[Cite as *In re C.C.M.*, 2012-Ohio-5037.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: Change of Name of C.C.M., (A.N.M., Appellant).	:	12AP-90
	:	(Prob. No. 538998)
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on October 30, 2012

Adams, Babner & Gitlitz, LLC, and *Frederick W. Stratmann*, for appellee; *D.C.R.*, pro se.

Law Offices of Thomas Tootle, Co., and *Thomas Tootle*, for appellant.

APPEAL from the Franklin County Court of Common Pleas, Probate Division.

BROWN, P.J.

{¶ 1} A.N.M. ("father"), appellant, appeals the decision of the Franklin County Court of Common Pleas, Probate Division, which granted the application to change the middle name and surname of his daughter, C.C.M. ("the child"), filed by D.C.R. ("mother"), appellee.

{¶ 2} The child was born in June 2005 to mother and father. Mother and father were not married at the time, but the child was given the father's surname. Mother, father, and the child continued to reside together until early 2007, at which time mother and father ended their relationship.

{¶ 3} On January 5, 2010, mother filed an application for change of name on behalf of the child. Mother sought to change the child's surname from father's surname to mother's surname, as well as her middle name. The matter was referred to a magistrate,

who conducted a hearing on March 16, 2010. On April 22, 2010, the magistrate issued a decision recommending that the trial court deny the application for change of name with respect to the child's surname but grant it with respect to the child's middle name. Mother filed objections to the magistrate's decision.

{¶ 4} Oral arguments were heard before the trial court on April 7, 2011, but no new evidence or testimony was taken. On January 6, 2012, the court issued a decision sustaining mother's objections. The court granted mother's application to change the child's surname from father's surname to mother's surname and adopted the magistrate's decision to change the child's middle name. Father appeals the judgment of the court, asserting the following assignment of error:

> THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT GRANTED THE REQUEST TO CHANGE THE SURNAME OF THE MINOR CHILD.

{¶ 5} Father argues in his assignment of error that the trial court abused its discretion when it granted mother's application to change the surname of the minor child. Name changes for minors are governed by R.C. 2717.01. An application for change of name may be made on behalf of a minor by either of the minor's parents. R.C. 2717.01(B). The standard for deciding whether to permit a name change is proof that the facts set forth in the application show "reasonable and proper cause" for changing the name of the applicant. R.C. 2717.01(A); *In re Willhite*, 85 Ohio St.3d 28, 30 (1999). In determining whether a reasonable and proper cause for a name change has been established, a court must consider the best interest of the child. *Id*. at 32. A probate court's determination of whether a proposed name change should be granted will only be reversed if it constitutes an abuse of discretion. *In re Change of Name of Barker*, 155 Ohio App.3d 673, 2003-Ohio-7016, ¶ 8 (12th Dist.), citing *In re Crisafi*, 104 Ohio App.3d 577 (8th Dist.1995). An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). A decision is unreasonable if there is

no sound reasoning process that would support that decision. *Id*. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result. *Id*.

{¶ 6} In determining the best interest of the child, the trial court should consider the following factors: (1) the effect of the change on the preservation and development of the child's relationship with each parent; (2) the identification of the child as part of a family unit; (3) the length of time that the child has been using a surname; (4) the preference of the child if the child is of sufficient maturity to express a meaningful preference; (5) whether the child's surname is different from the surname of the child's residential parent; (6) the embarrassment, discomfort or inconvenience that may result when a child bears a surname different from the residential parent's; (7) parental failure to maintain contact with and support of the child; and (8) any other factor relevant to the child's best interest. *Bobo v. Jewell*, 38 Ohio St.3d 330 (1988), paragraph two of the syllabus.

{¶ 7} In the present case, father argues that all of the applicable factors weigh in his favor, although he focuses mainly on the first and second factors. With regard to the first factor—the effect of the change on the preservation and development of the child's relationship with each parent—the trial court found that the name change will not have a negative effect on the preservation of any relationship between the child and father because the father has not had any "real relationship" with her since 2007, and the child's surname should be of little consequence to the development of a relationship if visitation is court ordered in the future.

{¶ 8} Father argues in his brief that the trial court erred when it found he has not had any "real relationship" with the child. Father counters that he lived with the child for her first 18 months, and has been in contact with the child through mother's brother and sister. Father also points to his testimony that he had been trying for over three years to visit the child and pay child support, but mother has thwarted his attempts by prolonging legal proceedings in domestic court.

{¶ 9} At the hearing before the magistrate, mother testified that she did not think the surname change would have any adverse effect on the child's relationship with father,

because supervised visitations would continue to occur, and the child could still establish a relationship with him. Mother said there was no contact and no relationship established between the child and father at that time, and the child does not even know father exists. Mother denied that father has visited the child while the child was with mother's siblings, and her brother has denied that any visits have taken place. She stated that she has been the only one supporting the child, paying for all school activities and finances, and the child considers her fiancé her father because he is all she has known since she was 18 months old.

{¶ 10} D.R., the child's maternal grandmother, testified that she did not believe a name change would affect any relationship with the parents, but it would encourage the child's self-esteem and reposition the child with greater solidarity with mother's family unit.

{¶ 11} Father testified that any current problems the child is having with her surname are because mother already allows her and others to use the mother's surname. Father said that he was soon going to be granted consistent visitation, and the child will be around a lot of his family members who share her surname. He said everyone in his family, except the married females, has the child's same surname. Father also conceded that a family assessment completed in the pending domestic court proceeding indicated he was granted only supervised visitation due to his history of criminal activity, drug and alcohol abuse, domestic violence, the limited contact between father and the child, and the lack of any relationship between the two.

{¶ 12} From the testimony before the magistrate, we cannot disagree with the trial court's assessment that father has had no "real relationship" with the child since 2007. Although father contends that he lived with the child for the first 18 months of her life, the trial court's finding takes this fact into account, limiting its finding to the period since 2007. Mother testified that the child did not know father existed as of the date of the magistrate's hearing, and his participation in her life was non-existent. As for father's contention that he had visited the child when the child was at the homes of mother's siblings, mother disagreed with father's claim, and we have no further evidence on the issue. The record before us is also vague as to how mother allegedly thwarted for three

years father's attempts to visit the child by prolonging the domestic court proceedings. The trial court's findings on this factor do not appear to be an abuse of discretion.

{¶ 13} We also note that, although father seems to contest the trial court's failure to order the child's name to be hyphenated with both parents' surnames, the magistrate explained that mother was opposed to such, and, regardless, that option had not been presented to the court. Thus, we can find no abuse of discretion in this respect.

{¶ 14} With regard to the second factor—the identification of the child as part of a family unit—the trial court found that the child identified with mother's home as the family unit, as mother has been the primary caregiver for the child's entire young life and continuously provided support, care, and nurturing. The court also found that the child had begun to question why her surname is different from her mother's surname.

{¶ 15} At the hearing before the magistrate, mother testified that the child's name change would positively affect her place as part of the family unit because she is getting married and keeping her surname, and any future children will also have her surname. Mother said the child affiliates herself with mother's family, who all have mother's surname.

{¶ 16} D.R., the child's maternal grandmother who has the same surname as mother, testified that the child was very well integrated into mother's family. The mother's side of the family participates in a lot of activities with the child. D.R. also said that she thought a surname change was appropriate because it would create more harmony with mother's future children, who will bear mother's last name.

{¶ 17} Father testified that he has seven other children, all bearing his surname, and the child would have unity with his side of the family by keeping her current surname.

{¶ 18} We agree with the trial court's findings regarding this factor. Mother testified that the child had begun to ask why her last name was different than mother's. Also, although father disputes that mother was the sole care provider and support for the child because father lived with mother and the child for the first 18 months of the child's life, the trial court was aware of this fact, and presumably meant that mother had been the sole caregiver and support for the child since 2007, as the court noted in its finding under the first factor. Thus, it is apparent that the child more identified with mother's family unit and this factor weighs in favor of mother.

{¶ 19} Father addressed the third and fourth factors together. With regard to the third factor—the length of time that the child has been using a surname—the trial court found that, although the child used father's surname for five years, she had not identified with either surname. With regard to the fourth factor—the preference of the child if the child is of sufficient maturity to express a meaningful preference—the trial court found that, although the child was too young to express a preference, changing her surname now will establish more stability as the child begins school and other extracurricular activities.

{¶ 20} Father contends that both of these factors were negated by the fact that the child is only five years old, and there was a lack of testimony on the matters cited by the trial court. Although the child may not identify with either surname and is unable to express a preference due to her young age, we agree with the trial court that the child's surname was beginning to become an issue because the child was starting school. Her surname did not match that of anyone with a presence in her life. As mentioned above, and as father concedes in his brief, mother testified that the child was starting to ask questions about why her surname is not the same as mother's because she was beginning to learn how to write. Mother also testified that children in the child's school ask a lot of questions about why the child's surname is not the same as her mother's surname. *See In re Change of Name of Morton to Piazza*, 2d Dist. No. 98 CA 14 (Nov. 20, 1998) (it was in child's best interest to change child's surname to mother's current surname when child was asking why his surname was not the same as mother's, the child was uncomfortable having to constantly explain to friends at school why his surname was different than his mother's, and father had minimal contact with the child). Thus, although the third and fourth factors are largely inapplicable here because of the child's young age, we cannot disagree with the trial court's observations.

{¶ 21} With regard to the fifth factor—whether the child's surname is different from the surname of the child's residential parent—the trial court found that mother is the residential parent and will continue to be the residential parent, and mother intended to retain her current surname after she remarries. Father contends that the trial court's finding was a clear mistake of fact, as mother said she intends to use a hyphenated surname with her new husband. However, father's contention is based upon a conversation between the magistrate and mother's attorney. Mother's clear testimony was

that she intended to keep her surname. Nevertheless, even if mother were to hyphenate her name upon remarriage, she would still share part of her name with the child's name. *See In re Change of Name of McGowan*, 7th Dist. No. 04 HA 572, 2005-Ohio-2938, ¶ 28 (it is in the child's best interest to have the child's surname the same as mother's maiden name, even though mother now hyphenates her maiden name with her married surname, because the mother's current surname name would still contain the child's surname and mother is the residential parent). Thus, we can find no abuse of discretion in the trial court's findings on this factor.

{¶ 22} With regard to the sixth factor—the embarrassment, discomfort or inconvenience that may result when a child bears a surname different from the residential parent's—the trial court found that mother testified she grew up with a different surname than the rest of her family and was uncomfortable with it, and there are security and inconvenience concerns when a child has a different surname than a parent while participating in school events, field trips, and extracurricular activities.

{¶ 23} On this issue, mother testified the child is experiencing discomfort and inconvenience by having a different last name because she has a lot of curiosity, and she does not want the child to feel different from other kids. Mother did not like growing up with a different last name than some of her siblings and felt ostracized. She stated she did not want her daughter to feel left out when she had more children, and her name was different than their last name.

{¶ 24} D.R. testified the child seems a little uncomfortable that her surname is different than her mother's because it makes her feel apart in terms of the unity and balance within the family.

{¶ 25} Father testified that he did not believe there was any embarrassment, discomfort or inconvenience with the child keeping his surname, and it would be difficult for her name to change to mother's surname because it would cause conflicts with all of the members on his side of the family who bear the same surname.

{¶ 26} Father argues herein that two facts undermine the trial court's analysis. First, as father argued above, mother stated she was going to hyphenate her name with her new husband's last name. However, we have already rejected this argument. Second, father asserts that no witness ever testified that there would be security or inconvenience

for the child in connection with school, field trips, and extracurricular activities, if she maintained father's surname. Although we agree that no witness testified about these matters, the trial court did not indicate that testimony was presented on these issues. We do not believe the trial court was prohibited from making its own observations pertinent to the matters before it. Notwithstanding these issues raised by the trial court, the testimony from mother and D.R. supports the conclusion that having a different surname as mother has caused the child discomfort.

{¶ 27} With regard to the seventh factor—parental failure to maintain contact with and support of the child—the trial court found that mother has had custody of the child and provided continuous care, nurturing, and support for the child's entire life; father has been minimally involved with the child, if at all, since 2007; and there was no indication that father ever consistently provided financial support for the child. Father again argues that it is mother's fault that he has not seen the child more, and the trial court's decision rewards mother's conduct.

{¶ 28} Father testified it was not that he had chosen not to see the child, but he has been in court proceedings for two years trying to establish visitation. Father stated that after he and mother broke up in May 2007, he filed his initial custody proceedings in November 2007, and filed with Franklin County Children's Services to establish parentage and pay child support in December 2007, but mother never responded to any of the actions. He said that mother's claim that he is not trying to be in the child's life and provide for her financially is not true.

{¶ 29} It does appear from father's testimony that he is trying to establish a relationship with the child and provide financial support. However, the fact remains that father had established little or no personal or financial relationship with the child prior to the magistrate's hearing, as documented in the family assessment completed in the domestic court proceeding. *See In re Change of Name of Newsome,* 11th Dist. No. 2006-A-0061, 2007-Ohio-2162, ¶ 17 (though father argues that he has every intention of maintaining a relationship with his two children, his silence for several years has been deafening, not to mention his lack of financial support). Although father contended in his testimony that mother had tried to hinder his relationship with the child and hired a long procession of attorneys to delay the domestic court proceedings, there are scant details

provided as to how she managed to stop father from obtaining visitation and paying child support for so many years. *See id*. (except for the first six months of the child's life, there was no relationship between mother and father and father and child, so there was no relationship for mother to destroy or poison). Furthermore, although father asserted that he had seen the child while the child was with mother's siblings, which mother flatly disputed, he provided no details as to when and how many times he had seen the child. Therefore, we agree with the trial court that this factor weighs in favor of mother.

{¶ 30} With regard to the eighth factor—any other factor relevant to the child's best interest—the trial court noted that father has a civil protection order against him until 2013 due to his domestic violence against mother. Mother testified visitation has not been appropriate because of the protective order she has against father until 2013 stemming from a physical altercation in which he knocked out her tooth. She believed his desire to see the child was only a way to inflict further abuse on her. The fact that father has a civil protection order against him due to domestic violence against mother is a valid concern. *See id* (father's domestic violence toward mother, resulting in a civil protection order, as well as his criminal drug activity, support mother's application to change the children's surname). It does not appear that the trial court placed substantial weight on this fact, but it is clear the trial court considered this issue, and we cannot say that it is so unrelated to the best interest of the child that it is not relevant.

{¶ 31} Viewing all of the best interest factors as a whole, we find the trial court did not abuse its discretion when it granted mother's application for name change with regard to the child's middle name and surname. All of the factors relevant to the present circumstances weigh in favor of granting the application. The one circumstance that most weighs in father's favor is that he was apparently attempting to establish both a personal and financial relationship with the child. However, this fact was not significant enough to outweigh the several years of little or no contact and support. There was also testimony that the child was becoming cognizant that her last name was different than her mother's and that it was causing her discomfort personally and with her friends. For these reasons, we find the trial court did not abuse its discretion when it granted mother's application for name change. Father's assignment of error is overruled.

{¶ 32} Accordingly, father's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Probate Division, is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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