denying A.S.D.'s petition was issued. Although the

court recognized that A.S.D. had satisfied the requirements of **[\*\*3]** 54 Pa.C.S. § 702(c)(1), it indicated that the denial was due to the serious circumstances of A.S.D.'s criminal record. **See** Trial Court Opinion, 1/27/17, at 3. The order also provided that A.S.D. could refile for a name change in twelve months.

As noted previously in footnote 1, A.S.D. filed this timely appeal,<sup>2</sup> and now raises the following issues for our review:

1. Did the trial court abuse its discretion by denying [A.S.D.'s] petition for change of name without sufficient evidence, where the evidence in the record shows that [A.S.D.] met all of the statutory requirements for a change of name **[\*341]** and that [A.S.D.], a transgender woman, was seeking to change her name to one consistent with her female identity and appearance rather than to avoid financial obligations or for any other improper purpose?
2. Did the trial court abuse its discretion by denying [A.S.D.'s] petition and by mandating an additional twelve-month waiting period upon [A.S.D.] not required by statute, where [A.S.D.] had satisfied all statutory requirements and, further, was not restricted by statute from changing her name because she filed her petition more than two years after the completion of her criminal sentence, as provided for in 54 Pa.C.S. § 702(c)(1)(i)?
3. Did **[\*\*4]** the trial court abuse its discretion by failing to exercise that discretion in a manner comporting with good sense, common decency and fairness to all concerned by denying [A.S.D.'s] petition for a change of name when granting it would enable her to obtain legal identification documents consistent with her appearance and long-held identity, thereby reducing social stigma and risks to her safety of harassment, threats of violence, and discrimination?

A.S.D.'s brief at 3-4.

To begin, we set forth the standards that guide our review of this case. Our Supreme Court has instructed that the established standard of review for cases involving petitions for change of name is whether or not there was an abuse of discretion. *In*

*Re Zachary Thomas Andrew Grimes*, 530 Pa. 388, 390 n.1, 609 A.2d 158, 159 n.1 (1992) (citing *In re Falcucci Name Case*, 355 Pa. [588,] 591, 50 A.2d [200,] 202 [(1947)]). That Court has also provided us with an understanding of what constitutes an abuse of discretion, as follows:

An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will. A finding by an appellate court that it would have reached a different result than the trial court does not constitute a finding of **[\*\*5]** an abuse of discretion. Where the record adequately supports the trial court's reasons and factual basis, the court did not abuse its discretion.

*Harman v. Borah*, 562 Pa. 455, 469, 756 A.2d 1116, 1123 (2000) (citing *Coker v. S.M. Flickinger Co., Inc.* 533 Pa. 441, 447, 625 A.2d 1181, 1184-85 (1993) and *Morrison v. Department of Pub. Welfare, Office of Mental Health*, 538 Pa. 122, 133, 646 A.2d 565, 571 (1994)). On matters involving petitions for a change of name, the Supreme Court has often cited the guiding principle first enunciated in *Falcucci*, where it declared:

Whenever a court has discretion in any matter (as it has in the matter of a change of name) it will exercise that discretion in such a way as to comport with good sense, common decency, and fairness to all concerned and to the public.

*Petition of Falcucci*, 355 Pa. at 592, 50 A.2d at 202, (cited and restated in *In the Matter of Robert Henry McIntyre (In Re McIntyre)*, 552 Pa. 324, 328, 715 A.2d 400, 402 (1998); *Grimes*, 530 Pa. at 392, 609 A.2d at 160).

*In re Miller*, 2003 PA Super 197, 824 A.2d 1207, 1210 (Pa. Super. 2003). Additionally, "our scope of review is limited to the question of whether the evidence is sufficient to support the decision reached by the hearing court." *Id.*

As noted above, the trial court denied A.S.D.'s petition under section 702(c) "Convicted felons," which provides:

**[\*342]** (1) The court may order a change of name for a person convicted of a felony, subject to provisions of paragraph (2), if:

<sup>2</sup> No Pa.R.A.P. 1925(b) statement of errors complained of on appeal was requested by the trial court, nor was such a statement filed by A.S.D.

(i) at least two calendar years have elapsed from the date of completion of a person's sentence and that person is not subject to the probation or parole jurisdiction of any court, county probation agency or the **[\*\*6]** Pennsylvania Board of Probation and Parole; or

(ii) the person has been pardoned.

(2) The court may not order a change of name for a person convicted of murder, voluntary manslaughter, rape, criminal conspiracy or criminal solicitation to commit any of the offenses listed above or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

54 Pa.C.S. § 702(c)(1)-(2).

Our review of the record in this case reveals that A.S.D.'s petition asserts that she has complied with the requirements listed in section 702(c), and the trial court acknowledges this fact. However, since no hearing was held we are compelled to vacate the order appealed from pursuant to the dictates of *In re Harris*, 707 A.2d 225 (Pa. Super. 1997). The *Harris* Court, as in the instant case, was considering the trial court's denial of a name change petition filed by a transgender person. Specially, this Court's opinion directed that:

Preliminarily, we note that our Supreme Court long ago articulated the general standard to be applied to petitions requesting name changes. **After determining that the petitioner has complied with the necessary statutory prerequisites, the court must hold a hearing after which the **[\*\*7]** court may, at its discretion, grant or deny the petition.** In making its determination, the court must act in such a way as to "comport with good sense, common decency and fairness to all concerned and to the public." *Petition of Falcucci*, 355 Pa. [at] 592, 50 A.2d [at] 202 [].

*Id.* at 227 (emphasis added).

Because no hearing was held, we must vacate the order denying A.S.D.'s petition and remand the matter for proceedings as directed by the *Harris* case.<sup>3</sup>

Order vacated. Case remanded for proceeding

<sup>3</sup>We also note that by the time this decision is handed down, almost one year has elapsed since the original denial was issued.

consistent with this opinion. Jurisdiction relinquished.

Judge Shogan joins this opinion.

Judge Bowes files a concurring opinion.

Judgment Entered.

Date: 11/20/2017

**Concur by: BOWES**

## Concur

### CONCURRING OPINION BY BOWES, J.:

I concur with the majority that, although A.S.D.'s petition complies with the requirements listed in 54 Pa.C.S. § 702, our High Court's holding in *In re Falcucci Name Case*, 355 Pa. 588, 50 A.2d 200 (Pa. 1947), and our decision in *In re Harris*, 707 A.2d 225 (Pa. Super. 1997), which require a hearing pursuant to 54 Pa.C.S. § 701(a.1)(3) in all circumstances, necessitate a remand for a hearing.<sup>1</sup> However, I write further to **[\*343]** emphasize that A.S.D.'s compliance with the technical requirements of the Judicial Change of Name statute, and the evidence proffered by objectors to the petition, should be the sole considerations utilized by the trial court when ruling **[\*\*8]** on a name change petition.<sup>2</sup> In

<sup>1</sup>Section 701 of the Judicial Name Change statute reads, in relevant part:

(a) General rule.--Except as set forth in subsection (b) [relating to information name changes], it shall be unlawful for any person to assume a name different from the name by which such person is and has been known, unless such changes in name is made pursuant to proceedings in court in accordance with subsection (a.1).

(a.1) Procedure.--

....

(3) Upon filing of the petition, the court shall do all of the following:

(i) Set a date for a hearing on the petition. The hearing shall not be held less than one month nor more than three months after the petition is filed.

54 Pa.C.S. § 701 (a) and (a.1)(3).

<sup>2</sup>Section 702 sets forth the procedural requirements of the Judicial Change of Name statute, in pertinent part, as follows:

(a) General rule.--The court of common pleas of any



this regard, I am of like mind with Judge Popovich's concurring statement in *In re Harris, supra*.

In enunciating his position, Judge Popovich highlighted the rationale underlying the change of name statute, noting that the primary purpose

is to prohibit fraud by those trying to avoid financial obligations. This intent is reflected in the penalty provision of the statute, which applies only to 'person[s] violating the provision of this chapter for the purpose of avoiding payment of taxes or other debts.'

*Id.* at 229 (Popovich, J., concurring) (citing *Commonwealth v. Goodman*, 544 Pa. 339, 676 A.2d 234, 236 (Pa. 1996)). He observed that the statute is purely procedural, and absent an indication of fraudulent intent, "[t]his is where the inquiry ends." *Id.* at 229. Judge Popovich took exception to cases, such as this, where a transgender person filed an unopposed petition to validate a name change where that person had been living under an assumed name which matched that person's gender identity for an extended period of **[\*\*10]** time. He argued that such petitions should be granted without "probing into [the petitioner's] sex or his desire to express himself in the manner of his choosing." *Id.*

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county may by order change the name of any person resident in the county.

(b) Procedure.--Prior to entry of an order of approval of change of name, all of the following shall apply:

(1) The court must forward to the Pennsylvania State Police a duplicate copy of the application for change of name and a set of the person's fingerprints. The person applying for the change of name is responsible for costs under this paragraph.

....

(c) Convicted felons.--

(1) The court may order a change of name for **[\*\*9]** a person convicted of a felony, subject to the provisions of paragraph (2), if:

(i) at least two calendar years have elapsed from the date of completion of a person's sentence and that person is not subject to the probation or parole jurisdiction of any court, county probation agency or the Pennsylvania Board of Probation and Parole; or

(ii) the person has been pardoned.

I believe that the hearing required by 54 Pa.C.S. § 701(a.1)(3) is intended to provide a forum for individuals or creditors to oppose a proposed name change based on suspected fraudulent purposes or other nefarious intent. *In re Miller*, 2003 PA Super 197, 824 A.2d 1207, 1210-1211 (Pa.Super. 2003) (stating "the necessity for judicial involvement in name change cases centers on government concerns that persons not alter their identity to avoid financial obligations.") (brackets and citation omitted). Hence, any hearing held pursuant to the Judicial Change of Name statute should focus only upon evidence relating to these concerns and the requirements enunciated in § 702. I fear that any reason utilized outside the dictates of the statute to deny a petition raises the specter of pretext and constitutes an abuse of discretion.

Moreover, our High Court has long-held that the statute should be construed liberally, **[\*344]** and that a trial court should exercise its discretion "in such a way as to comport with good sense, common decency and fairness to all concerned and to the public." *In re Zachary Thomas Andrew Grimes*, 530 Pa. 388, 609 A.2d 158, 160 (Pa. 1992) (quoting *Falcucci, supra*). Here, based on the compelling nature of **[\*\*11]** Appellant's request, and in light of her compliance with the statute, equity and fairness militate in favor of granting her petition in order to align her name with her identity. Simply, the additional hurdles imposed by the trial court did not work to effectuate a liberal construction of the statute or promote fairness in the proceedings.

Finally, in rendering its ruling, the trial court determined that, notwithstanding Appellant's satisfaction of the statute's requirements, it nevertheless retained discretion to deny her position. The trial court noted that the statute "**may** order a change of name for a person convicted of a felony [ . . . ] if at least two calendar years have elapsed from the date of completion of a person's sentence and that person is not subject to the probation or parole of any court, county probation agency or the Pennsylvania Board of Probation and Parole." Trial Court Opinion, 1/27/17, at 3 (emphasis in original) (citing 54 Pa.C.S. § 702(c)(1)(i)).

However, in that same section, the statute states, "The court **may not** order a change of name for a person convicted of," any one of a list of enumerated offenses. 54 Pa.C.S. § 702(c)(2) (emphasis added). In light of the seriousness of those offenses (including murder, **[\*\*12]** voluntary manslaughter, and rape), I believe that the legislature did not intend for the court to exercise

discretion with regard to name change petitions filed by individuals convicted of those offenses. That is, the phrase "may not" functions as a "shall not" for the purposes of the statute. This line of reasoning supports the conclusion that the term "may" operates as a mandatory, as opposed to a discretionary, mechanism within the confines of the Judicial Change of Name statute. **See A. Scott Enterprises, Inc. City of Allentown**, 636 Pa. 249, 142 A.3d 779, 787 (Pa. 2016) (noting that "'may' can mean the same as 'shall' where a statute directs the doing of a thing for the sake of justice," but holding that the statute's plain language indicated it was used permissively in that case). In addition, interpreting the statute as requiring a court to grant a change of name petition, where its technical requirements are met and there is no evidence of fraudulent intent, comports with a liberal application of the act.

In summary, the statute provides the mechanism by which an individual formerly convicted of a non-serious offense may apply for a name change. It requires such an individual to wait two years following the completion of her sentence before applying for a change **[\*\*13]** of name. Appellant, herein, fulfilled the dictates of the statute in this regard. The statute does not delineate a further waiting period, such as the one-year interval ordered by the court, before considering the name change application. Since this timeframe is not found in the statute, I believe it reflects an abuse of discretion and was fundamentally unfair to impose on Appellant.

Thus, as in the case herein, where a transgender petitioner files an unopposed name change petition, which comports with the requirements of § 702, I believe the petition should be granted if, upon holding the hearing, the court finds no indication that the name change is being sought for fraudulent purposes.



# In re Miller

Superior Court of Pennsylvania

January 21, 2003, Submitted ; May 14, 2003, Filed

No. 1209 MDA 2002

## Reporter

2003 PA Super 197 \*; 824 A.2d 1207 \*\*; 2003 Pa. Super. LEXIS 1251 \*\*\*

IN RE: NADINE ANN MILLER; APPEAL OF: NADINE ANN MILLER, Appellant

**Prior History:** [\*\*\*1] Appeal from the Order entered July 25, 2002 of the Court of Common Pleas of York County, Civil Division at No. 2002-SU-02178-13. Before KENNEDY, J.

**Disposition:** Reversed and remanded with directions.

**Counsel:** Audrey E. Woloshin, York, for appellant.

**Judges:** Before JOHNSON, LALLY-GREEN and POPOVICH, JJ. OPINION BY JOHNSON, J. LALLY-GREEN, J. concurred in the result.

**Opinion by:** JOHNSON

## Opinion

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[\*\*1208] OPINION BY JOHNSON, J.:

[\*P1] We are asked to determine whether a court may deny an individual's petition to change her name to that of her life companion on the basis of the trial court's individual perception that the change offends the law and public policy. We are guided by our Supreme Court's admonition that, in matters involving a name change, a court's discretion must be exercised "in such a way as to comport with good sense, common decency and fairness to all concerned and to the public." *Petition of Falcucci*, 355 Pa. 588, 592, 50 A.2d 200, 202 (1947). We find that the petitioner has satisfied all statutory requirements, and there appears no evidence of record supporting the court's conclusion that the name change would violate public policy. Consequently, we conclude that the trial court abused its discretion in denying [\*\*\*2] the petition. Accordingly, we reverse the order denying relief and remand with directions that the trial court grant the petition.

[\*P2] On April 30, 2002, Nadine Ann Miller (Petitioner)

filed a Petition for Change of Name pursuant to 54 Pa.C.S. §§ 701(a), 702. The petition sought to secure a name change from Nadine Ann Miller to Nadine Ann Gingerich, in order that Petitioner might obtain the surname of her life companion. The petition averred that the change of name as requested was not made for the purpose of defrauding creditors or others. Attached to the petition was the Federal Bureau of Investigation Form FD-258 (Rev. 12-29-82) containing Petitioner's fingerprints along with other identifying information.

[\*P3] Included in the certified record on appeal is the certification of the Pennsylvania State Police Central Repository indicating that Petitioner's fingerprint cards had been searched and that Petitioner is not subject to 18 Pa.C.S. Chapter 91 (relating to criminal history record information). *See* 54 Pa.C.S. § 702(b)(1), (2), (3) and (4). Also included in the record are: (1) [\*\*\*3] the certification of Petitioner's attorney that there are no outstanding judgments or decrees of record against petitioner for the five years preceding the filing of the petition, and (2) the proofs of publication of the notice of application for name change, which appeared in the York Dispatch on Friday, June 7, 2002, and in the York Legal Record on Thursday, May 16, 2002. *See* Section 6 of the Act of December 16, 1982, P.L. 1309, 1337-38, Act No. 295 (setting forth the procedural requirements for compliance with 54 Pa.C.S. §§ 701(a), 702).

[\*P4] [\*\*1209] On July 1, 2002, a hearing on the petition was held before the Honorable John S. Kennedy. The only witness was Petitioner. After testifying to her residence addresses over the preceding five years, she stated that she desired to change her last name to Gingerich. In response to counsel's question as to the reason for the request for name change, Petitioner testified: "I'm taking the surname of my lifelong companion." Transcript of Proceedings (T.P.), 7/1/02, at 3. After Petitioner then testified that she did not have any creditors from whom she was trying to hide, the trial [\*\*\*4] court asked how long Petitioner's companion had been her companion. *Id.* Petitioner replied: "Three months. We were - I was separated [from my husband] for five years living in the

same house but living separately. I have not been living in that house for approximately four months." *Id.*

[\*P5] After Petitioner's counsel submitted the proofs of publication and the lien search certification, Judge Kennedy issued his ruling denying the petition *ex cathedra*, stating:

**THE COURT:** All right. I have had this issue in front of me previously, and I did not ask whether Ms. Miller's companion is male or female. Frankly, [it] doesn't make a difference to me, but it has been my policy to deny these name changes because I believe it permits the party to have what would appear to the public to be a marriage when in reality it is not.

The last one I had --and again I didn't inquire as to gender of her companion because it doesn't make a difference. The last one I had was a woman who came in [and] wanted to change her name to that of her fiancé who was male, and I didn't permit it because in my opinion it would have bestowed upon the couple -- it [\*\*\*5] would have held them out to society as folks that were legally married, and, accordingly, I denied it for that reason. So I am going to deny this petition for the same reason. You, of course, have 30 days to appeal.

T.P., 7/1/02, at 4. In his Opinion Pursuant to Pa.R.A.P. 1925(a), issued September 25, 2002, Judge Kennedy asserted that he denied the name change "because we felt that it violated public policy and would permit the Petitioner and her 'life long companion' to hold themselves out to the public as a married couple." Opinion, 9/25/02, at 1. The trial court conceded that Petitioner met the procedural requirements of 54 Pa.C.S. § 702, but concluded that "permitting the name change in this circumstance is against public policy." *Id.* The court went on to declare that it believed that "by permitting this name change we would sanction the creation of a type of domestic relationship that has not been legally recognized in this state." *Id.* at 2.

[\*P6] The record indicates that Petitioner was married, but was filing for divorce at the time of the hearing on the petition. T.P., 7/1/02, at 2. The trial judge, through questioning, [\*\*\*6] established that Petitioner and her husband had been separated "for five years living in the same house but living separately." However, the trial judge did not place any weight on this factor in denying the petition and we, likewise, take no position on whether this factor would militate against the granting of the petition. No lawful objection to the granting of the

petition was presented by any party at the hearing on the petition. **See** Section 6(b) of Act No. 295, December 16, 1982, P.L. 1309, 1338; **see also** 54 Pa.C.S. § 701 Historical and Statutory Note (providing procedural provisions for judicial change of name including right of any person having lawful objection to name change to appear and be heard, and further providing for name change decree where no lawful objection is advanced and [\*\*1210] proofs of publication and official searches have been certified).

[\*P7] The record establishes that all procedural requirements for a judicial name change have been met. We turn now to a review of the standards that must guide our resolution of this case. Our Supreme Court has instructed that the established standard of review for cases involving [\*\*\*7] petitions for change of name is whether or not there was an abuse of discretion. *In Re Zachary Thomas Andrew Grimes*, 530 Pa. 388, 390 n.1, 609 A.2d 158, 159 n.1 (1992) (citing *Petition of Falcucci*, 355 Pa. at 591, 50 A.2d at 202). That Court has also provided us with an understanding of what constitutes an abuse of discretion, as follows:

An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will. A finding by an appellate court that it would have reached a different result than the trial court does not constitute a finding of an abuse of discretion. Where the record adequately supports the trial court's reasons and factual basis, the court did not abuse its discretion.

*Harman v. Borah*, 562 Pa. 455, 469, 756 A.2d 1116, 1123 (2000) (citing *Coker v. S.M. Flickinger Co., Inc.* 533 Pa. 441, 447, 625 A.2d 1181, 1184-85 (1993) and *Morrison v. Commonwealth, Dept. of Public Welfare*, 538 Pa. 122, 133, 646 A.2d 565, 571 (1994)). [\*\*\*8] On matters involving petitions for a change of name, the Supreme Court has often cited the guiding principle first enunciated in *Falcucci*, where it declared:

Whenever a court has discretion in any matter (as it has in the matter of a change of name) it will exercise that discretion in such a way as to comport with good sense, common decency, and fairness to all concerned and to the public.

*Petition of Falcucci*, 355 Pa. at 592, 50 A.2d at 202, (cited and restated in *In the Matter of Robert Henry McIntyre (In Re McIntyre)*, 552 Pa. 324, 328, 715 A.2d 400, 402 (1998); *Grimes*, 530 Pa. at 392, 609 A.2d at

160).

[\*P8] This Court has also looked to *Falcucci* and has been governed by the same principle in reviewing matters involving change of name. *See In re Harris*, 707 A.2d 225, 227 (Pa. Super. 1997); *In re Petition of Christjohn*, 286 Pa. Super. 112, 428 A.2d 597, 598 (Pa. Super. 1981). Our scope of review is limited to the question of whether the evidence is sufficient to support the decision reached by the hearing court. *Christjohn*, 428 A.2d at 599. [\*\*\*9] If we find the evidence sufficient we must affirm, even if based on the same evidence we would have reached a different conclusion. *See id.*

[\*P9] "The court of common pleas of any county may by order change the name of any person resident in the county." 54 Pa.C.S. § 702(a). The act providing for a judicial change of name does not contain criteria limiting the court's discretion upon a name change petition. However, a person who violates the provisions of the statute "for purpose of avoiding payment of taxes or other debts" may be found guilty of a summary offense. *See* 54 Pa.C.S. § 705. Without court approval, "a person may at any time adopt and use any name if such name is used consistently, nonfraudulently and exclusively." 54 Pa.C.S. § 701(b). Our Supreme Court has reviewed the statute and the procedures thereunder and concluded that they "indicate a liberal policy regarding change of name requests." *Grimes*, 530 Pa. at 392, 609 A.2d at 160. The *Grimes* court observed that "the necessity for judicial involvement [in name change cases] centers [\*\*\*10] on governmental concerns that persons [\*\*1211] not alter their identity to avoid financial obligations." *Id.* More recently, and while citing *Grimes*, then-Justice Stephen A. Zappala declared that "the primary purpose of the Judicial Change of Name Statute, other than with regard to minor children, is to prohibit fraud by those attempting to avoid financial obligations." *In re McIntyre*, 552 Pa. at 328, 715 A.2d at 402.

[\*P10] How do these standards inform our review of the denial of the petition in the case now before us? The grounds that the trial court set forth as justification for the denial of the petition had nothing to do with avoidance of financial obligations. Judge Kennedy first declared that he had denied an earlier petition on the basis that granting the petition would have "bestowed upon the couple --it would have held them out to society as folks that were legally married, and, accordingly, I denied it for that reason." T.P., 7/1/02, at 4. Judge Kennedy indicated that he was denying the petition on this appeal "for the same reason." *Id.*

[\*P11] We find instructive our Supreme Court's analysis in *In re McIntyre* [\*\*\*11]. There, a fifty-three year old male transsexual had held himself out as a woman in all respects with the exception of his employment as a maintenance worker for a municipal parking authority. *See In re McIntyre*, 552 Pa. at 326, 715 A.2d at 401. He was generally known as Katherine Marie McIntyre, the name under which he leased his apartment, maintained various bank accounts and credit cards and was enrolled in membership in local organizations. *See id.* He petitioned to change his name from Robert Henry McIntyre to Katherine Marie McIntyre, testifying that his employer would not recognize him as a female until it received legal recognition of his name change. *See id.* at 327, 715 A.2d at 401. Of equal importance, he argued that a prerequisite to sex-reassignment surgery required the patient to undergo living for a full year in all aspects of his life in the gender he desires. *See id.* at 326, 715 A.2d at 401.

[\*P12] The trial court denied the petition, holding that it would not grant legal recognition of his name change until he underwent sex-reassignment surgery, finding that granting the name [\*\*\*12] change was premature and would be deceptive to the public and his co-workers. *See id.* at 327, 715 A.2d at 401-02. On appeal, this Court affirmed that denial on the basis of the trial court's opinion. In reversing this Court and in granting the petition, our Supreme Court noted that the petitioner was judgment free and was not seeking a name change to avoid any financial obligations. *See id.* at 328-329, 715 A.2d at 402-403. The Court stated:

The fact that [petitioner] is a transsexual seeking a feminine name should not affect the disposition of his request.

The Superior Court of New Jersey espoused a similar view in *The Matter of William Eck*, 245 N.J.Super. 220, 584 A.2d 859 (1991).

...

Likewise, we find that there is no public interest being protected by the denial of Appellant's name change petition. 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, *In re: Grimes*, 530 Pa. 388, 609 A.2d 158 (1992), [\*\*\*13] we see no reason to impose restrictions which the legislature has not.

*In re McIntyre*, 552 Pa. at 328-29, 330, 715 A.2d at 402-03.

[\*P13] In the same manner that our Supreme Court found wisdom in the reasoning of the most distinguished Superior Court of New Jersey, Appellate Division, we have been equally guided by a more [\*\*1212] recent pronouncement by a panel of that court. In a case raising the identical issue we here must resolve, the Appellate Division held that the denial of a request for a change of name to include the last name of petitioner's same-sex partner was "a misapplication of judicial discretion." *In re Application for Change of Name by Bacharach (In re Bacharach)*, 344 N.J. Super. 126, 136, 780 A.2d 579, 585 (2001). There, as here, an order was entered fixing a date for a hearing on the name change request. *See id.* at 129, 780 A.2d at 580. Publication was made and copies of the order were sent to both the County Prosecutor and the New Jersey Attorney General. *See id.* As in the case now before this Court, a criminal background check disclosed no criminal record, and no objection to [\*\*\*14] the name change was received from the County Prosecutor, the Attorney General, or from any member of the general public. *See id.*

[\*P14] The hearing judge expressed concern that approval of the name change would give the appearance of approval of a same-sex marriage. *See id.* The Appellate Division quotes the hearing judge as opining (in content similar to that now before us):

The point is that this Court is particularly concerned with an impression or an appearance. If I grant such a petitioner--a petition, rather, to the outside world, which in this case would be the immediate neighborhood or their social contact, their work related, their church, other places of worship, people in the apartment, where they go shopping and so forth, bank accounts, social security, credit cards and so forth, because if it becomes-if I grant it, it would be legal and then we would have a union of some sort between the two, representing to all people that there's some sort of a union here; there's some sort of a marriage here; there's some sort of a civil contract to represent to these people in general that they're together. And that is not legal as of today.

[\*\*\*15] *Id.* at 129, 780 A.2d at 580. The New Jersey court observed that the hearing judge had denied the name change based on that court's perception of the law and public policy of New Jersey against recognition of same-sex marriage. *See id.* In rejecting the trial court's decision, the Appellate Division observed that "It is well settled that an adult can legally and properly change his or her name at will and without need of judicial approval simply by using the desired name in ordinary life so long as the adopted name is not used for a criminal or fraudulent purpose." *Id.* at 130, 780 A.2d at 582. The law is the same in this Commonwealth. *See* 54 Pa.C.S. § 701(b) (intended as codification of existing law); *Matter of Montenegro*, 365 Pa. Super. 98, 528 A.2d 1381, 1383 (Pa. Super. 1987).

[\*P15] The *Bacharach* court noted that there had been few reported cases in which a court had denied a requested name change. *See id.* at 132, 780 A.2d at 583. It cited to an earlier case in which it had reversed a hearing judge's denial of a married woman's application [\*\*\*16] to resume use of her maiden name, in spite of no objections having been filed and no evidence of any fraudulent intent. *See id.* at 132, 780 A.2d at 583 (citing *In Re Bonnie Lee Daniels Lawrence (Application of Lawrence)*, 128 N.J. Super. 312, 319 A.2d 793 (Cty.Ct. 1974) rev'd. 133 N.J. Super. 408, 337 A.2d 49 (App.Div. 1975)). There, the trial judge gave as his reason for denying the petition, "This court has great concern for the stability of the family and the marriage." *Application of Lawrence*, 128 N.J. Super. at 327, 319 A.2d at 801. In reversing, the *Bacharach* court held, in effect, that a name change request should not be denied "simply because a judge disputes the wisdom of the request or disagrees with the reason for the change based on his or her personal views or [\*\*1213] philosophy." *Bacharach*, 344 N.J. Super. at 132, 780 A.2d at 583 (citing *Application of Lawrence*, 133 N.J. Super. at 413-14, 337 A.2d at 52).

[\*P16] The highest court in our sister state of Ohio has examined the same issue we now review, under similar law, and has reached [\*\*\*17] the same result as our esteemed colleagues on the New Jersey Appellate Division court. *See In re Bicknell*, 96 Ohio St.3d 76, 2002 Ohio 3615, 771 N.E.2d 846 (2002). There, two women filed individual applications seeking to have their surnames changed to "Rylen", a combination of letters from both of their last names. *See id.* at 76, 771 N.E.2d at 847. A magistrate first denied both applications, writing: "To grant their petitions would be contrary to the public good, contrary to encoded public policy, and contrary to natural law." *Id.* The probate court next

denied the applications on different grounds, concluding, "It is not reasonable and proper to change the surnames of cohabiting couples, because to do so would be to give an aura of propriety and official sanction to their cohabitation and would undermine public policy of this state which promotes legal marriages and withholds official sanction from non-marital cohabitation." *Id.* The Ohio Court of Appeals affirmed the probate court's denial, holding, "We find that there is support for the trial court's determination that Ohio law favors solemnized marriages and that cohabitation [\*\*\*18] contravenes this policy. Accordingly, the trial court did not abuse its discretion by finding that court sanctioning of the use of the same surname by two unmarried cohabitants is against Ohio's public policy promoting marriage." *Id.* The Supreme Court of Ohio granted *certiorari* and reversed. The *Bicknell* court considered the New Jersey position pronounced in *In re Bacharach*, along with this Commonwealth's position set forth in *In re McIntyre*. *Id.* at 77-78, 771 N.E.2d at 848-849. In finding that the cohabiting, unmarried partners' name change requests were reasonable and proper under the statute governing name changes, the Ohio court declared:

In the case at bar, appellants' only stated purpose for changing their names is to carry the same surname to demonstrate their level of commitment to each other and to the children that they planned to have. Both acknowledge that same-sex marriages are illegal in Ohio, and it is not their intention to have this court validate a same-sex union by virtue of granting the name-change applications. Any discussion, then, on the sanctity of marriage, the well-being of society, [\*\*\*19] or the state's endorsement of non[-]marital cohabitation is wholly inappropriate and without any basis in law or fact.

*Id.* at 78, 771 N.E.2d at 849. In citing to our own Supreme Court's decision in *In re McIntyre*, the *Bicknell* court quoted our Court in declaring: "As the name change statute and the procedures thereunder indicate a liberal policy regarding change of name requests, . . . we see no reason to impose restrictions which the legislature has not." *Id.* (quoting *In re McIntyre*, 552 Pa. at 330, 715 A.2d at 403). This Court remains mindful of our intermediate appellate role that requires that we follow the instructions of our State Supreme Court. "The formal purpose of the Superior Court is to maintain and effectuate the decisional law of [the Pennsylvania Supreme Court] as faithfully as possible." *Commonwealth v. Dugger*, 506 Pa. 537,

545, 486 A.2d 382, 386 (1985); *accord Shearer v. Naftzinger*, 714 A.2d 421, 427 (Pa. Super. 1998); *Commonwealth v. Busch*, 713 A.2d 97, 100 (Pa. Super. 1998); *Commonwealth v. Brown*, 447 Pa. Super. 454, 669 A.2d 984, 988 (Pa. Super. 1995) [\*\*\*20] (*en banc*).

[\*P17] Based upon the teachings of our State Supreme Court the exercise of discretion to deny a change of name runs [\*\*1214] contrary to the common law and statutory policy in favor of granting such relief. *See In re McIntyre, supra* (reversing denial of name change petition brought by pre-operative transsexual male); *Petition of Falcucci, supra* (affirming decree granting change of name against objection and appeal of member of the Philadelphia Bar bearing same surname). We, as judges, have no monopoly on wisdom, no heightened discernment into the public mind and no right to impose personal views or values on the citizenry of this Commonwealth. *See Bacharach*, 344 N.J. Super. at 134, 780 A.2d at 584. If we look to the actions of our legislature and the decisions of our Supreme Court, we discern no basis for declining a name change that would enable an applicant to adopt the surname of the applicant's partner.

[\*P18] Shakespeare recognized the care with which we must approach a person's desire to change or modify their name where the playwright presents Iago addressing the Moor of Venice with the caution: [\*\*\*21] "Good name in man and woman, dear my lord, is the immediate jewel of their souls." *Tragedy of Othello*, Act III, scene iii, 155. Where a court denies an application for adoption of a name change without anything on the record to support such denial, we rob the applicant of that which in no way enriches, or protects, the public and makes the applicant poor indeed.

[\*P19] In denying the application for name change in this matter, the trial court concluded that approval "would have held them out to society as folks that were legally married." T.P., 7/1/02, at 4. There is no evidence on the record to support the decision of the trial court. In its Rule 1925 Opinion, the trial court was persuaded by the decision reached by our sister intermediate appellate court in *Devlin v. City of Philadelphia*, 809 A.2d 980 (Pa. Cmwlth. 2002). That decision is inapposite and not helpful in deciding the issue here presented. In *Devlin*, the Commonwealth Court considered whether the City of Philadelphia had exceeded its powers, granted by certain acts of the General Assembly, in enacting three municipal ordinances providing for the status of "life partnership"

[\*\*22] between members of the same sex with respect to certain health benefits and exemption from realty transfer taxes. **See *Devlin***, 809 A.2d at 981-83. The court held that the City's action in creating and regulating Life Partnerships as a marital status and new type of domestic relationship was beyond the City's power as a municipal corporation. **See *id.*** at 990-992. The court further held that the General Assembly had preempted the field of the marital relationship between two people in Pennsylvania. **See *id.*** The ***Devlin*** court did not have before it, nor did it consider, the narrow issue here presented, whether an application for a change of name to assume the surname of a life partner is prohibited under either the public policy of this Commonwealth or the Judicial Name Change Act, 54 Pa.C.S. §§ 701-705. We do not believe the ***Devlin*** decision is relevant on the issue now before this Court.

[\*P20] Finding nothing to support the trial court's single reason for denial, and given the strong, liberal policy regarding change of name requests, we can only conclude that [\*\*\*23] the trial court has misapplied its judicial discretion. **See *In re McIntyre, supra; Petition of Falcucci, supra; In re Harris, supra.*** The petitioner is entitled to have her application favorably received. We will reverse the order denying the petition and remand the matter for entry of an order granting the relief sought by petitioner.

[\*P21] [\*\*1215] Order entered July 25, 2002  
**REVERSED. Case REMANDED WITH DIRECTIONS.**

[\*P22] Judge Lally-Green Concurred in the Result.