

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

In re The Application for Change of  
Name of K.P.S. to K.P.S.-K.

Court of Appeals No. H-11-019

Trial Court No. NC 2011 00006

**DECISION AND JUDGMENT**

Decided: October 19, 2012

\* \* \* \* \*

J.S. Jr., pro se.

Lisa M. Snyder, for appellee N.A.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a September 12, 2011 judgment of the Huron County Court of Common Pleas, Probate Division, granting appellee's application for a change of name of a minor. On April 8, 2011, appellee, the minor's grandmother and legal guardian, filed the application. The application was accompanied by a consent to the

change of name form executed by the mother of the minor child. The name change was sought in order for the minor to share the same last name as her sibling. The two children share the same parents. The last name requested in the application is both parents' last names combined in a hyphenated format.

{¶ 2} On September 9, 2011, the final hearing on the matter was held. Appellee, appellant father, and the mother of the minor child each testified during the hearing. Although appellant was incarcerated and thus not physically present, he participated via teleconference. After taking the testimony of all involved parties and considering the evidence in concert with the statutory guidelines, the trial court granted the name change application.

{¶ 3} On September 14, 2011, appellant filed a motion for rehearing. Appellant requested that the trial court hear the matter once again with appellant physically present in the courtroom. The trial court denied the motion. This appeal ensued.

{¶ 4} For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 5} Appellant sets forth the following two assignments of error:

1. COURT ERRED BY DENYING APPELLANT'S MOTION TO HAVE RE-HEARING, DUE TO THE FACT THAT THE APPELLANT COULDN'T HEAR PROPERLY WHAT WAS TRANSPIRING AT THE HEARING FROM WHICH THE APPEAL IS BEING TAKEN AND DUE TO HIM NOT BEING ABLE TO HEAR CAUSED THE INFORMATION

WHICH WAS TESTIFIED AND SUBMITTED AT THE HEARING TO  
BE BROUGHT IN A MISTAKEN AND FRAUDULENT MANNER  
AND/OR OTHER JUSTIFIABLE REASONS IN ACCORDANCE WITH  
**CIV R 60.**

2. THE COURT FAILED TO CONSIDER WHAT WAS IN THE  
CHILD'S BEST INTEREST WHEN IT ERRONEOUSLY APPLIED THE  
STANDARD SET FORTH IN *IN RE WILLHITE* (1999) 85 OHIO ST. 3D  
28.

{¶ 6} The undisputed facts relevant to this case are as follows:

{¶ 7} On May 8, 2009, the minor child was born. Appellee, the minor's maternal grandmother, was designated to be the legal guardian of the child as a result of a Huron County Department of Job and Family Services referral. Appellant, who is presently incarcerated, is the father. The mother, who is gainfully employed, maintains a place of residence near appellee. On April 8, 2011, appellee filed an Application for Change of Name of Minor, accompanied by the mother's executed consent form. Appellant did not execute the consent form. Accordingly, an evidentiary hearing was set for September 9, 2011.

{¶ 8} At the hearing, appellee was present with her attorney, Lisa Snyder, as well as the mother of the minor child. Due to appellant's incarceration, the trial court arranged to have appellant participate via teleconference. During the hearing, the trial

court expressly asked appellant if he could hear the proceedings. Appellant responded, “Yes, basically.”

{¶ 9} During her testimony, appellee stated that the minor child had been living with her since birth. She further stated that the minor’s mother had been actively involved in the minor’s life since birth. Appellee testified that the child’s mother has been getting treatment and has successfully maintained employment. Appellee also testified that the mother has another child with appellant. The minor’s sibling has a hyphenated last name, comprised of the last names of both parents. This hyphenated last name is the subject of the underlying application. The application was submitted so that both siblings may share the same last name. The name encompasses the last names of both the mother and father of the children.

{¶ 10} The testimony at the hearing reflected that the minor is of a young age, cannot yet read or write, and cannot spell her name. Appellee testified that the minor child is not aware of her last name and does not know how to spell either name. Further, the evidence showed that people assume that the minor has the same last name as that of her brother so that a name change would not change the ability of others to recognize her. Upon inquiry by the trial court, appellant declined to pose any questions on cross-examination of either witness.

{¶ 11} Appellant’s first assignment of error claims that the trial court erred in denying appellant’s motion for a new hearing with him physically present. Appellant

asserts that he could not adequately hear during the hearing. We have thoroughly reviewed the record. We disagree.

{¶ 12} Civ.R. 59(A) provides that:

**(A) Grounds.**

A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:

(1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;

{¶ 13} While appellant now claims that he could not hear during the proceedings, the record reflects that appellant was explicitly asked if he could hear. He replied, “yes, basically.” In conjunction with this, appellant elected not to ask any questions upon cross-examination. Appellant never expressed difficulty in adequately hearing the proceedings or confusion of any kind. On the contrary, the record shows that appellant actively participated in the proceedings and was able to hear sufficiently to respond to questions posed to him. Given these facts and circumstances, we find the first assignment of error not well-taken.

{¶ 14} Appellant’s second assignment of error claims that the trial court did not consider the child’s best interest. Appellant contests the trial court’s application of the standard set in *In re Willhite*, 85 Ohio St.3d 28, 706 N.E.2d 778 (1999).

{¶ 15} In Ohio, courts must abide by R.C. 2717.01(A). “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.” *Id.*

{¶ 16} In assessing the propriety of an application, “the trial court must consider the best interest of the child in determining whether reasonable and proper cause has been established.” *In re Willhite* at 28. The *Willhite* court set forth several factors to be considered when determining if the name change of the minor is in the best interest. *Id.*

{¶ 17} Appellee is merely adding the mother’s last name to the father’s last name through hyphenation to mirror that of the minor’s older brother. Through testimony, it was established that people already assume that the minor child has the same last name as her brother. It was likewise shown that the minor is of such a young age that she does not know her true last name nor can she spell it. The record is devoid of any evidence that the name change would disadvantage the child in any way.

{¶ 18} For the reasons set forth above, we find appellant’s second assignment of error not well-taken.

{¶ 19} On consideration whereof, the judgment of the Huron County Court of Common Pleas, Probate Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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of Name of K.P.S. to K.P.S.-K.  
C.A. No. H-11-019

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.