

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN RE:        PETITION TO CORRECT :  
              SPELLING ON BIRTH     :        No. 19-9338  
              CERTIFICATES           :       

Civil Law-    Petition to Correct Names on Birth Certificates of  
                 Deceased Ancestors - Orphans' Court Jurisdiction -  
                 Venue - Standing - Indispensable parties - Joinder of  
                 Pennsylvania Department of Health, Bureau of Health  
                 Statistics & Registries, Division of Vital Records

1. Excluding those circumstances governed by regulations of the Pennsylvania State Department of Health and providing for certain types of corrections on birth certificates without court involvement, the orphans' court division of each court of common pleas has original and exclusive jurisdiction in all matters relating to the recording, amendment or correction of birth certificates.
2. An original filing in the orphans' court to correct or amend a birth certificate is to be made in the orphans' court division of the county in which the petitioner resides or, with respect to a deceased ancestor, in the county in which the deceased ancestor was born.
3. The petition filed by Petitioner in Carbon County to correct the spelling of her maternal grandmother's name on the birth certificate of her deceased mother, who was born in Luzerne County, was incorrectly filed in Carbon County.
4. A petition to correct the name on a birth certificate of a deceased ancestor does not require the opening of an estate in the name of the deceased ancestor. However, for standing to exist, the petitioner must establish a substantial, direct and immediate interest in the correction requested and provide notice of such request to all interested parties.
5. A petitioner has standing to request corrections in the spelling of names on the birth certificates of her deceased maternal grandmother and mother where the corrections requested are to support an application of the petitioner to obtain Italian dual citizenship by ancestry, which changes, if granted, and will enhance the likelihood of the application being approved.
6. The Pennsylvania Department of Health, Bureau of Health Statistics & Registries, Division of Vital Records, which is responsible for maintaining, *inter alia*, the integrity of the

birth records of all persons born in Pennsylvania, is an indispensable party to an orphans' court proceeding in which corrections and/or are requested to the birth certificates of persons born in Pennsylvania who are now deceased.

7. Absent joinder of the Pennsylvania Department of Health, Bureau of Health Statistics & Registries, Division Vital Records in an orphans' court proceeding requesting corrections and/or changes to the birth certificate of a deceased person born in Pennsylvania, any order or decree issued by the court will be null and void for want of jurisdiction.

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Anthony Roberti, Esquire                      Counsel for Petitioner

**MEMORANDUM OPINION**

Nanovic, P.J. - June 24, 2020

The petition to correct birth certificates of deceased ancestors which we address herein encompasses multiple issues which ultimately require that the petition be dismissed for lack of jurisdiction.

**FACTUAL AND PROCEDURAL BACKGROUND**

On July 29, 2019, the Petitioner, Sandra Jean Dillon, filed in the Carbon County Prothonotary's Office a petition to correct the birth certificates of her mother and her maternal grandmother, both deceased.<sup>1</sup> Petitioner's grandmother, Concetta Carmela DiBello, was born in Tresckow, Banks Township, Carbon County, Pennsylvania, on May 27, 1914, and died on November 19, 1991. Her birth certificate incorrectly states her name as Katie Debelle. This birth certificate also incorrectly states Petitioner's great grandfather's name as Aniello Debelle, rather than the correct name of Aniello DiBello. The birth certificate further incorrectly

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<sup>1</sup>This matter was subsequently transferred to the orphans' court division of this court by order dated October 15, 2019.

states Petitioner's great grandmother's maiden name as Mary Durso, rather than the correct name of Mariangela D'Urso. Petitioner seeks to have each of these names correctly spelled.

With respect to Petitioner's mother, whose maiden name was Marie Mickaline Cortese, Petitioner seeks to have this birth certificate amended to state the correct spelling of her maternal grandmother's name as Concetta Carmela DiBello, rather than the listed name of Conzella Debelle. Petitioner's mother was born in Hazle Township, Luzerne County, Pennsylvania on November 21, 1936, and died on November 22, 2018. Petitioner is a resident of New Jersey.

At issue is whether Petitioner has standing to correct the birth certificates of deceased family members and the jurisdiction of this court to decide the issues raised by Petitioner.<sup>2</sup>

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<sup>2</sup> Certain types of corrections on birth certificates can be made directly by the Division of Vital Records in accordance with regulations of the State Department of Health without a court order. See generally, 28 Pa.Code §§ 1.31 - 1.35. Corrections in the spelling of names on birth certificates is the specific topic of Section 1.34 which provides:

**§ 1.34. Correction of spelling of names**

Changes in the spelling of names on birth certificates shall be made in compliance with the following:

(1) If the subject is less than 1 year of age, correction may be accomplished by a statement signed by both parents.

(2) If the subject is over 1 year of age, correction may be accomplished by an affidavit of the parents or of the subject, if of legal age.

(3) If the correction requested suggests a change in surname rather than the correction of the spelling of a surname, then the Department of Health may require additional recorded evidence or an order from a court of competent jurisdiction if it is deemed necessary to preserve the integrity of the records.

28 Pa.Code § 1.34. Under this Section, only two people can correct the spelling of names on a birth certificate: either the subject or the subject's parents.

[FN - 21 - 2020]

## DISCUSSION

Section 711 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. § 711, grants the orphans' court division of each court of common pleas original jurisdiction with respect to petitions seeking the alteration, amendment or modification of birth records. This Section states, in pertinent part, as follows:

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), *the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:*

(9) *Birth records.* Except as provided in Section 713 of this code, *all proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same. Whenever a person is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records the appeal shall be taken to the orphans' court division of the county in which the person is a resident. In all other matters in which a petition is addressed to a court in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, shall be filed and determined by the orphans' court division of the county in which the Petitioner resides.*

20 Pa.C.S.A. Section 711(9) (emphasis added). See also In re Gibson's Estate, 34 A.2d 159, 161 (Pa.Super. 1943) ("The orphans'

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Consequently, as applicable here - to correct the spelling of names on a deceased person's birth certificate - a court order is required.

court within its jurisdiction is a court of equity, and has full power as a chancellor to grant relief; and being a court of equity it is guided by the principles of equity, although its jurisdiction is special and derived entirely from statute." ).

Pursuant to the foregoing statutory authority, the orphans' court division of the appropriate court of common pleas has jurisdiction in matters involving the alteration, amendment or modification of a birth certificate. Swartzwelder v. Edmonds, 331 A.2d 224, 225 (Pa.Cmwlth. 1975); see also In re I.L.P., 965 A.2d 251, 255 - 256 (Pa.Super. 2009). Although language in the statute directs that an appeal from the decision of the Department of Health or an original filing with the orphans' court be made in the orphans' court division of the county in which the Petitioner resides, this latter language identifying the county in which the appeal or petition should be filed for individuals residing within this Commonwealth does not prohibit a person who was born in Pennsylvania, but who is no longer a resident, from filing with the orphans' court when questions involving the alteration, amendment or modification of birth records are in issue. In re DiFabio Birth Record, 8 Pa.D.&C.2d 577, 580 - 81 (Phila. Co. 1957).

As stated in DiFabio:

[I]f a person is a resident of the State of Pennsylvania, all proceedings "concerning recordation of birth and birth records or the right to obtain a certified copy of the same" must be instituted in the county in which such person

resides. If, however, the person whose birth record is in question is not a resident of the State of Pennsylvania, the proceeding may be commenced in the county in which he was born.

Id. at 582. See also 35 P.S. § 491 (providing for the filing of petitions to correct or amend birth records of persons born prior to January 1, 1906 in the orphans' court of the county in which the person was born); Petition to Amend Birth Record of S.Z., 5 Pa.D.&C.2d 786, 787 (Phil.Co. 1955) (explaining that Act No. 116 of August 4, 1955, which amended Section 301(15) of the Orphans' Court Act of 1951, a predecessor to 20 Pa.C.S.A. § 711(9), conferred exclusive jurisdiction upon the orphans' court in all matters relating to the recording, amendment or correction of birth certificates, regardless of the date of birth of the person whose birth record is in question). Consequently, while we do not find that Petitioner's status as a non - resident of Pennsylvania prohibits her from filing her petition in the orphans' court division of the appropriate court of common pleas, as to Petitioner's mother, who was born in Luzerne County, the Orphans' Court Division of Carbon County is not the appropriate court for this filing.

Interwoven with the foregoing issue is whether Petitioner is entitled to maintain this action in her own right or was required to open separate estates for her mother and grandmother to obtain orders correcting the spelling of names on their birth

certificates. We believe the issue is really one of standing - provided all interested parties are notified - whose central inquiry is whether the person has "such a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult. . . questions." PUBS v. School Dist. of Philadelphia, 646 A.2d 689, 691 (Pa.Cmwlth. 1994) (quoting Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed. 663 (1962)).

The issue of standing is a question of law. Com., Office of Governor v. Donahue, 98 A.3d 1223, 1228 (Pa. 2014). For standing to exist, the underlying controversy must be real and concrete, and the party initiating the action must demonstrate a "substantial, direct and immediate interest" in the outcome of the litigation. Id.

A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.

Id. at 1229 (citation omitted); see also Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 282 - 83 (Pa. 1975) (plurality).

Petitioner seeks these changes to obtain Italian Dual Citizenship by ancestry and has been advised that her Italian



citizenship application has a greater likelihood of success if she obtains court orders resolving the spelling errors before the matter is referred to the Italian Consulate. This interest is clearly personal to Petitioner and correcting the discrepancies will enhance her goal of acquiring Italian citizenship and the personal, familial, business and employment benefits this may bring. For purposes of these proceedings, we find Petitioner meets the requirements for standing.

Critical to this proceeding, however, is Petitioner's failure to join the Pennsylvania State Department of Health as a party to her petition to amend the birth certificates. Petitioner's petition specifically requests that the birth certificates of her mother and grandmother be corrected, and the order Petitioner seeks directs the Pennsylvania Department of Health, Bureau of Health Statistics & Registries, Division of Vital Records to amend and correct the birth certificates of Petitioner's mother and grandmother. The Pennsylvania State Department of Health is statutorily mandated to install, maintain, and act as custodian for the statewide system of vital statistics files and records, part of whose responsibilities include the completion and registration of birth certificates for all persons born in Pennsylvania. 35 P.S. §§ 450.201, 450.401 - 450.402. Given these responsibilities and the relief Petitioner requests, the Department of Health is an indispensable party to these proceedings

which has neither been joined nor notified of the proceedings so as to present its opinion on the manner in which we should view Petitioner's requests.<sup>3</sup> This omission "renders any order or decree of court null and void for want of jurisdiction." In Re Tarselli, 2017 WL 657757 (Pa.Super. 2017) (Non - Precedential Decision). See also, 35 P.S. § 450.603 (Change of Civil Status: Amendment of Birth Certificates) (authorizing, *inter alia*, any person born in this Commonwealth whose name is changed by order or decree of a court of competent jurisdiction to request the State Department of Health to prepare an amended certificate of birth on the basis of proof of the new status).<sup>4</sup>

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<sup>3</sup> In retrospect, upon the filing of Petitioner's Petition we should have issued a citation to the Department of Health of the Commonwealth of Pennsylvania and to all other interested parties as original process in order to acquire jurisdiction over the Department. See Petition to Amend Birth Record of S.Z., 5 Pa.D.&C.2d 786, 789 (Phil.Co. 1956) (setting forth the correct procedure to be followed for joining the Department of Health in an original filing in the orphans' court to correct or amend a birth certificate); In re Halohan Petition, 80 Pa.D.&C. 582, 589 (Phil.Co. 1952). Unfortunately, we were not aware of this procedural requirement at the time, nor was it brought to our attention. With respect to any other interested parties, Petitioner testified that she is one of four children, and that her two brothers and sister have each been notified of her request to correct the spelling of the names in their mother's and maternal grandmother's birth certificates and are in agreement with this request.

<sup>4</sup> Several times during the course of these proceedings, Petitioner's counsel has suggested that the amendments Petitioner is requesting are innocuous, that no one will be hurt if we grant the request, and that notwithstanding the absence of any legal authority counsel could find authorizing this court to grant the relief requested, other courts have done so and the Department of Health has honored these orders. With respect to this request by Petitioner's counsel, we cannot improve on the response given by the Court in In re Halohan Petition wherein Judge Mawhinney of that Court wrote:

The suggestion of petitioners that other courts of common pleas have approved petitions of the type before us and that the bureau of vital statistics is willing to obey any order that we may render cannot be considered. Jurisdiction cannot be conferred upon this court by consent of the parties; nor does past unauthorized or improper exercise of jurisdiction create jurisdiction. The bureau

### **CONCLUSION**

At a hearing held in this matter on February 20, 2020, Petitioner presented us with copies of ship manifests, Italian passports, naturalization documents, baptismal records, marriage certificates, death certificates, and the genealogy of her family. These documents amply convince us of the merits of Petitioner's request and provide the information required by 35 P.S. Section 491(a) - (q). This notwithstanding, for the reasons explained above, we find we are without jurisdiction to grant Petitioner's requests.

**BY THE COURT:**

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**Roger Nanovic, P.J.**

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of vital statistics has the duty to maintain *true and correct records* of births in this Commonwealth; it cannot avoid the responsibility of decision by consenting to orders which we have no right to make.

. . . We will not enter orders the enforcement of which is beyond our power.

80 Pa.D.&C. 582, 588 - 89 (Phil.Co. 1952). See also 42 Pa.C.S.A. § 323 dealing with the general structure and authority of the courts of this Commonwealth.

[FN - 21 - 2020]