RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1706-20

IN THE MATTER OF THE
APPLICATION OF T.I.C.-C.
TO ASSUME THE NAME
OF A.B.C.-C.

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APPROVED FOR PUBLICATION

February 16, 2022

APPELLATE DIVISION

Argued February 3, 2022 – Decided February 16, 2022

Before Judges Haas, Mawla and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1330-20.

Celeste Fiore argued the cause for appellant A.B.C.-C. (Argentino Fiore Law & Advocacy, LLC, attorneys; Celeste Fiore and Jodi Argentino, of counsel and on the brief; Christina Salvia, on the brief).

Lowenstein Sandler, LLP, and David Brown and Charlie Arrowood (Transgender Legal Defense and Education Fund) of the New York bar, admitted pro hac vice, attorneys for amicus curiae Transgender Legal Defense and Education Fund, National Center for Transgender Equality, Masjid al-Rabia, and Muslim Alliance for Sexual and Gender Diversity (Lynda A. Bennett, of counsel and on the brief; Michael J. Scales, David Brown and Charlie Arrowood, on the brief).

The opinion of the court was delivered by

HAAS, J.A.D.

Appellant A.B.C.-C. is a transgender man who sought to change his name to conform his identification documents with his gender identity. As part of his application, appellant submitted evidence showing transgender people are subject to a particularized threat to their safety based upon their identity, and asked that the record of his name change be sealed to protect him from such discrimination and violence. The trial court denied appellant's request. Having considered the issues appellant presents in light of the applicable law, we are satisfied he demonstrated good cause to seal the record. Therefore, we reverse the trial court's denial of appellant's motion, order that the record be sealed, and remand for any necessary further proceedings.

I.

On July 28, 2020, appellant filed a verified complaint and certification seeking to change his name. In his complaint, appellant asserted that: he had never been convicted of a crime and there were no criminal charges pending against him; there were no unsatisfied judgments of record or suits pending against him; he was not making the application with the intent to avoid creditors or to escape or evade criminal or civil prosecution or for any other fraudulent purpose; he had not made any previous applications to assume another name; and he did not have any pending applications for a name change

in any other court or jurisdiction. Appellant asserted he sought the name change in order to reflect the name he uses in everyday life and who he is.

On August 5, 2020, the trial court set a September 14, 2020 hearing date. Pursuant to Rule 4:72-4 as it then existed, but since amended, the court also required that notice be published in a newspaper at least two weeks prior to the scheduled hearing.

On September 3, 2020, appellant requested an adjournment for time to file a motion to waive the publication requirement and seal the record.[1] On September 8, 2020, the court granted the adjournment request and set a new hearing date of October 13, 2020, but again required that notice be published in a newspaper at least two weeks prior to the hearing date.

On October 6, 2020, appellant filed a motion in which he requested to be identified in the public record only by initials, to seal the record, and to waive

[1] On July 30, 2021, the Supreme Court amended Rule 1:38-3 to exclude all records for a name change from public access. See Omnibus Rule Amendment Order (July 30, 2021) (adopting Rule 1:38-3(d)(20) and amending Rule 1:38-3(f)(10). However, this rule change did not become effective until September 1, 2021. Therefore, the rule change did not render appellant's appeal moot because the trial court issued its final judgment granting his name change on January 19, 2021, and authorized him to use his new name on February 15, 2021, well before the effective date of the amended rule.

the rules requiring publication of the name change hearing. In support of this motion, appellant certified:

> [1.] I desperately need to have my name changed because the name on my identity documents does not match the name I use in my everyday life. My documents do not match who I am, which causes confusion, discomfort, and the possibility of discrimination against me based upon this discrepancy. This discrepancy exists because my gender identity does not match with the name I was given at birth.
>
> [2.] I know that other transgender people like myself experience harassment, intimidation, and bullying and even more serious violence when their identity documents do not reflect the person that they are.
>
> [3.] I have been made aware that name changes are generally a matter of public record. I am concerned that disclosure of my personal, confidential, and private medical information could have a detrimental impact on my life and can result in harassment, intimidation, and bullying. I am concerned that the publication of my name change could interfere with my personal and professional life.
>
> . . . .
>
> [4.]. I ask that the court grant my requests to keep my name change as private and confidential as possible given the extremely personal medical disclosure that will result from publishing the name change and having an open public record of same.

Appellant's counsel submitted a certification, attaching a portion of the executive summary section of The Report of the 2015 U.S. Transgender

Survey National Center for Transgender Equality (Dec. 2016), USTS-Full-Report-Dec17.pdf (transequality.org), which documented the mistreatment suffered by transgender people and the importance of their obtaining identity documents that reflect their correct gender and name. Appellant's counsel also provided written notice of the proceeding to the Director of the Division of Criminal Justice (Division) as required by Rule 4:72-3.

On October 30, 2020, the trial court denied appellant's motion to seal the record and to waive the publication requirement. The court rejected appellant's "general concerns for being transgendered" as insufficient to meet the preponderance of the evidence standard for sealing judicial proceedings, stating:

> Discrimination can occur for all kinds of reasons and not just the type claimed by the applicant. There is nothing in the law that says that a person claiming to be concerned for being discriminated against for being different is entitled to have a private court proceeding.
>
> This court has had countless name changes by people who were changing their name for sexual identity reasons that did not ask to have a sealed record. That is not a reason to deny the application here, but it means that the court cannot find a reason to support the application on its own. The applicant has to show proof and there is not any.
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> In addition, the case was already filed and is publicly available on the internet. Civil cases can be found on the court's website, njcourts.gov, under the public/media tab and clicking on the civil and

> foreclosure search. In addition, the Attorney General was not given notice that this name change application was going to be requested to be done under seal.

On November 17, 2020, the Supreme Court instituted a change to Rules 4:72-3 and 4:72-4, which eliminated the publication requirement for all name change applications. The Court explained:

> The Court's November 17, 2020 action will expand equal access to the courts for people who are poor, self-represented, and members of the LGBTQ+ community, including transgender women of color who disproportionately continue [to] be targeted victims of violence throughout our nation. Amending Rule 4:72 advances the Judiciary's goals of equal access, procedural fairness, and ongoing identification and elimination of obstacles to justice.
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> [Notice to the Bar: Name Change Applications -- Elimination of the Requirement of Newspaper Publication (Nov. 18, 2020).]

Thus, appellant no longer had to publish notice of his proposed name change.

On November 19, 2020, appellant moved for reconsideration of the denial of his motion to seal the record. In the motion papers, appellant's counsel advised the court of the amendments to Rules 4:72-3 and 4:72-4. Counsel also provided the court with a complete copy of The Report of the 2015 U.S. Transgender Survey, a portion of which had been provided on the previous motion. This report detailed the significant amounts of violence, harassment, and discrimination experienced by transgender people in various

areas of their lives. It also specifically addressed the importance of transgender people obtaining a change of name that conforms with their gender identity, in order to reduce the negative interactions they faced.

Finally, counsel advised the court that the Division had been notified of the date for his name change hearing, as required under Rule 4:72-3. However, counsel had not received any indication that the Division opposed appellant's name change application or sought to participate in the proceedings.

On January 8, 2021, the court denied appellant's motion for reconsideration. In its written decision, the court reiterated its belief that appellant "failed to provide any changes in data or statistics that would indicate [appellant] is directly and inevitably in danger of irreparable injury or harm." The court observed that "New Jersey has laws specifically designed to protect against discrimination and violence" and had created a Transgender Equality Task Force "to prevent acts of violence and discrimination against the transgender community in the State." Under these circumstances, the court determined it could not "grant a petition [to seal the record] based on fear rather than actual events, especially with added protections from the State."

The court also stated that the record did not need to be sealed because appellant "has not indicated that [he] would keep the name change secret."

Therefore, appellant was "asking that the court keep a secret [appellant was] not going to keep." Finally, the court again noted that appellant did not notify the Division of his motion to seal the record.

The court adjourned the hearing on appellant's name change application until January 15, 2021. Although the court acknowledged that the Division had "indicat[ed] that there wasn't any background issue here[,]" it again directed appellant to notify the Division of the new hearing date.

On January 15, 2021, the court granted appellant's name change application. At the hearing, the court modified its prior order denying the motion to seal the record to allow the "redact[ion of] medical references." However, the court did not specify the portions of the record that could be redacted, and no alterations were made.

II.

Appellant contends the trial court erred in denying his motion to seal the record, and his motion for reconsideration of that ruling. He maintains that the record was sufficient to establish good cause to seal the record under Rule 1:38-11(b).

Amici curiae[2] join in these arguments. They emphasize the substantial evidence that transgender people, both in New Jersey and nationwide, suffer inordinate levels of violence, harassment, and discrimination solely because they are transgender, and argue that "[a]n unsealed court record of a person's name change, which outs that person as transgender, will inevitably be accessible to anyone over the Internet and will invite others who would otherwise have no reason to know the person is transgender to commit acts of violence or discrimination against that person."

"The questions whether to seal or unseal documents are addressed to the trial court's discretion." Hammock by Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356, 380 (1995) (considering public access to documents filed under a protective order). Thus, we review the trial court's ruling for abuse of discretion.

An abuse of discretion occurs when the court's decision is made without rational explanation, inexplicably departs from established policies, or rests upon an impermissible basis. Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561,

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[2] We granted the motion filed by the Transgender Legal Defense and Education Fund, the National Center for Transgender Equality, Masjid al-Rabia, and the Muslim Alliance for Sexual and Gender Diversity to file a brief as amici curiae.

571 (2002). "If the [court] misconceives or misapplies the law, [its] discretion lacks a foundation and becomes an arbitrary act." In re Presentment of Bergen Cnty. Grand Jury, 193 N.J. Super. 2, 9 (App. Div. 1984).

We also review the court's denial of defendant's reconsideration motion for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020). Reconsideration is reserved for instances in which the court's ruling is premised upon a palpably incorrect or irrational basis, or the court did not consider or failed to appreciate the significance of probative, competent evidence. Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002); D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

We review any interpretations of the law or legal rulings de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Findings of facts are entitled to deference if they are supported by substantial credible evidence in the record. Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 483-84 (1974). However, less deference may be afforded to factual findings made based upon motion papers, without the court hearing any testimony. N.J. Div. of Child Prot. & Permanency v. S.K., 456 N.J. Super. 245, 262 (App. Div. 2018); N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 350 (App. Div. 2016).

The Court Rules establish a general rule in favor of open judicial proceedings, except upon a showing of good cause. See R. 1:2-1; R. 1:38-1; Hammock, 142 N.J. at 367-69, 375, 380-82. At the time of appellant's motion, Rule 1:2-1 provided, in pertinent part:

> All trials, hearings of motions and other applications, first appearances, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute.
>
> . . . .
>
> If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, as defined by R. 1:38-11(b), which shall be set forth on the record.[3]

Similarly, Rule 1:38-1 states:

> Court records and administrative records . . . within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.

[3] Effective September 1, 2021, the rule was amended to read, in pertinent part: "All trials, hearings of motions and other applications, first appearances, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute." R. 1:2-1(a).

Rule 1:38-3 specifies that certain court records are excluded from public access, including certifications of confidential information for name changes. And Rule 1:38-5 excludes certain administrative records from public access. However, at the time of appellant's motion, the enumerated exclusions did not apply.[4]

Rather, appellant's motion to seal the record was governed by Rule 1:38-11, which states in pertinent part:

> (a) Information in a court record may be sealed by court order for good cause as defined in paragraph (b) . . . . The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
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> (b) Good cause to seal a record . . . shall exist when:
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> > (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
> >
> > (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R[ule]. 1:38.

[4] As previously noted, the Supreme Court recently adopted amendments to Rule 1:38-3 such that effective September 1, 2021, all records in actions for a name change will be excluded from public access. See Omnibus Rule Amendment Order (July 30, 2021) (adopting Rule 1:38-3(d)(2)(20) and amending Rule 1:38-3(f)(10)).

. . . .

> (d) Documents or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

The movant must establish good cause by a preponderance of the evidence, Rule 1:38-11(a), substantiated by "specific examples or articulated reasoning[.]" Hammock, 142 N.J. at 382. Good cause is measured by a standard of reasonableness. Id. at 376.

"[A] flexible balancing process adaptable to different circumstances must be conducted to determine whether the need for secrecy substantially outweighs the presumption of access" in recognition of the fact that confidentiality is more important in certain circumstances than others. Id. at 381.[5] Moreover, if confidentiality is required:

> The need for secrecy should extend no further than necessary to protect the confidentiality. Documents should be redacted when possible, editing out any privileged or confidential subject matter, so that the

[5] Although Hammock is a binding Supreme Court decision, it was decided in 1995, before the 2009 adoption of Rule 1:38-11 which defined the standard for showing good cause.

> protective order will have the least intrusive effect on the public's right-of-access.
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> [Id. at 382 (citation omitted).]

Applying these standards, we are satisfied appellant established good cause to seal the record of his name change application. First, the record amply supports a conclusion that "disclosure will likely cause a clearly defined and serious injury" to appellant. R. 1:38-11(b)(1). Second, the record fully supports a finding that appellant's "interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R[ule]. 1:38." R. 1:38-11(b)(2).

The two prongs of this court's inquiry are intertwined in this case because the "clearly defined and serious injury" to appellant is the violation of his "interest in privacy" in being transgender. Indeed, it is difficult to imagine a more intimate, personal, and private matter than whether a person's gender identity conforms with the sex they were assigned at birth, typically based upon the existence and appearance of their reproductive organs, and their chromosomal makeup. See Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 522 (3d Cir. 2018) (discussing difference between sex and gender, and noting that "[t]ypically, sex is determined at birth based on the appearance of external genitalia"); see also F.V. v. Barron, 286 F. Supp. 3d 1131, 1136 (D. Idaho 2018) ("[B]iological sex is determined by numerous elements, which can

include chromosomal composition, internal reproductive organs, external genitalia, hormone prevalence, and brain structure.").

New Jersey case law supports sealing the record to protect appellant's right to privacy in being transgender. In a case that pre-dates the "good cause" definition currently set forth in Rule 1:38-11(b), the court stated:

> Although in certain rare circumstances a litigant's interest in privacy may overcome the constitutional presumption in favor of open court proceedings, mere embarrassment or a desire to avoid the potential criticism attendant to litigation will not suffice. In cases involving essentially money damage claims and employment reinstatement issues a plaintiff should not be permitted to conceal his identity from the public absent a clear and convincing showing that there exists a genuine risk of physical harm, the litigation will entail revelation of highly private and personal information, the very relief sought would be defeated by revealing the party's identity, or other substantial reasons why identification of the party would be improper. Once such compelling circumstances have been shown, the litigant's privacy interest must be weighed against the constitutional and public interest in open judicial proceedings.
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> [A.B.C. v. XYZ Corp., 282 N.J. Super. 494, 505 (App. Div. 1995).]

Similarly, in Verni ex rel. Burstein v. Lanzaro, 404 N.J. Super. 16, 24 (App. Div. 2008), the court stated:

> A personal interest in privacy and freedom from annoyance and harassment, while important to the litigant, will not outweigh the presumption of open judicial proceedings even in relatively uncomplicated

> and non-notorious civil litigation. Zukerman v. Piper Pools, Inc., 256 N.J. Super. 622, 628-29 (App. Div. 1992). On the other hand, when an application is filed with a court that pertains to a purely private matter, an order sealing the submissions may be appropriate. See In re Tr. Created by Johnson, 299 N.J. Super. 415, 423 (App. Div. 1997) (financial information submitted to the trustees in support of a discretionary distribution from a trust created for the benefit of the beneficiary and her family may be sealed because of the absence of any meaningful public interest in a private trust dispute).[6]

The present case fits directly within the circumstances under which the court in A.B.C. recognized that the presumption of open court proceedings could be overcome, that is: (1) the litigation entails revelation of highly private and personal information; and (2) the very relief sought, a name change

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[6] Case law from outside New Jersey also explicitly supports finding a right to privacy in one's transgender status. See Powell v. Schriver, 175 F.3d 107, 111-12 (2d Cir. 1999) (finding that Constitution protects right to maintain confidentiality of one's "transsexualism"); Ray v. McCloud, 507 F. Supp. 3d 925, 931-32 (S.D. Ohio 2020) (finding right to privacy in being transgender); Grimes v. Cnty. of Cook, 455 F. Supp. 3d 630, 638 (N.D. Ill. 2020) (finding that plaintiff's transgender status qualified as private medical information); Gonzalez v. Nevares, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) ("The Commonwealth's forced disclosure of plaintiffs' transgender status violates their constitutional right to decisional privacy."). Thus, other jurisdictions permit transgender individuals to litigate without revealing their names, where they seek a change of name to affirm their gender identity. See, e.g., In re Name & Gender Change of R.E., 142 N.E.3d 1045, 1046, 1053-54 (Ind. Ct. App. 2020); N.Y. Civ. Rights Law § 64-a; In re E.P.L., 891 N.Y.S.2d 619, 620-21 (Sup. Ct. 2009).

that affirms appellant's gender identity, would be defeated by opening the record to the public, which would reveal a given name that conflicts with appellant's gender identity. Moreover, this case is a "purely private matter," with no meaningful public interest, as set forth in Verni, 404 N.J. Super. at 24.

In denying appellant's motion, the trial court misunderstood and misapplied the governing law. Prior case law may have involved past physical violence or threats. See, e.g., In re E.F.G., 398 N.J. Super. 539, 545-49 (App. Div. 2008) (involving name change applicant who was victim of domestic violence). However, contrary to the court's understanding, the standard set in Rule 1:38-11(b)(1) does not require that the "clearly defined and serious injury" be physical harm or the threat of physical harm. Nor does the rule require that the movant have already suffered physical harm or the threat of physical harm. In fact, the language of Rule 1:38-11(b)(1) evidences an intent to prevent harm from occurring.

Thus, the trial court erred in discounting appellant's expressed fear of physical harm and discrimination and requiring that he show evidence of a personal experience with violence or discrimination based upon his being transgender, or study data focused particularly on the State of New Jersey. To state the obvious: "The fact that [appellant] did not testify to a personal experience of violence or crime against him based on his gender identity does

not negate the fact that such violence exists." Sacklow v. Betts, 450 N.J. Super. 425, 435 (Ch. Div. 2017).

Appellant presented the court with evidence that transgender individuals face violence, harassment, and discrimination because of their gender identity. This is commonly recognized in case law as well. See, e.g., Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 611-12 (4th Cir. 2020), cert. denied, 141 S. Ct. 2878 (2021); Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1051 (7th Cir. 2017); Powell, 175 F.3d at 111-12; Ray, 507 F. Supp. 3d at 932-34, 937; M.A.B. v. Bd. of Educ. of Talbot Cnty., 286 F. Supp. 3d 704, 720 (D. Md. 2018); Adkins v. City of New York, 143 F. Supp. 3d 134, 139-40 (S.D.N.Y. 2015); F.V., 286 F. Supp. 3d at 1137-38; Sacklow, 450 N.J. Super. at 435.

Accordingly, there was no reason for the court to discount appellant's fears, or assume they were unfounded. The court cited the fact that New Jersey has established a Transgender Equality Task Force. However, the Task Force's own publicly available report indicates the problems transgender people face in New Jersey, similar to the problems they face in other jurisdictions, notwithstanding the laws in place to protect them. See New Jersey Transgender Equality Task Force Report and Recommendations, (Nov. 20, 2019), Transgender Equality Task Force Final

(https://d3n8a8pro7vhmx.cloudfront.net/gardenstateequality/pages/1683/attachments/original/1574265601/Transgender_Equality_Task_Force_Final.pdf). Moreover, the report specifically recommends that name change proceedings for transgender people should be private. Id. at 37.

Indeed, the trial court's skepticism is especially puzzling given the recent change to Rules 4:72-3 and 4:72-4, which eliminated the requirement that name change applications and judgments be published. The Supreme Court expressly noted that the rule change was proposed, and endorsed, in order to protect the privacy and safety of transgender, gender nonconforming, and non-binary individuals who seek a name change in affirmation of their gender identity.

And, most recently, the Supreme Court adopted changes to Rule 1:38-3 such that effective September 1, 2021, all records in actions for a name change are excluded from public access. See Omnibus Rule Amendment Order (July 30, 2021) (adopting Rule 1:38-3(d)(20) and amending Rule 1:38-3(f)(10)).[7] These changes had been proposed to address "the safety concerns and privacy interests of transgender, gender non-conforming, and non-binary people who

[7] The Court also amended Rule 4:72-4 to provide that most name changes will be "effective immediately" rather than "not less than 30 days" from entry of the court's order.

seek name changes in affirmation of their gender identity as well as others who seek names changes through the courts[.]" See 2019-2021 Supreme Court Rules Committee Reports – Publication for Comment; Notice to the Bar, New Jersey Law Journal, Feb. 15, 2021.

Thus, appellant presented sufficient evidence to justify his fears about public disclosure of his transgender identity. By requiring that appellant's name change application be publicly available, and thereby publicly identifying appellant as transgender, the court would violate appellant's right to privacy and could heighten the risk of physical harm to appellant, or even facilitate such harm by making it easier for people to identify him as transgender.

On the other side of the ledger, the only expressed public interest in name change applications is protecting against those seeking to avoid or obstruct criminal prosecution, avoid creditors, or perpetrate a criminal or civil fraud. See N.J.S.A. 2A:52-1 to -4; R. 4:72-1 to -4; In re Zhan, 424 N.J. Super. 231, 235-36 (App. Div. 2012); In re Bacharach, 344 N.J. Super. 126, 130-36 (App. Div. 2001); In re Eck, 245 N.J. Super. 220, 223 (App. Div. 1991); Egner v. Egner, 133 N.J. Super. 403, 406-08 (App. Div. 1975). In this case, however, there are no concerns that appellant is seeking to avoid or obstruct criminal prosecutions, avoid creditors, or perpetrate a fraud. Moreover,

appellant notified the Division of his application, as required under Rule 4:72-3, and the Division chose not to participate in the case and made no objection to appellant's application. Thus, a fair consideration of the law and the facts warranted granting appellant's motion.

The trial court also considered a number of irrelevant factors in denying appellant's motion to seal the record and his motion for reconsideration of that decision. The court denied the motions, in part, because appellant had already chosen to reveal he was transgender to individuals he trusted with that information. However, that did not mean appellant should be compelled to disclose this information to the world, including those who may do harm to him as a result, in order to obtain a change of name that affirms his gender identity. The purpose of sealing the record was to protect appellant's right to share his transgender identity only with those he trusts, thus avoiding the psychological and possibly physical harm he would suffer by making the information public. As the court stated in Ray, 507 F. Supp. 3d at 934:

> The fact that [p]laintiffs are proud of their transgender status and have shared such information on their personal social media accounts or with friends and family in no way negates their right to not be forced to disclose such private and personal information except on their own terms and in environments they chose. . . . Plaintiffs do not lose their informational right to privacy by choosing to share the private information at certain times with certain people.

Also contrary to the court's reasoning, it was irrelevant to appellant's motion that he had not filed his complaint under seal. Appellant could not have filed the complaint under seal because the Court Rules prohibit it in the absence of a court order. R. 1:38-11(d). See also R. 1:4-1(a) (requiring caption to include parties' names, and "[e]xcept as otherwise provided by R. 5:4-2(a), the first pleading of any party shall state the party's residence address . . . ."). The purpose of appellant's motion was to obtain the required court order, which would retroactively seal the record.

It was also irrelevant that other transgender people who sought name changes may not have requested that their proceedings be sealed. See, e.g., Sacklow, 450 N.J. Super. at 427 n.1 (noting use of parties' real names, at their request, including the name of a transgender youth who sought to change his name). People seeking name changes may have different comfort levels in sharing their transgender identity. Others may be proceeding pro se or otherwise not understand that sealing the record is possible under the Court Rules. Regardless, how past petitioners have chosen to proceed did not prevent appellant from seeking to seal the record of his proceeding.

Finally, the trial court incorrectly denied appellant's motion to seal the record because he did not give the Division notice of the motion. Rule 4:72-3 requires a name change applicant to serve notice of the application "at least

[twenty] days prior to the hearing" scheduled by the court. Appellant complied with this requirement and the Division acknowledged its receipt of this notice. Nothing in the rule required appellant to notify the Division when he later filed his motion to seal the record of the name change proceeding.

In sum, appellant made a compelling showing of good cause in support of his motion to seal the record of his name change application. Accordingly, the trial court mistakenly exercised its discretion by denying this motion and appellant's subsequent motion for reconsideration. Therefore, we reverse these orders, order this matter sealed, and remand for any necessary further proceedings.

Reversed and remanded. We do not retain jurisdiction.