[Cite as *In re Name Change of T.N.M.W.*, 2015-Ohio-2790.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

IN THE MATTER OF THE NAME CHANGE OF T.N.M.W.	:	
	:	Appellate Case No. 2015-CA-4
	:	Trial Court Case No. 87189
	:	(Appeal from Common Pleas Court-Probate Division)

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O P I N I O N

Rendered on the 10th day of July, 2015.

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WELBAUM, J.

{¶ 1} In this case, Appellant, K.W., appeals from a trial court decision rejecting her application to change the last name of her minor daughter, T.N.M.W. In support of her appeal, K.W. contends that the trial court abused its discretion.

{¶ 2} We conclude that the trial court did not abuse its discretion in denying the application for a name change. The trial court applied the appropriate standards, and did not improperly rely on speculation about the father's potential relationship with the child. Accordingly, the judgment of the trial court will be affirmed.

I. Facts and Course of Proceedings

{¶ 3} The minor child involved in this case, T.N.M.W., was born in December 2009, and had just turned five years old at the time of the name-change hearing. When T.N.M.W. was born, her father, Z.W., signed her birth certificate and she was given his last name. At the time of the hearing, Z.W. had not seen T.N.M.W. for about four years, and had not supported her since her birth. The child lived with K.W., K.W.'s parents, and a brother, all of whom had the same last name (the mother's maiden name).

{¶ 4} At one time, Z.W. and K.W. lived together, and they both used drugs, including heroin. Z.W. had one drug conviction, in October 2014, for possession of heroin and cocaine, based on an incident that occurred in the spring or summer of 2014, and he was on probation for this conviction at the time of the hearing. However, according to Z.W., he had not used drugs since, and was involved in an intense out-patient program, through Cornerstone Project. He also was engaged in an apprenticeship at a local ironworkers' union.

{¶ 5} Z.W. had previously been convicted more than ten times for crimes like theft and burglary, and had been in prison. While he was in prison, his sister filed for visitation rights with T.N.M.W., but K.W. opposed it and "fought every step of the way." January 12, 2015 Hearing Transcript, p. 12.

{¶ 6} After Z.W. was released from prison in December 2013, he contacted K.W. over Facebook to ask if he could see his daughter. However, K.W. refused to let him see T.N.M.W. He then petitioned the court for visitation, but dismissed the action after a positive drug screen. Z.W. testified that he did not withdraw his petition because of the drug test, but was not ready at that point in his life, due to personal issues. He admitted that his drug use had been a serious concern in the past. However, at the time of the hearing, he had not used drugs for six months, and had filed another petition, requesting supervised visitation. At the time of the hearing, Z.W. had supervised visitation with another child, his 11-year-old son, every other weekend and on one week-day evening.

{¶ 7} K.W. testified that she had no proof that Z.W. was currently using drugs, but said that, regardless of this, she would oppose Z.W. even having supervised visitation with their daughter. Her actions were based on concern for her daughter's welfare. K.W. stated that she requested a name change based on concern for her daughter's reputation, and did not want her to have Z.W.'s last name because of his family background.[1] K.W. stated that her daughter does not use Z.W.'s last name, and is "very upset" when she hears the father's last name. K.W. further stated that she absolutely does not correct her daughter when she writes her last name using K.W.'s name instead of Z.W.'s name. K.W. also indicated that she had enrolled her daughter in preschool

[1] Z.W.'s last name is not either uncommon or unusual.

using her own last name rather than Z.W.'s last name.

{¶ 8} After hearing the evidence, the trial court filed a decision, rejecting the application for a name change. K.W. appeals from the decision rejecting her application.

II. Alleged Error in Rejecting the Application

{¶ 9} K.W.'s sole assignment of error states that:

> The Trial Court Erred in Not Granting Petitioner/Appellant's Request for a Name-Change for her Daughter, a Minor.

{¶ 10} Under this assignment of error, K.W. contends that the trial court abused its discretion in failing to grant the name change. According to K.W., the trial court improperly applied the relevant legal standard and denied the petition based on a speculative "potential" relationship that could develop between Z.W. and the child.

{¶ 11} R.C. 2717.01(B) permits applications for name changes on behalf of minors to be made by either of the minor's parents, by a legal guardian, or by a guardian ad litem. The standard in the statute is that "upon * * * proof 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)(3). Notice and consent are also required; if consent is not given, the court will hold a hearing. R.C. 2717.01(A) and (B).

{¶ 12} In the case of *In re Willhite*, 85 Ohio St.3d 28, 706 N.E.2d 778 (1999), the Supreme Court of Ohio held that "[w]hen deciding whether to permit a name change for a minor child pursuant to R.C. 2717.01(A), the trial court must consider the best interest of the child in determining whether reasonable and proper cause has been established." *Id.* at paragraph one of the syllabus. The court further held that:

> In determining whether a change of a minor's surname is in the best interest of the child, the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

Id. at paragraph two of the syllabus, following *Bobo v. Jewell*, 38 Ohio St.3d 330, 528 N.E.2d 180 (1988), paragraph two of the syllabus, and *In re Change of Name of Andrews*, 235 Neb. 170, 454 N.W.2d 488 (1990).

{¶ 13} "We review for an abuse of discretion a probate court's determination of whether a proposed name change is in a child's best interest." (Citation omitted). *In re J.A.K.*, 2d Dist. Greene No. 11CA0068, 2012-Ohio-3403, ¶ 6. " 'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary or unconscionable." (Citation omitted.) *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). In *AAAA Enterprises*, the court stressed that "[i]t 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." *Id.* The court also stated that:

> A decision is unreasonable if there is no sound reasoning process that would support that decision. 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.

{¶ 14} Furthermore, the Supreme Court of Ohio has stressed that "[w]hen reviewing a trial court's decision determining that a child's name either should or should not be changed, a reviewing court may not substitute its own judgment for that of the trial court, but it must consider whether the trial court abused its discretion." *D.W. v. T.L.*, 134 Ohio St.3d 515, 2012-Ohio-5743, 983 N.E.2d 1273, ¶ 10, citing *Jarrells v. Epperson*, 115 Ohio App.3d 69, 71, 684 N.E.2d 718 (3d Dist.1996), and *In re Dayton*, 155 Ohio App.3d 407, 2003-Ohio-6397, 801 N.E.2d 531, ¶ 9 (7th Dist.).

{¶ 15} In denying the application, the trial court cited *Willhite*, and discussed the applicable factors. The court gave significant weight to the fact that while the child had legally had the father's surname for five years, the mother encouraged the use of the wrong name and had failed to correct the misuse. The court also gave little weight to what it described as the mother's "self-serving" testimony about the child's embarrassment or discomfort, finding that the mother had caused this by failing to properly educate the child. In addition, the court found the father's lack of contact significant, concluding that the father could have done more to prove actual effort. However the court did note that the father had two recent filings asking for visitation, including a pending motion, and was attempting to establish a relationship with the child.

{¶ 16} The trial court also stated that the only factor without dispute was the residential parent issue, but concluded that this was only one factor, not the determining factor. Finally, the court stated that:

> The birth certificate bears both names; father did not "duck" that issue. He has failed to financially support and now (after numerous incarcerations) is in a position to support and establish a relationship (as long as he is drug free). Mother added confusion to the case by failing to allow any contact (she is also a previous drug user) and failing to teach the child about both parents and their different surnames.
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> After considering all of the factors, the court finds that the applicant has failed to present sufficient evidence to show that the name change would be in the best interest of the child; the application is denied.

Doc. #12, pp. 3-4.

{¶ 17} Based on our review of the evidence, we cannot find that the trial court abused its discretion in denying the name change. *Compare Whytal v. Watring*, 2d Dist. Clark No. 2004-CA-68, 2005-Ohio-4487, ¶ 29 (concluding that the trial court did not abuse its discretion by placing significant weight on its finding that one parent had promoted confusion by attempting to teach the child a surname that was different from the child's current legal surname). The trial court in the case before us considered all the factors, and did not improperly speculate about the father's potential relationship. Instead, the court placed more weight on the mother's actions. We cannot say this was based on unsound reasoning.

{¶ 18} Accordingly, the sole assignment of error is overruled.

III. Conclusion

{¶ 19} K.W.'s sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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FROELICH, P.J. and FAIN, J., concur.

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