

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LAUREN GREY, VICTOR WILLIAMS, and)
NICHOLAS GUARINO, on behalf of themselves)
and all persons similarly situated,)

Plaintiffs,)

v.)

LA MAR HASBROUCK, MD, MPH in his official)
capacity as State Registrar of Vital Records,)

Defendant.)

No. 11 CH 17091

Judge Hyman

PROPOSED CONSENT DECREE AND ORDER

INTRODUCTION

1. On May 10, 2011, Lauren Grey, Victor Williams, and Nicholas Guarino filed this suit on behalf of themselves and a class of persons similarly situated and moved for class certification. Plaintiffs are transsexual individuals with Illinois birth certificates who have undergone an operation to conform their bodies to their internal sense of gender. Plaintiffs have submitted applications to the Illinois Department of Public Health to change the sex designation on their Illinois birth certificates.
2. Defendant LaMar Hasbrouck, MD, MPH, is the State Registrar of Vital Records and the Director of the Illinois Department of Public Health.
3. The Vital Records Act states, in relevant part:

For a person born in this State, the State Registrar of Vital Records shall establish a new certificate of birth when he receives any of the following:

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

410 ILCS § 535/17(1)(d).

4. Plaintiffs allege that, since 2005, Defendant has wrongfully denied the applications of transsexual persons to change the sex designation on their Illinois birth certificates because

they have not undergone genital reconstruction surgery to match the applicant's internal sense of gender. Plaintiffs assert that this conduct violates the Vital Records Act, 410 ILCS §§ 535/1-29, and Article I, § 2 (the right to due process) and Article I, §§ 6 and 12 (the right to privacy) of the Illinois Constitution. Plaintiffs seek declaratory and injunctive relief.

5. The Department expressly denies that its conduct has ever violated the Illinois Vital Records Act, the U.S. and Illinois Constitutions, and further denies that its conduct has ever violated any applicable law or rule whatsoever.
6. On July 7, 2011, Defendant moved to stay this case on the ground that the Illinois Department of Public Health would soon promulgate an administrative rule setting forth the requirements for obtaining a change in the sex designation on an Illinois birth certificate. On July 13, 2011, the Court ordered Defendant to issue corrected birth certificates to Plaintiffs Lauren Grey, Victor Williams, and Nicholas Guarino and stayed this case pending approval of the rule.
7. On October 3, 2011, the Department promulgated a rule, effective that date, stating in relevant part:

A person born in Illinois, with an existing Illinois birth record, may submit an application to the Department seeking to have the gender changed on his or her own birth record after undergoing an operation having the effect of reflecting, enhancing, changing, reassigning or otherwise affecting gender. The burden of proof shall be on the applicant to clearly demonstrate that he/she has met the gender change criteria set forth in this Section.

(a) Except as provided in subsection (b), all requested changes shall be supported by an affidavit of a physician, licensed to practice medicine in Illinois or any other State. The physician's affidavit shall clearly state that he or she has performed an operation on the applicant that has reassigned the gender of the applicant, and that, by reason of the operation, the sex designation on the applicant's birth record (certificate) should be changed. (Section 1(9) and 17(d) of the Act) The affidavit shall specify the name of the operation or operations that justify the change in gender on the applicant's birth record.

77 Ill. Adm. Code § 500.43.

8. Defendant moved on October 11, 2011 to dismiss this case on mootness grounds. In support of that motion, Defendant submitted an affidavit from Illinois Department of Public Health Assistant Director Teresa Garate stating, in part, that under Section 500.43, "a person with an existing Illinois birth record seeking to change the gender designation on his or her own birth record will not be required to undergo genital reformation surgery" and that "under the new rule, applications will not be denied on the ground that the applicant did not have genital surgery." Garate also stated that, "[a]s of October 5, 2011, the Department had 57 open/pending applications for new birth records which sought a change in gender." In a supplemental affidavit filed with the Court, Deputy State Registrar for the Division of Vital Records George Rudis stated that, "[b]etween January 1, 2012 and February 2, 2012, the Division of Vital Records approved 18 applications for a change in gender on birth records."

Rudis also stated that, “[a]s of February 2, 2012, the Department has 20 applications that were pending due to incomplete information from the applicants.” The Court denied Defendant’s motion on February 9, 2012.

9. In the interests of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree and Order.

JURISDICTION

10. The Court has subject matter jurisdiction over this action pursuant to Article VI, § 9 of the Illinois Constitution and personal jurisdiction over Defendant pursuant to 735 ILCS § 5/2-209(a).

RELIEF

IT IS HEREBY ORDERED THAT:

11. The parties stipulate to, and the Court orders, certification of the following class:

All persons with an existing Illinois birth record who are or will be unable to obtain an Illinois birth certificate with the sex designation that matches their internal sense of gender solely because of Defendant’s refusal to issue birth certificates with a revised sex designation to persons who have not had genital reconstruction surgery.
12. The parties stipulate to, and the Court orders, certification of Plaintiffs Lauren Grey, Victor Williams, and Nicholas Guarino as class representatives.
13. The parties stipulate to, and the Court orders, certification of Plaintiffs’ counsel, John Knight and Harvey Grossman of the Roger Baldwin Foundation of ACLU, Inc., and David M. Kroeger, Margaret J. Simpson, Kyle A. Palazzolo, and Thomas A. Bousnakis of Jenner & Block LLP, as lead class counsel.
14. Defendant is enjoined from denying applications for a change in the sex designation on persons’ existing Illinois birth records solely because those individuals have not undergone genital reconstruction surgery to match their internal sense of gender. This consent decree is not intended to change, alter or limit any other statutory requirement of the Illinois Vital Records Act (410 ILCS § 535/1-29).
15. Defendant shall promptly process and reach a final resolution on all complete applications open or pending as of the date of this Consent Decree and Order by class members for a change in the sex designation on an Illinois birth certificate. Defendant shall, within forty-five days, submit a report to Plaintiffs’ counsel detailing his compliance with this directive. The report shall be in summary form and shall not contain any medical or individually identifiable information.

16. Defendant shall, within thirty (30) days, ascertain the names of all persons previously denied a change in the sex designation on an Illinois birth certificate since January 1, 2010 and provide individual notice informing them that genital surgery is no longer required for such a change. Defendant shall also provide such notice to all persons previously denied a change in the sex designation on an Illinois birth certificate between September 1, 2008 and December 31, 2009, for whom it has complete records. The notice shall be made by certified mail to the person's last known mailing address on file with the Illinois Department of Public Health. Defendant shall, within an additional forty-five (45) days, submit a report to Plaintiffs' counsel detailing his compliance with this directive. The report shall be in summary form and shall not contain any medical or individually identifiable information.
17. Defendant shall, within thirty (30) days, post on the Illinois Department of Public Health website a clarification that genital reconstruction surgery is no longer a requirement for obtaining a change in the sex designation on an existing Illinois birth certificate.

RETENTION OF JURISDICTION FOR ENFORCEMENT

18. The Court retains jurisdiction of this case to enforce the terms of this Consent Decree and Order.

ATTORNEY'S FEES, EXPENSES, AND COSTS

19. The issue of whether an award any of attorney fees, costs and expenses is proper is expressly reserved. Plaintiffs may file a petition seeking fees, costs and expenses within thirty (30) days of the entry of this order. Defendants shall be afforded full opportunity to contest both Plaintiffs' eligibility for and the amount of any potential award.

MISCELLANEOUS

20. This Consent Decree and Order has been entered into based on a negotiated settlement between the parties and shall not be construed as an admission of liability by any party, as all allegations of wrongdoing are expressly denied.
21. This Consent Decree and Order shall constitute a final resolution of all claims, and only those claims, for injunctive and declaratory relief set forth in the complaint.
22. This Consent Decree and Order shall inure to the benefit of and be binding upon Plaintiffs and the plaintiff class and Defendant and his successors.

SO ORDERED THIS _____ DAY OF _____, 2012.

Judge Michael B. Hyman
Illinois Circuit Court of Cook County

Counsel for Plaintiffs

Date: _____

Counsel for Defendant

Date: _____