

alleviate public confusion over a person's identity by providing a method of recording the name change. See In re Mohlman, 26 N.C. App. 220, 224-25, 216 S.E.2d 147, 150-51 (1975). More significantly, as discussed further below, if § 101 is construed as an absolute bar to name-change applications like the Petition, it will violate both the North Carolina Constitution and the U.S. Constitution.

But this Court need not construe § 101 so broadly. Under North Carolina General Statute § 101-5(f), this Court is empowered to reconsider the Order and may avoid a construction of the statute that might render it unconstitutional. Accordingly, Ms. Kelleher now moves the Court, pursuant to § 101-5(f), to reconsider her Petition and to issue an Order changing her name from "Michael Damian Kelleher" to "Sile Michaela Kelleher."

Background

Relevant Statute

North Carolina General Statute § 101 governs the State's legal name-change process. First, a person must file an application before the clerk of the superior court in the county where he or she lives. N.C. Gen. Stat. § 101-2. The applicant must "state in the application his true name, county of birth, date of birth, the full name of parents as shown on birth certificate, the name he desires to adopt, his reasons for desiring such change, and whether his name has ever before been changed by law, and, if so, the facts with respect thereto." Id. at § 101-3. The applicant must also "file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing." Id. at § 101-4.

If the clerk "finds that good and sufficient reasons exist for the change of name...it is the clerk's duty to issue an order changing the name of the applicant from that person's true name to the name sought to be adopted." Id. at § 101-5(d). But if the clerk "finds that good and sufficient reasons exist to deny the applicant's request for a name change, it is the clerk's duty

not to issue an order changing the name of the applicant....” Id. at § 101-5(f). The order denying the name change must “state the reasons for the denial.” Id. To appeal the clerk’s decision, an applicant must “petition the chief resident superior court judge within 30 days of the denial to request a reconsideration of the application.” Id.

A provision that dates from the initial passage of the statute in 1891, however, provides: “No person shall be allowed to change his name under [§ 101] but once.” Id. at § 101-6(a). The statute also contains exceptions: persons may resume a former name, minor children may change their names twice, and persons who are widowed may resume use of a premarriage surname. Id. at §§ 101-6(a), 101-6(b), 101-8. But § 101 was enacted to streamline the process by which adults may change their name and alleviate public confusion over a person’s identity by providing a method of recording the name change. See Mohlman, 26 N.C. App. at 224-25, 216 S.E.2d at 150-51. It was not intended to bar applications—like this one—that are made in good faith and supported by ample evidence of good and sufficient reason for the change. Id.

Petitioner

[REDACTED]

As early as five years old, Ms. Kelleher remembers feeling like a girl. She often spurned traditional boys’ activities in favor of staying home and secretly playing with her mother’s makeup. As she got older, although her discomfort with being a boy grew, she felt compelled to hide the fact that she knew she was a girl. Still, she found outlets to express who she was. For

example, when her sister outgrew clothing, Ms. Kelleher would take the old clothes, hide them, and wear them when no one was around. For as long as she can remember, Ms. Kelleher has known that she is female.

First Petition

During the spring or summer of 1995, Ms. Kelleher's therapist diagnosed her with gender identity disorder, also known as "gender dysphoria."² Shortly after her diagnosis, Ms. Kelleher started hormone therapy and began changing her appearance to female. She also began to take steps to align her legal documents with her female sex and rapidly-changing appearance. In particular, changing one's name is recognized as a critical component of gender dysphoria treatment. See WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th Ed.), at 10. Accordingly, Ms. Kelleher sought to change her legal name soon after her body started changing as a result of hormone therapy. In addition to giving her a name that matches who she is, she needed a legal name change to update the name on her Social Security card, driver's license, voter registration card, and other critical government-issued identity documents.

On November 21, 1995, Ms. Kelleher gave notice of her intent to file a Petition for Name Change. (See attached Exhibit 4.) Then, on December 5, 1995, she submitted the Petition for Name Change (the "First Petition," see attached Exhibit 5) to the Office of the Clerk of Superior

² Gender dysphoria is a clinical term used to describe the symptoms of "excessive pain, anguish, agitation, restlessness, and malaise" that transgender people often experience, including "the experience of discomfort a person has with his or her physical body and the desire to express the gender attributes associated with the other sex." Arlene Istar Lev, *Transgender Emergence: Therapeutic Guidelines for Working with Gender-Variant People and Their Families* 9-10 (2004). Gender dysphoria is "characterized by 'a strong and persistent cross-gender identification' and a 'persistent discomfort with one's sex or sense of inappropriateness in the gender role of that sex,' 'caus[ing] clinically significant distress or impairment in social, occupational, or other important areas of functioning.'" World Professional Association for Transgender Health ("WPATH"), *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th Ed.), at 96, available at <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>, (quoting the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. text rev.) (2000)). WPATH is recognized by the American Medical Association ("AMA") as "the leading international, interdisciplinary professional organization devoted to the understanding and treatment of gender identity disorders." AMA House of Delegates' Resolution 122, *Removing Financial Barriers to Care for Transgender Patients* at 1, ¶¶ 15-17 (April 18, 2008).

Court of Guilford County, North Carolina, requesting that the Court issue an Order changing her name from “Michael Damian Kelleher” to “Michelle Nichole O’Malley.” On December 8, 1995, the clerk of the Court granted the First Petition. (See attached Exhibit 6.)

Petition to Resume Original Name

None of this was an easy process for Ms. Kelleher. Among other obstacles, she found little support from those close to her. For example, her ailing mother said that the news would kill her, and her parents eventually cut her off both financially and emotionally. With increased pressure from those around her to reverse the steps she had taken, Ms. Kelleher suffered a series of panic attacks. This lack of support and the declining health of her mother caused Ms. Kelleher to abandon her treatment plan, including hormone therapy. She attempted to ignore her gender identity disorder and began to live as a man again.

During that same period, Ms. Kelleher also began to date a woman. To give her relationship a chance to succeed, Ms. Kelleher decided to revert to her original name. On January 8, 1999, Ms. Kelleher gave notice of her intent to file a Petition for Name Change to revert to her original birth name. (See attached Exhibit 7.) On March 16, 1999, Ms. Keller then submitted the Petition for Name Change (the “Petition to Resume Original Name,” see attached Exhibit 8) to the Office of the Clerk of Superior Court of Guilford County, North Carolina, respectfully requesting that the Court issue an Order allowing her to resume her original name, “Michael Damian Kelleher.” The clerk of the Court granted that Petition. (See attached Exhibit 9.)

This Petition

Despite her efforts to live as a man, Ms. Kelleher eventually found that the burden of living with untreated gender dysphoria was too great. She separated from her wife (whom she had married after changing her name back to Michael Damian Kelleher). They eventually

divorced, and Ms. Kelleher once again began taking steps to transition. By 2008, she had resumed full hormone therapy and again wore women's clothing and accessories. Since at least November 2009, she has received medical treatment for gender identity disorder, has consistently used hormone therapy, and has lived as a woman as far as possible without having a woman's name.

Absent a legal name change, Ms. Kelleher cannot continue her treatment for gender dysphoria—which includes living as a woman. Because the name that appears on her key identity documents identifies her as male and agencies such as the Social Security Administration and the North Carolina Division of Motor Vehicles do not honor common law name changes, Ms. Kelleher's ability to live as a woman and express herself as a woman is necessarily limited absent the name change sought by the Petition.

On September 27, 2012, Ms. Kelleher gave notice of her intent to file a Petition for Legal Name Change of an Adult. (See attached Exhibit 10.) Then, on October 12, 2012, she submitted the Petition to the Office of the Clerk of Superior Court of Wake County, North Carolina, respectfully requesting the Court to issue an Order changing her legal name from "Michael Damian Kelleher" to "Sile Michaela Kelleher." (Petition, see attached Exhibit 1.) As required under North Carolina law, the Petition states Ms. Kelleher's true name, county of birth, date of birth, the full name of parents as shown on birth certificate, the name she desires to adopt, her reasons for desiring such change, the fact that she had previously changed her name, and the facts relating to those name changes. It also attaches two affidavits attesting to proof of Ms. Kelleher's good character. See N.C. Gen. Stat. § 101-3, 4.

On October 12, 2012, the clerk of the Court denied the Petition. (Order, see attached Exhibit 2.) The only reason given by the clerk for the denial of Ms. Kelleher's petition is that she previously changed her name under North Carolina General Statute § 101.

Discussion

Ms. Kelleher submitted the Petition for “good and sufficient reason(s),” including: to put an end to the discrimination and harassment that often results when people discover that she is transgender because she is a woman with a male name, to continue her medical treatment plan, and to live as a woman. The Clerk of Wake County’s denial of the Petition based on Ms. Kelleher’s previous name change is perhaps understandable for a clerical action, but it adopts an unnecessarily rigid construction of § 101—one that this Court need not adopt. If North Carolina General Statute § 101 is found to be an absolute bar to applications like Ms. Kelleher’s Petition, it will violate both the North Carolina Constitution and the U.S. Constitution.

Specifically, requiring Ms. Kelleher to retain the male legal name “Michael Damian Kelleher will: (1) abridge her rights under the North Carolina and U.S. Constitution by denying her the expressive value of a traditionally female name; (2) compel private speech by forcing her to identify herself by a male name, thereby denying her the expressive value of a traditionally female name, and (3) infringe her fundamental rights, including her rights to vote, to travel, and to privacy and liberty. Each is addressed in turn below. It does, however, bear emphasis that this Court need not adopt a construction that threatens to render § 101 unconstitutional. The statute was not adopted to bar applications—like Ms. Kelleher’s—that are made in good faith and supported by ample evidence of good and sufficient reason for the change. This Court should reconsider the Petition and issue an Order changing Ms. Kelleher’s name from “Michael Damian Kelleher” to “Sile Michaela Kelleher.”

First, if the State of North Carolina requires Ms. Kelleher to retain the legal name “Michael Damian Kelleher,” it will impermissibly deny her the expressive value of a traditionally female legal name, which is a core symbol of who she is.

Second, if North Carolina continues to restrict Ms. Kelleher’s ability to obtain a legal name change, the State will impermissibly continue to compel private speech by forcing Ms. Kelleher to use a male name, and thereby express that she is male against her will. Although Ms. Kelleher may choose to call herself Sile, there are numerous instances in her daily life where she has no choice but to present identification or other documentation containing her legal name—a name that she rejects because it does not express who she is.

In fact, by restricting Ms. Kelleher’s ability to obtain the legal name change that she desires, North Carolina has already impermissibly compelled Ms. Kelleher to use a male name that expresses that she is male. Specifically, this has already occurred while:

1. Voting. When Ms. Kelleher exercised her right to vote during the November 2011 elections, she approached the poll worker from whom she was to obtain a ballot and identified herself as “Sile Kelleher.” The driver’s license Ms. Kelleher presented, however, identified her by her legal name, “Michael Damian Kelleher.” The poll worker looked at Ms. Kelleher, then at her license, and then back at Ms. Kelleher; though eventually providing Ms. Kelleher with a ballot, the poll worker loudly referred to her as “sir.” Although Ms. Kelleher was permitted to vote—only after being embarrassed by the poll worker referring to her as “sir”—she was compelled to use a male name, and thereby express that she is male rather than female, in order to exercise her right. She vividly recalls entering the voting facility addressed as “ma’am” and departing addressed as “sir.” It also bears emphasis that even if Ms. Kelleher is not asked for identification when attempting to vote, she will be required to provide her legal male name to obtain a ballot—once again compelling her to express that she is male against her will in order to exercise her fundamental right to vote.
2. Traveling. On one occasion, a hotel clerk began to check Ms. Kelleher into a hotel—until she provided him with her driver’s license. The clerk then refused Ms. Kelleher a room until she answered a number of questions concerning her identity, simply because the male gender expressed by her legal name did not match Ms. Kelleher’s outward appearance and expression of being a woman. Although Ms. Kelleher was permitted to stay in the hotel—again only after being embarrassed by the hotel clerk’s questions—she was compelled to use a male name, and thereby express that she is male.
3. Continuing employment. At the start of any new employment, Ms. Kelleher will be forced to supply a male name, and thereby disclose that she is transgender, in connection with completing any forms for employment that require use of her legal name. She will again be compelled to express that she is a man instead of a

woman. Given the discrimination she has faced during her life, she fears that this may prevent her from obtaining some jobs at all.

4. Applying for government benefits. After a contract under which she worked was not renewed in 2009 and she was unable to find new employment, Ms. Kelleher applied for unemployment insurance. In connection with that process, on one occasion, Ms. Kelleher appeared in person at the unemployment insurance office because of a problem with her check. Upon approaching the counter, the government employee asked Ms. Kelleher for photo identification and then refused to believe that she was actually Michael Damian Kelleher, repeating “your name is Michael Kelleher; you are a male.” Although the problem with Ms. Kelleher’s check was eventually resolved—only after she was embarrassed by the government employee—she was compelled to use a male name, and thereby express that she is male, to acquire the benefit.
5. Applying for a bank account. Ms. Kelleher must apply for any bank account under her legal name of Michael. She is questioned nearly every time she goes to the bank or uses her credit card because the legal male name that appears on her account or credit card does not match her female appearance. Ms. Kelleher is once again compelled to use a male name, and thereby express that she is male, to conduct ordinary financial transactions.

In addition to the above, there are numerous other instances where North Carolina compels private speech by forcing Ms. Kelleher to keep a legal name that expresses that she is a man rather than a woman. These include air or other travel that requires presenting government-issued identification, driving, and interacting with law enforcement. With respect to the last category, it is notable that failure to provide identification when asked by a police officer during a traffic stop is a class 2 misdemeanor in North Carolina. See N.C. Gen. Stat. § 20-29. The speech that North Carolina has already compelled, and threatens to compel, is in violation of Ms. Kelleher’s rights under the North Carolina Constitution and the U.S. Constitution.

Third, the rights at issue in Ms. Kelleher’s case—rights such as privacy and liberty, the right to vote, and the freedom to travel—are rights that have been deemed fundamental by the North Carolina Supreme Court and the U.S. Supreme Court. Where fundamental rights are concerned, courts abhor regulation that threatens to infringe such rights unless the regulation is narrowly tailored to serve a compelling interest. See, e.g., Reno v. Flores, 507 U.S. 292, 301-02

(1993). Here, if § 101 is construed to prevent Ms. Kelleher from adopting a female legal name, the statute infringes her ability to exercise her fundamental rights. As applied, even presuming North Carolina has a compelling interest in regulating name changes, the statute is not narrowly tailored to achieve such interests. Accordingly, it will be unconstitutional under the North Carolina Constitution and the U.S. Constitution.

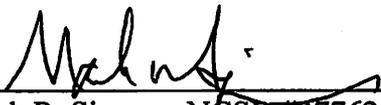
Finally, North Carolina case law firmly establishes that when construction of a statute raises a serious constitutional question, courts should adopt an available alternate construction that avoids constitutional questions. See, e.g., Best v. Wayne Memorial Hosp., Inc., 147 N.C. App. 628, 633-34, 556 S.E.2d 629, 634 (2001) (“We rely, instead, on the familiar canon of statutory construction that ‘[w]here one of two reasonable constructions will raise a serious constitutional question, the construction which avoids this question should be adopted.’”); see also Delconte v. North Carolina, 313 N.C. 384, 402, 329 S.E.2d 636, 647 (1985). This Court should avoid raising a serious constitutional question with § 101 by reconsidering the Petition and issuing an Order permitting Ms. Kelleher to change her name under the statute.

Conclusion

For the reasons stated above, Petitioner respectfully requests that the Honorable Donald W. Stephens reconsider the Petition and issue an Order changing her name from “Michael Damian Kelleher” to “Síle Michaela Kelleher.”

Respectfully submitted this the 1 day of November, 2012.

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