[Cite as *In re H.M.B.*, 2013-Ohio-1261.]

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

In re Change of Name of H.M.B.

Court of Appeals No. L-12-1180

Trial Court No. 2012NCH403

DECISION AND JUDGMENT

Decided: March 29, 2013

* * * * *

T.B., pro se.

Mark S. Lindberg and Mark A. Harris, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals an order issued by the Lucas County Court of Common Pleas, Probate Division, changing the name of his minor daughter. Because we conclude that the court's findings are supported by competent credible evidence and it did not abuse its discretion, we affirm.

{¶ 2} In 2008, appellant, T.B., apparently despondent with the breakup of his marriage, put his then four-year-old daughter, H.M.B., in his pickup truck. Appellant ran

a hose from the truck's exhaust into its cabin, attempting to kill both himself and his daughter. Both survived. Appellant eventually was convicted of the attempted murder of his daughter and is presently incarcerated.

{¶ 3} On February 22, 2012, appellee, H.M.B.'s mother and appellant's former wife, applied to change H.M.B.'s name. Appellee's stated reason for the name change was to prevent appellant from harassing either the mother or H.M.B. after he is released from prison.

{¶ 4} Appellant contested the name change and requested a hearing. On April 10, 2012, the matter was heard by a magistrate who took testimony from both parties and multiple witnesses. On May 18, 2012, the magistrate issued his decision, finding that the name change was in H.M.B.'s best interest and approving appellee's application. Appellant filed objections to the magistrate's decision on June 12, 2012. On June 18, 2012, the court dismissed appellant's objections as untimely and, following an independent review of the record, adopted the magistrate's decision as that of the court. From this judgment, appellant now brings this appeal.

{¶ 5} Appellant sets forth the following single assignment of error:

> The trial court erred and abused its discretion in granting the application for name change, over objection, where the decision was not supported by credible and substantial evidence and it was not demonstrated that the contested name change wa [sic] in the best interest of the child.

I. Timeliness

{¶ 6} Civ.R. 53(D)(3)(b)(i) provides that a party may file objections to a magistrate's decision within 14 days of the filing of the decision. In this matter, the magistrate's decision was filed on May 18, 2012.

{¶ 7} The time within which an act is required to be done by law or rule is computed by excluding the first and including the last day following, unless the last day falls on a Sunday or when the public office in which the act to be done is closed. R.C. 1.14; *see also* Civ.R. 6(A). Since time begins to run the day after filing, the fourteenth day would have fallen on June 2, a Saturday, making objections due June 4.

{¶ 8} In its judgment entry, the trial court noted that appellant's objections were postmarked June 4, but sent to the Lucas County Clerk of Courts and not file stamped in the probate court until June 12. The trial court rejected these objections as untimely.

{¶ 9} "It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶ 10, quoting *Sabouri v. Ohio Dept. of Job & Family Servs.*, 145 Ohio App.3d 651, 654, 763 N.E.2d 1238 (10th Dist.2001). While a pro se litigant may be afforded reasonable leeway to the extent that his or her motions and pleadings should be liberally construed, such a litigant may not be given any greater rights than a represented party and must bear the consequences of his or her mistakes. *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, ¶ 3.

{¶ 10} In this matter, the trial court could have chosen to grant appellant leeway, but chose not to. That is the court's prerogative and certainly does not constitute error, especially since the court alternatively ruled on the merits of appellant's objections.

II. Weight of Evidence

{¶ 11} Appellant maintains that the weight of the evidence does not support the magistrate's finding that the name change was in the best interest of H.M.B.

{¶ 12} R.C. 2717.01(A) provides that: "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."

{¶ 13} When determining whether it has been established that a change of a minor's name is reasonable and proper, the court must consider the child's best interest. *In re Willhite*, 85 Ohio St.3d 28, 706 N.E.2d 778 (1999), paragraph one of the syllabus. The court is directed to consider a number of factors to determine the best interest of the child:

> [T]he 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.

{¶ 14} The decision of whether to grant a name change rests within the sound discretion of the court and will not be reversed absent an abuse of that discretion. *In re Change of Name of Barker*, 155 Ohio App.3d 673, 2003-Ohio-7016, 802 N.E.2d 1138, ¶ 8 (12th Dist.), citing *In re Crisafi*, 104 Ohio App.3d 577, 581, 622 N.E.2d 887 (8th Dist.1995). An abuse of discretion is more than an error of judgment or a mistake of law, the term implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 15} We have carefully reviewed the transcript of the magistrate's hearing and like the trial court conclude that the magistrate's findings are supported by competent credible evidence. Moreover, we conclude that the decision of the magistrate and the trial court to grant a name change for H.M.B. was not arbitrary or unreasonable and certainly not unconscionable. Accordingly, appellant's sole assignment of error is not well-taken.

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

Judgment affirmed.

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Name of H.M.B.
C.A. No. L-12-1180

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

Arlene Singer, P.J. _____

JUDGE

Thomas J. Osowik, J. _____

JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.

JUDGE