

OCT 16 2014

Surrogate's Court, County of Bronx

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

_____X Docket No.: 77X-1931 and
In the Matter of the Adoption of 78X-1931
Children Whose First Names are

Zalkind and Sara

NOTICE OF APPEAL

_____X

PLEASE TAKE NOTICE, that Petitioner-Appellant, Matthew G. Yeager, Ph.D., by his attorneys, Paskoff & Tamber, LLP, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an Decision of the Honorable Nelida Malave-Gonzalez, Surrogate, dated September 18, 2014, denying Appellant's motion to unseal adoption records for good cause other than medical reasons. Appellant appeals from every part thereof.

Dated: New York, New York
October 14, 2014

PASKOFF & TAMBER, LLP



ADAM PASKOFF
Attorneys for Appellant
MATTHEW G. YEAGER, PH.D.
225 W. 34th Street, Suite 1303
New York, NY 10122
(212) 643-5454

TO: CLERK OF THE SURROGATE'S COURT
Bronx County

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Adoption of
Children Whose First Names are

X Docket No.: 77X-1931 and
78X-1931

Zalkind and Sara

PRE-ARGUMENT STATEMENT

X

Appellant, Matthew G. Yeager, Ph.D., by his attorneys, Paskoff & Tamber, LLP, submit this pre-argument statement pursuant to Section 600.17 of the Rules of the Supreme Court, Appellate Division, First Judicial Department, in connection with his appeal from Decision of the Surrogate's Court, Bronx County (Surrogate Malave-Gonzalez), dated September 18, 2014.

1. Title of action: The title of this proceeding is as it appears in the caption above.

2. Full names of original parties and any change in the parties: The full names of the parties are Zalkind Tannenbaum and Sara Nessa Tannenbaum. The Movant-Appellant's full name is Matthew G. Yeager, Ph.D.

3. Name, address and telephone number of counsel for appellant Matthew G. Yeager, Ph.D:

Adam Paskoff, Esq.
Paskoff & Tamber, LLP
225 W. 34th Street, Suite 1303
New York, NY 10122
(212) 643-5454

4. Name, address and telephone number of counsel for respondent: None as this was an uncontested motion to unseal adoption records.

5. Court and county from which the appeal is taken: This appeal is taken from a Decision of the Surrogate's Court of the State of New York, Bronx County by the honorable Nelida Malave-Gonzalez, Surrogate, dated September 18, 2014, a copy of which is annexed hereto. Appellant takes this appeal on every part of the aforesaid Decision.

6. Nature and object of the cause of action or special proceeding: The nature and object of this matter is for a motion to unseal an adoption record for good cause other than medical reasons pursuant to D.R.L. § 114(2).

7. Results reached in the court below: The Surrogate's Court denied Appellant's motion to unseal the adoption records.

8. Grounds for seeking reversal, annulment or modification: Appellant is an academician in the field of criminology who is researching a biography of Frank Tannenbaum, a public figure well regarded in the field of criminology. Research reveals that Frank Tannenbaum had two children, Zalkind who was born in 1925 and Sara Nessa who was born in 1927. Both were placed for adoption that was completed in 1931. The importance of Frank Tannenbaum as a historical figure goes beyond his contributions to the field of criminology, and properly includes a complete chronology of his life. Professor Yeager seeks reversal of the denial of the motion seeking to produce adoption records from 1931 and seeking to unseal such

adoption records for good cause to the extent necessary. It is respectfully argued that the Surrogate's Court erred as a matter of law in denying the aforesaid motion. The Court failed to apply sound judicial precedent, failed to properly consider Appellant's arguments, and failed to properly weigh New York's policy of confidentiality against numerous factors in favor of releasing and unsealing an adoption record.

This matter presents a case of first impression in the proper application of establishing good cause where the records sought by an academician (here a professor of criminology) are archival in nature, and present historical significance. The case at bar presents a strong factual basis that the protection of confidentiality is not required herein because the parties to the adoption already knew each other, the relevant parties are already deceased, and consents have been obtained from living relatives.

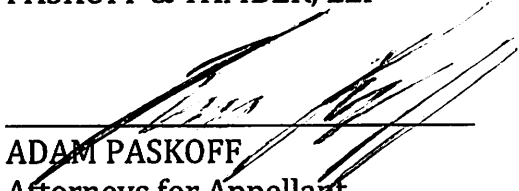
Surrogate Malave-Gonzalez improperly relied upon the status of the movant as a third-party. D.R.L. § 114(2) does not distinguish who may or may not move to unseal a record. The sole determining factor should be the establishment of "good cause". Any reliance by Surrogate Malave-Gonzalez on the mere fact that a third-party made the motion is a misapplication of the law. An important question of law is raised as to the extent "good cause" is synonymous with the public interest. Surrogate Malave-Gonzalez did not address this issue in weighing factors to consider the unsealing of the adoption records.

Significantly, this adoption was completed in 1931, predating the enactment of D.R.L. § 114(2) (enacted in 1938). There is no known Order sealing the within adoption record, and D.R.L. § 114(2) is not retroactive on its face. There is presumably no legal basis preventing the disclosure of public court documents that contain significant historical value.

There are no known related appeals pending involving the same facts and issues of law.

Dated: New York, New York
October 14, 2014

Yours, etc.,
PASKOFF & TAMBER, LLP



ADAM PASKOFF
Attorneys for Appellant,
MATTHEW G. YEAGER, PH.D.
225 W. 34th Street, Suite 1303
New York, NY 10122
(212) 643-5454

TO: CLERK OF THE SURROGATE'S COURT
Bronx County

SURROGATE'S COURT, BRONX COUNTY

September 18, 2014

IN THE MATTER OF THE ADOPTION OF
CHILDREN WHOSE FIRST NAMES ARE ZALKIND AND SARA
File Nos.: 77X-1931 and 78X-1931

This is an application by an academician, a "criminologist," for access to records contained in sealed adoption files that he avers will be useful to him in connection with a biography that he is writing about the adoptees' alleged biological father. Notarized statements are filed from the adoptee's alleged daughter and the fiduciary of the estate of an alleged brother of the biological father that they do not object to unsealing these records. The petitioner notes that the adoptions predate the 1938 enactment of DRL § 114 (2) and contends that these files now constitute archival records for which the general purposes of DRL 114 (2) no longer apply and, "given the public interest aspects of the application, the instant petition should not be separately sealed as it comes from a third party source, none of the materials are confidential, and these pleadings belong in the "public domain."

In New York State, the sealing of adoption records has been mandated since 1938, but courts have had discretionary power to seal such

records since 1924. Adoption records remain sealed pursuant to DRL § 114 to protect confidentiality "which is vital to the adoption process" to provide anonymity to the natural parents, enable the adoptive parents to form a close bond with their adopted child, protect the adopted child from possibly disturbing information that might be found in his records, and allow the state to foster an orderly and supervised adoption system (see *Matter of Linda F. M.* 52 NY2d at 236 [1981], appeal dismissed 454 US 806 [1981]; *Matter of Candy, M.M.M.* (38 Misc 3d 1228 [A]; 2013 NY Slip Op 50312 [U] [Sur Ct, Nassau County 2013]; *Matter of Hayden*, 106 Misc 2d [Sup Ct, Albany County 1981]).

Nonetheless, adoption records may be unsealed pursuant to DRL § 114 (2), usually for medical grounds, upon the application of the adoptee or the adoptive parents, after a showing of "good cause" accompanied by a certification from a physician licensed to practice medicine in New York State that the records are required to address a serious physical or mental illness, upon due notice to the adoptive parents and to such additional persons as the court may direct (see *Matter of Peter B.*, 12 Misc 3d 1184 [A] [Sur Ct, Nassau County 2006]). Good cause has been found for non-medical reasons, such as to establish Hungarian lineage for purposes of citizenship (see *Matter of Victor M. I. II.*, NYLJ, Mar. 30, 2009, at 25, col 1 [Sur Ct, Nassau County 2009]), apply for Turkish citizenship after a close relationship was established with the birth mother (see *Matter of S. P.*, NYLJ, May 13, 2010, at 38, col 3 [Sur Ct, Bronx County 2010]), or to establish

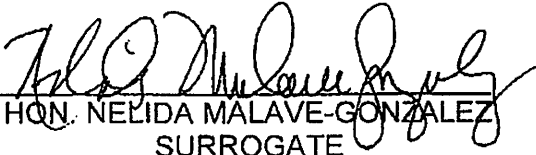
membership in the Hopi Tribe (see Matter of Merri H. F., NYLJ, May 27, 2005, at 5, col 1 [Sur Ct, Kings County 2005]).

No good cause warranting unsealing was found for the following purposes: to establish Puerto Rican heritage in order to participate in a basketball draft (see Matter of C. C., NYLJ, Jan. 7, 2010 at 40, col 4 [Sur Ct, Kings County 2010], learn the identities of biological relatives (see Matter of Linda F. M. 52 NY2d at 240), make the adoptee aware of a biological brother (see Matter of Robert R. B., 147 Misc 2d 569 [Fam Ct., Schoharie County 1990]), or ascertain the birth mother's religion (see Matter of Alica L. L. T. (38 Misc 3d 966 [Sur Ct, Nassau County 2012])).

In weighing the request for disclosure against the privacy interests at stake, the petitioner must spell out a "concrete and compelling need that is credibly connected to the adoptee's lack of knowledge of his parentage (see Matter of Theodore, NYLJ, June 15, 2012, at 22, col 4 [Sur Ct, New York County 2012])). No such compelling reasons exist here. The petitioner is not a party to the adoption or related to the adoptive or biological relatives, and his stated purpose is to obtain information concerning the biological father for publication in the father's biography. That the adoption records are old do not support unsealing. Otherwise, the statute's requirement of good cause would become a nullity and adoption records could be unsealed after the mere passage of time (see Matter of R. S., NYLJ, Oct. 25, 2006, at 32, col 1 [Sur Ct, Kings County 2006])).

Accordingly, the application is denied. The Chief Clerk shall

mail a copy of this decision, which constitutes the order of the court, to the petitioner.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE