[Cite as *In re Bicknell*, 2001-Ohio-4200.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN THE MATTER OF:	:	
JENNIFER LANE BICKNELL, et al.	:	CASE NOS. CA2000-07-140 CA2000-07-141
	:	O P I N I O N
	:	2/12/2001
	:	

Scott E. Knox, 13 E. Court Street, Suite 300, Cincinnati, Ohio 45202, for appellants, Jennifer Bicknell and Belinda Lou Priddy

David R. Langdon, 1140 Covedale Avenue, Cincinnati, Ohio 45238 and Michael J. DePrimo, P.O. Drawer 2440/100 Parkgate Drive, Tupelo, Mississippi 38803, for amicus curiae, American Family Association of Ohio

POWELL, P.J. Appellants, Jennifer Lane Bicknell ("Bicknell") and Belinda Lou Priddy ("Priddy"), appeal a decision of the Butler County Probate Court which denied appellants' petitions to change their names.

Appellants filed individual applications with the Butler County Probate Court, requesting to have their surnames changed to the name "Rylen," which is a combination of some of the letters of their last names. The applications of both women provided identi-

cal reasons for requesting the name change:

> Applicant desires to legally have the same last name as her long[-] term partner of nine (9) years. This name change will only add to the level of commitment they have for each other, as well as that of their unborn child. Also so that this tender and new family will have a unified name in the eyes of the law.

A hearing was held before a magistrate on February 28, 2000. At the hearing, appellants testified that they have been living together in a committed relationship for nine years. They have made a verbal commitment to each other and have exchanged rings to signify the commitment. Appellants also testified that Bicknell underwent artificial insemination and is expecting a child. They stated that they are planning to parent the child equally and consider themselves both mothers to the child. Priddy testified that she also plans to have a child in the future.

The magistrate issued a written decision on March 1, 2000, denying both name change petitions. Appellants filed objections to the magistrate's decision on March 14, 2000. The trial court granted a continuance to allow appellants to submit additional evidence. Appellants presented the testimony of Patricia Williams at a hearing held on May 16, 2000. Ms. Williams, a clinical social worker, testified that a common surname helps with family identity and can make social situations less difficult for children.

The trial court issued a written decision denying appellants' name change petitions on June 16, 2000. The trial court found that it was not "reasonable and proper" to change the names of unmarried cohabitants because to do so would give an "aura of propriety and

official sanction" to their cohabitation.

Appellants appeal the trial court's decision and raise the following three assignments of error:

> Assignment of Error No. 1:
>
> THE TRIAL JUDGE ERRED TO THE PREJUDICE OF THE APPLICANT-APPELLANTS IN FAILING TO APPLY THE CORRECT LEGAL STANDARD FOR ALLOWING NAME CHANGES.
>
> Assignment of Error No. 2:
>
> THE TRIAL JUDGE ERRED IN FINDING THAT ALLOWING THE APPLICATIONS FOR CHANGE OF NAME IS AGAINST PUBLIC POLICY.
>
> Assignment of Error No. 3:
>
> THE TRIAL JUDGE'S DECISION DENYING MS. PRIDDY AND MS. BICKNELL THE USE OF THE NAME CHANGE STATUTE IS UNCONSTITUTIONAL.

An appellate court may only reverse a trial court's decision on a name change application if the trial court abused its discretion. In re Hall (1999), 135 Ohio App.3d 1, 3. The term "abuse of discretion" implies that the court's decision is unreasonable, arbitrary or unconscionable. Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621.

In their first assignment of error, appellants contend that the trial court applied an incorrect standard by considering public policy and by not considering the best interest of the child. Appellants first argue that the only ground for denial of a name change petition occurs when the name change is requested for fraud-

ulent purposes.

In Ohio, there are two ways in which a person may change his name. First, a person may change his name at common law by simply adopting another name. Pierce v. Brushart (1950), 153 Ohio St. 372, 380. In Pierce, the Ohio Supreme Court stated the common law standard for a name change: "In the absence of a statute to the contrary, a person may ordinarily change his name at will, without any legal proceedings, merely by adopting another name. He may not do so, however, for fraudulent purposes." Id.

Second, a person may obtain a statutory name change pursuant to procedure outlined in R.C. 2717.01. The statutory name change procedures are in addition to the common law method of effecting a name change and do not abrogate it. State ex rel. Robinson v. Clark (1994), 91 Ohio App.3d 627, 629; In re Paxson (June 30, 1992), Scioto App. No. CA91-2008, unreported, 1992 WL 154139.

The statutory name change provision states:

> A person desiring a change of name may file an application in the probate court of the county in which the person resides. The application shall set forth that the applicant has been a bona fide resident of that county for at least one year prior to the filing of the application, the cause for which the change of name is sought, and the requested new name.
>
> Notice of the application shall be given once by publication in a newspaper of general circulation in the county at least thirty days before the hearing on the application. The notice shall set forth the court in which the application was filed, the case number, and the date and time of the hearing.
>
> Upon proof that proper notice was given and that the facts set forth in the application show reasonable and proper cause for changing

> the name of the applicant, the court may order the change of name.

R.C. 2717.01(a).

Once the statutory application requirements have been met, the standard for granting a statutory name change is whether the change is "reasonable and proper." R.C. 2717.01(a). Since R.C. 2717.01 provides that the court "may" order the name change, the statute vests discretion with the trial court in determining whether to grant the request.

Appellants contend that the trial court erred by considering whether the requested name changes were against public policy. Instead, they argue that the meaning of the term "proper" in relation to a statutory name change means only that the change is not requested for fraudulent reasons.

There is a dearth of case law in Ohio interpreting the statutory "reasonable and proper" standard for an adult name change. Recently, one court determined that a court should consider public policy issues when ruling on a name change petition. In re Name Change of Handley (P.C.2000), 107 Ohio Misc.2d 24, 26-27. In Handley, the applicant requested to have his name judicially changed to Santa Claus. Id. The court found that the public has a proprietary interest in the name Santa Claus and that the requested name change would be against public policy. Id.

Courts in other states have included a review of public policy considerations when ruling on name change petitions. See Application of Sakaris (N.Y. Civil Court 1993), 610 N.Y.S.2d 1007, 1011; In the matter of the Application of Pirlamarla (N.J.Super.Ct.Law

Div.1985), 504 A.2d 1238, 1241; In re Harris (Pa.Super.Ct.1997), 707 A.2d 225, 227; Lee v. Ventura County Superior Court (Cal.Ct.App.1992), 11 Cal. Rptr.2d 763, 768.

Although a person may change his name at common law as long as he/she does not do so with fraudulent intent, requesting a court to approve a name change requires additional considerations. A name change application becomes subject to judicial scrutiny because the applicant is requesting court approval of the name change. "An inevitable by-product of the statutory process is the result that the judicial imprimatur is placed upon the change of name lending it the aura of propriety and official sanction." Matter of Linda Ann A. (N.Y.Sup.Ct.1984), 480 N.Y.S.2d 996, 997. Because of these considerations, we find that the "reasonable and proper" standard provided in R.C. 2717.01 includes judicial scrutiny regarding whether a requested name change is consistent with public policy.

Appellants also contend that the trial court erred by not considering factors concerning the best interest of the child. In a proceeding to change the name of a minor child, the court is required to consider the best interest of the child in determining whether reasonable and proper cause has been established. In re Willhite (1999), 85 Ohio St.3d 28, paragraph one of the syllabus.

However, the facts of this case differ materially from those cases in which the best interest of the child must be considered. A review of Ohio cases requiring consideration of the child's best interest in a name change petition reveals that in each case the court was considering whether to change the name of an already-

named child. See e.g., id., Erin C. v. Christopher R. (1988), 129 Ohio App.3d 290;; In re Budenz (1999), 133 Ohio App.3d 359; In re Crisafi (1995), 104 Ohio App.3d 577; Bowen v. Thomas (1995), 102 Ohio App.3d 196. Appellants' petitions request that the court change their own names as adults. The petitions were not to change the name of an already-named child. Accordingly, as the request was to change the name of two adults, there was no best interest of a named child to be considered by the court. Appellants' first assignment of error is overruled.

In their second assignment of error, appellants contend that the trial court erred by finding that granting the name change petitions would be against public policy. The trial court found that Ohio public policy "promotes legal marriages and withholds official sanction from non-marital cohabitation." Appellants argue that there is no legislative public policy preventing unmarried people from sharing the same name.

However, a review of Ohio law reveals that there is both a legislative and judicial public policy promoting solemnized marriage. In 1991, the legislature abolished the recognition of common-law marriages. See R.C. 3105.12. This statute provides that after 1991, "common law marriages are prohibited in this state, and the marriage of a man and woman may occur only in this state if the marriage is solemnized ***[.]" R.C. 3105.12(B)(1).

Even prior to the abolition of common law marriage by the legislature, it was not favored. The Ohio Supreme Court stated that "common-law marriage contravenes public policy and should not be

accorded any favor; indeed it is quite generally condemned." In re Estate of Redman (1939), 135 Ohio St. 554, 558. See, also, State v. Depew (June 29, 1987), Butler App. No. CA85-07-075, unreported, at 20.

Other courts have reiterated Ohio's long-standing public policy promoting marriage. In holding that restraints to marriage are generally disfavored, one court recently stated the principle that "[t]he union of two people in marriage has been the ultimate expression of commitment and love throughout this nation's history and has been the bedrock upon which our society has built and continues to build upon." Jordan v. Jordan (1996), 117 Ohio App.3d 47, 50. Though recently courts may be less inclined to speak of the sanctity of marriage, it remains a basic social institution of the highest type and importance, in which society at large has a vital interest. Hempy v. Green (May 31, 1990), Franklin App. No. 89AP-1369, unreported, 1990 WL 72607 at *3, quoting Holloway v. Holloway (1935), 130 Ohio St. 214, 216.

We find that there is support for the trial court's determination that Ohio law favors solemnized marriages and that cohabitation contravenes this policy. Accordingly, the trial court did not abuse its discretion by finding that court sanctioning of the use of the same surname by two unmarried cohabitants is against Ohio's public policy promoting marriage. Appellants' second assignment of error is overruled.

In their third assignment of error, appellants contend that the trial court's decision is unconstitutional. Specifically,

appellants argue that the decision violates the Equal Protection Clause of the Constitution. Appellants argue that denying unmarried couples the opportunity to share a common surname bears no rational relationship to a legitimate governmental purpose.

The Equal Protection Clause prevents a state from treating people differently under its laws on an arbitrary basis. State v. Williams (2000), 88 Ohio St.3d 513, 530. Unless a suspect class or fundamental right is involved, the action need only bear a rational relationship to a legitimate state interest. Id. A classification based on marital status does not implicate either a suspect class nor does it involve a fundamental right. Smith v. Shalala (1993), 5 F.3d 235, 239.

Appellants argue that Ohio courts do not recognize any public policy giving lesser rights to same-gender or unmarried couples raising children. Appellants are correct that a parent's sexual orientation or marital status does not automatically disqualify that person from obtaining custody or adopting a child. See In re adoption of Charles B. (1990), 50 Ohio St.3d 88; Inscoe v. Inscoe (1997), 121 Ohio App.3d 396. However, the issue in this case is not appellants' parenting rights. Instead, the issue is whether the state has a legitimate interest in denying the name change petitions of couples who are unmarried.

Appellants also argue that denying unmarried couples the use of the name change statute denies use of the name change statute to all same-gender couples. Appellants argue that exclusion of people in same-gender relationships constitutes an unconstitutional status

and that effectuating animus against a group of people cannot constitute a legitimate governmental purpose. In support of this argument, appellants cite Stemler v. City of Florence (6th Cir.1997), 126 F.3d 856, and Glover v. Williamsburg School District (S.D.Ohio 1998), 20 F.Supp.2d 1160, cases which found it impermissible to discriminate on the basis of sexual orientation. While these cases stand for the proposition that animus cannot be the basis of a governmental action, appellant's argument is misplaced because there is no evidence the court's decision was based on animus or unconstitutional status.

The trial court's decision did not distinguish between unmarried heterosexual couples and unmarried homosexual couples. The trial court first looked at Ohio's public policy of promoting legal marriages and withholding official sanction from nonmarital cohabitation. The court then stated:

> The fact that these applications involve two women, instead of a man and a woman, does not change the principle in cases such as these. It would not be "reasonable and proper" for a court to change the last name of a woman living with a man whom she was not legally married, to the same last name as that of the man ****. Similarly, it is not "reasonable and proper" for a court to change the last name of a woman living with a woman to whom she cannot legally marry, to the same last name as that of the other woman. Cohabitation is cohabitation, whether it involves a man and a woman, a woman and a woman, or a man and a man.
>
> ***
>
> The fact that the applicant can not legally marry her "long term partner" because they are both women does not alter the basic conclusion of law that this court finds to be true, i.e. that it is not "reasonable and proper" to

> change the surnames of cohabiting couples, because to do so would be to give an "aura or propriety and official sanction" to their cohabitation.

The trial court's decision distinguished between married couples and unmarried couples on the basis of Ohio's public policy in favor of marriage. This distinction bears a rational basis for treating the two groups in different manners in order to promote a legitimate governmental interest. Appellants' third assignment of error is overruled.

In conclusion, we find that the trial court's decision is not unreasonable, arbitrary or unconscionable. Accordingly, the trial court's decision was not an abuse of discretion.

Judgment affirmed.

WALSH, J., concurs.
VALEN, J., dissents.

VALEN, J., dissenting. Because I disagree with the majority's analysis, I respectfully dissent.

Standard of Review

Although the name change statute vests discretion with the trial court to determine whether to grant a name change application, this discretion is not unlimited. The name change statute uses the permissive verb "may," but this does not mean that this court is prohibited from reversing the trial court's denial of appellants' name change applications. The supreme court has reversed and remanded a trial court's decision to deny a name change that was not adequately supported by law. In re Willhite (1999),

85 Ohio St.3d 28, 31-33. When deciding whether to grant a name change, the trial court must determine whether there is "proof that *** the facts set forth in the application show reasonable and proper cause for changing the name of the applicant." Id. at 30, quoting R.C. 2717.01(A).

The Analysis of the Trial Court and the Majority Opinion

Both the trial court and majority's analyses of whether appellants' requested name changes were reasonable and proper rest upon their assertion of a particular public policy. I believe that there must be clearer guidelines for the court to determine the interaction of public policy with name change. This responsibility is first for the legislature and ultimately for the supreme court. Today the religious influence and tradition that marriage and family unit are synonymous has been legislatively and judicially eroded.

The trial court gave the following legal reasoning in support of its decision to deny appellants' name changes:

> It is not reasonable and proper to change the surnames of cohabiting couples, because to do so would be to give an aura of propriety and official sanction to their cohabitation and would undermine the public policy of this state which promotes legal marriages and withholds official sanction from non-marital cohabitation.

In affirmation of the trial court's decision, the majority writes:

> We find that there is support for the trial court's determination that Ohio law favors solemnized marriages and that cohabitation contravenes this policy. Accordingly, the trial court did not abuse its discretion by finding that court sanctioning of the use of the same surname by two unmarried cohabitants

> is against Ohio's public policy promoting marriage.

The majority's opinion seems to say that the trial court was right to deny the requested name changes because appellants were cohabiting, and cohabitation of unmarried couples is against the public policy of this state to promote solemnized marriage. This analysis is not reasonable and proper for three reasons. First, it relies upon the unsupported premise that cohabitation of unmarried partners contravenes current public policy. Second, it relies upon the unsupported premise that by refusing appellants' requests, the court is protecting the sanctity of marriage. Third, the decision fails to honestly address the real legal question before us, which is whether appellants, who are same-sex partners, may be denied their name change requests.

Cohabitation of Unmarried Couples Does Not Contravene the Current Public Policy of this State

The majority argues that cohabitation of unmarried couples contravenes the current public policy of this state. In support of their argument, the majority points out that in 1991, the Ohio legislature abolished any new recognition of common law marriages. Although the legislature decided to end the legal recognition of common law marriage, this measure was probably not intended to be a "condemnation" of the practice of cohabitation between adults in romantic relationships. The majority opinion offers no legislative history to support its contention that the abolition of common law marriages was a result of a legislative public policy of promoting solemnized marriages and disfavoring the cohabitation of unmarried

couples. I believe that the abolition of common law marriages was likely the result of years of problems in the courts in proving marital status for the assertion marital rights.

One example of such proof problems in the probate courts was showing that your partner, now deceased, lived with you in such a way that you were his or her spouse according to common law was a tough task and led to uncertainty in the courts. In fact, the leading case cited by the majority support my point. In re Estate of Redman (1939), 135 Ohio St. 554, in which the supreme court commented that "common-law marriages contravene public policy," involved the inheritance rights of a man who claimed to be the common law spouse of a woman who died intestate with no known heirs.

An example of proof problems in criminal court is illustrated by State v. Depew (June 29, 1987), Butler App. No. CA85-07-075, unreported, a case also cited by the majority as an example of judicial disapproval of common law marriage. In that case, Depew argued that a woman was his common law wife and therefore was precluded from testifying against him at his trial for aggravated murder. Id. at 20-21. In this context, this court's condemnation of common law marriage does not appear to be based on a public policy against cohabitation but is a further demonstration that the abolishment of common law marriage was to eliminate evidentiary proof problems.

As the majority notes, a person may change her name at common law by simply adopting another name. Pierce v. Brushart et. al.,

Board of Elections (1950), 153 Ohio St. 372, 380. The only restriction of this practice is that the name change must not be made for a fraudulent purpose. Id. When the common law name change procedure is used, there is no record of the name change with any court. Through the statutory name change procedure, each name change is recorded with the court in which the name change was granted. To promote the public policy of maintaining accurate records of people's legal names, we should liberally encourage the granting of name change requests and thereby not encourage the use of a common law name change to effectuate the same result.

A review of Ohio's statutory enactments and case law shows that the legislature has, in certain circumstances, granted extra protections to couples who cohabit. The General Assembly has defined "family or household member" in a manner that encompasses both married couples and unmarried couples who are cohabiting. Therefore, there is no public policy against cohabitation in this state.

In enacting our domestic violence statute, the General Assembly has shown its intention to grant the same protections to married couples and unmarried couples who are cohabiting. The domestic violence statute states that "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." R.C. 2919.25(A). R.C. 2919.25(E)(1)(a)(i) defines "family or household member," as "a spouse, a person living as a spouse, or a former spouse of the offender." The statute further defines a "person living as a spouse" as "a person who is living or has lived

with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged occurrence of the act in question." (Emphasis added.) R.C. 2919.25(E)(2).

Therefore, the legislature has recognized cohabitation without the benefit of marriage as reason to provide the same protections for victims of assault as are possessed by those that are married. Domestic violence carries harsher penalties than assault. Assault occurs when one person causes physical harm or attempts to cause physical harm against any another person. See R.C. 2903.13. Domestic violence occurs when a person causes or attempts to cause physical harm to "a family or household member." See R.C. 2919.25. In general, first offenses under both statutes are first degree misdemeanors. See R.C. 2903.13(C) and 2919.25(D). However, a second offense under the domestic violence statute is a fifth degree felony. See R.C. 2919.25(D). There is no analogous provision for assault in R.C. 2903.13. The supreme court has found that in the context of domestic violence, the essential elements of "cohabitation" are (1) sharing of familial or financial responsibilities and (2) consortium. State v. Williams (1997), 79 Ohio St.3d 459, paragraph two of the syllabus, reconsideration denied, 80 Ohio St.3d 1438.

Our legislature also granted special recognition of cohabiting couples without any sense of condemnation when it enacted R.C. 2907.02. This statute states, "It is not a defense to a charge ***

[of rape] that the offender and the victim were married or were cohabiting at the time of the commission of the offense." R.C. 2907.02(G).

In the area of child custody, in which public policy plays an important role, cohabitation between unmarried partners has not been censured. Ohio courts have found that cohabitation between romantic partners who are not married is not sufficient reason, in and of itself, to change custody; rather, in order to have relevancy to a child custody decision, this behavior must be shown to have an adverse impact on the child. See Kraus v. Kraus (1983), 10 Ohio App.3d 63 (change in custody not allowed where evidence did not show that custodial parent's live-in boyfriend had an adverse impact on children); Wyss v. Wyss (1982), 3 Ohio App.3d 412 (immoral conduct or cohabitation of a custodial parent with a non-spouse may not form the basis for a change in custody unless there is a showing of a material adverse effect on the child); Whaley v. Whaley (1978), 61 Ohio App.2d 111 (change in custody from mother to father was improper where it was ordered to punish the mother for conduct the court considered morally wrong); In re Burrell (1979), 58 Ohio St.2d 37, 39 (finding that absent evidence showing a detrimental impact upon her children, mere fact that mother was living with her boyfriend did not support characterization of her children as "dependent"). Therefore, in matters of child custody, evidence of cohabitation is not relevant unless it is shown to have adversely affected the child.

As unsettling as it may seem, these legislative and judicial

decisions demonstrate that rather than condemning cohabitation between unmarried couples, those who set public policy recognize that this behavior is not a reason to discriminate or offer less protection in the eyes of the law.

The Denial of Appellants' Requested Name Changes Does Virtually Nothing to Protect the Sanctity of Solemnized Marriages

The decision of the trial court, as affirmed by the majority opinion, also finds that the denial of these name change requests protects the rights of married persons and the sanctity of solemnized marriage. The majority describes marriage as "the ultimate expression of commitment and love" and the "bedrock upon which our society has built and continues to build upon." The majority opinion seems to imply that the trial court's decision to withhold approval of this name change between partners who are cohabiting but are not married is justified as a way to protect or promote the sanctity of solemnized marriage.

There is an apparent concern that granting a name change to appellants would give appellants marital status. However, granting appellants' their requested name changes will not entitle them to the legal privileges that we associate with the marital commitment. Having the same last name does not make two people married. Siblings share the same last names, as do distant cousins, and complete strangers. Conversely, more and more married couples are choosing to have different last names. I fail to see how refusing appellants' petitions for name changes protects the institution of marriage in any meaningful way.

The Real Issue: Whether the Court May Deny a Same-Sex

Couple's Request to Share the Same Name

The real controversy before this court is whether same-sex partners, living together in a committed relationship, may be denied their request to share the same name. The unspoken argument against granting appellants' requests for name changes is that it might be equated to approval of the appellants' alternative life-style and that the trial court is entitled to withhold such approval as it deems proper.

In significant areas of criminal and domestic law, the courts have not discriminated against persons based on sexual orientation. As explained below, same-sex couples enjoy special protection in criminal law under our current domestic violence statute. Moreover, sexual orientation, in and of itself, does not negatively affect adoption rights or child custody rights.

The domestic violence statute, R.C. 2919.25, protects same-sex couples who cohabit. State v. Yaden (1997), 118 Ohio App.3d 410, 417; State v. Hadinger (1991), 61 Ohio App.3d 820, 823. When considering, as an issue of first impression, whether the domestic violence statutes applied to same-sex couples who cohabit, the Tenth District Court of Appeals explained:

> While the trial court apparently imposed the requirement that persons to be charged pursuant to R.C. 2919.25 have the ability to marry, such does not appear to be the case given the broad language of the statute. Given the language of R.C. 2919.25, this court concludes that the legislature intended that the domestic violence statute provide protection to persons who are cohabiting regardless of their sex. We believe that to read the domestic statute otherwise would eviscerate the efforts of the legislature to safeguard, regardless of gender, the rights

> of victims of domestic violence.

Hadinger at 823. The First District Court of Appeals has also determined that same-sex couples who cohabit should be protected by the domestic violence statutes, noting the following:

> We can see no tangible benefit to withholding this statutory protection from same-sex couples.
>
> Furthermore, R.C. 2919.25 has been amended four times since Hadinger [which applied R.C. 2919.25 to a same-sex cohabiting couple] was decided. We can safely assume that the legislature was fully aware of the Hadinger decision when it drafted these amendments. Thus, the legislature implicitly endorsed Hadinger when it declined to alter the definition of "cohabit" to exclude same-sex couples. (Citation omitted.)

Yaden at 416-17. Ohio courts and our legislature have acknowledged that same-sex couples who cohabit are to be considered families for the purpose of applying our domestic violence statute.

The supreme court has held that an unmarried homosexual male may adopt a child. In re Adoption of Charles B. (1990), 50 Ohio St.3d 88, 92 (reversing a court of appeals split decision, finding that, as a matter of law, homosexuals are not eligible to adopt).

Ohio courts have stated that sexual orientation is generally irrelevant to decisions regarding child custody and visitation. In Inscoe v. Inscoe (1997), 121 Ohio App.3d 396, 417, the Fourth District Court of Appeals determined that a trial court had abused its discretion by granting a request for modification of custody that was based upon the fact that the child's father had entered into "an openly gay life-style since the prior decision" and that "the same has adversely affected the parties' minor child." The court

of appeals determined that a parent's sexual orientation, standing alone, has no relevance to a decision concerning allocation of parental rights and responsibilities. Id. at 413. Similarly, Ohio courts have found that sexual orientation, in and of itself, is not sufficient reason to justify a denial of visitation. In Conkel v. Conkel (1987), 31 Ohio App.3d 169, the court of appeals determined that a homosexual father could not be denied overnight visitation with his two sons on the basis of his homosexuality without evidence that the boys would be psychologically or physically harmed thereby. Reviewing these cases, it is clear that moral objections to an adult's sexual orientation, in and of themselves, are not reasons to grant, deny, or modify that adult's custodial care of a child.

Concluding Thoughts

In significant ways the legislature and judiciary have protected the rights of persons regardless of sexual behavior and sexual orientation. Our domestic violence statutes protect persons who are cohabiting, regardless of marital status or sexual orientation. In custody and dependency proceedings, cohabitation between unmarried partners and sexual orientation are irrelevant, absent a showing that this behavior has an adverse impact on the child. Single homosexuals are allowed to adopt children. Yet, the majority finds that appellants are not entitled to a name change.

The majority states that it cannot consider the best interest of a child who is unborn. But that does not mean that the court cannot consider the intention of the parties to have a child when

considering their name change requests.

I would find that the trial court's denial of appellants' applications for name changes constituted an abuse of discretion as this decision was not adequately supported by law. I disagree with the court's decision on its legal grounds alone. There may be a sufficient legal basis upon which the trial court could have relied in denying appellants' requests, but the trial court's explanation, as affirmed by the majority opinion here, lacks such a basis. Therefore, I would reverse and remand this case to the trial court to determine whether there was a legal reason to deny appellants' requests.

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