

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

In re Change of Name of E.B.

Court of Appeals No. F-11-014

Trial Court No. 20117004

DECISION AND JUDGMENT

Decided: August 31, 2012

* * * * *

D.B., pro se.

E.S., pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal of an August 9, 2011 judgment of the Probate Division of the Fulton County Court of Common Pleas that granted an application for a change of name of a minor child, E.B., pursuant to R.C. 2717.01. D.B. is appellant and is the natural father of the child. E.S. is the boy's natural mother and the applicant for the

change of name. In the judgment, the trial court ordered a change of the boy's surname from the surname of father to the surname of mother.

{¶ 2} On June 6, 2011, mother filed the application for change of name and a notice of an August 9, 2011 hearing date set by the court on the application. Copies of the application and notice were sent to father by certified mail. Notice of the hearing was also published in the Fulton County Expositor on June 14, 2011.

{¶ 3} On June 28, 2011, father filed an alternative motion to dismiss or to stay proceedings in probate court on the name change. The motion was based on the fact that mother had filed the same name change request in February 2011 in juvenile court. Father's motion for a stay requested a stay of proceedings in probate court until the action in juvenile court had concluded. In a brief filed on July 7, 2011, however, mother opposed the motion and advised the court that the juvenile court proceeding had been voluntarily dismissed in May 2011. A file stamped copy of the notice of dismissal was filed with mother's brief.

{¶ 4} The trial court granted the change of name in a judgment filed on August 9, 2011, the scheduled hearing date for the application. Afterwards (on August 18, 2011), appellant filed (1) a brief opposing the name change, (2) a motion to permit participation at hearings in the case by electronic means due to his incarceration in the Richland Correctional Institution in Mansfield, Ohio, and (3) a motion for an ex parte in camera hearing with his son to provide evidence as to the best interests of the child.

{¶ 5} In a judgment filed on August 30, 2011, the trial court overruled the motions as moot and held that father's opposition brief was untimely. In the judgment, the trial court stated that the application for change of name was considered at a hearing on August 9, 2011 and granted and that at the hearing the court also overruled father's alternative motion to dismiss or stay proceedings at the hearing. The court also found that notice of the hearing date had been published prior to the hearing according to law and sent to father.

{¶ 6} Father asserts one assignment of error on appeal:

Assignment of Error No. 1: The trial court abused its discretion, or, in the alternative denied the appellant his due process rights prior to changing the surname of his son.

{¶ 7} R.C. 2717.01(A) requires proof of the existence of "reasonable and proper cause" for an application to change a name to be granted. In making that determination with respect to a name change for a minor child, a trial court must consider the best interests of the child. *In re Willhite*, 85 Ohio St.3d 28, 706 N.E.2d 778 (1999), paragraph one of the syllabus; *In the Matter of the Name Change of Armin Lawrence R., Jr.*, 6th Dist. No. L-06-1236, 2007-Ohio-1523, ¶ 7. An appellate court reviews a trial court's determination on whether a requested name change is in the best interests of a child under an abuse of discretion standard. *Charles B. v. Jennifer B.*, 6th Dist. No. E-08-012, 2008-Ohio-4276, ¶ 15.

{¶ 8} Father contends that the trial court abused its discretion in granting the change of name in this case, but has not submitted a transcript of the August 9, 2011 hearing conducted by the trial court on the motion. It is an appellant's responsibility to provide a reviewing court with a transcript of trial court proceedings necessary to resolve assigned error on appeal. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); *Patrick T. v. Michelle L*, 6th Dist. No. WD-02-015, 2002-Ohio-3574, ¶ 8-10; App.R. 9.

When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d at 199.

{¶ 9} As a record is lacking upon which to determine whether the trial court abused its discretion in granting the change of name application, we presume regularity of proceedings and affirm on that issue.

{¶ 10} Father also argues that he was denied due process of law because the trial court proceeded with the hearing on the application for change of name without providing prior notice to him that it would address his alternative motion to dismiss or stay proceedings at the August 9, 2011 hearing. If appellant's argument is intended to assert surprise that the hearing on the name change request proceeded as scheduled, the argument is without merit. Appellant was served with notice of the August 9, 2011

hearing date both by certified mail and by publication in June 2011. The trial court did not issue any subsequent order modifying the hearing date.

{¶ 11} The alternative motion to dismiss or to stay proceedings had been briefed by the parties and was decisional. Appellant has not claimed that the trial court erred in overruling the motion. The record demonstrates that the juvenile court proceedings on which the motion was based had been dismissed months before the August 9, 2011 hearing.

{¶ 12} We find appellant's claim of denial of due process of law to be without merit and appellant's Assignment of Error No. 1 not well-taken.

{¶ 13} Justice having been afforded the party complaining, we affirm the judgment of the Probate Division of the Fulton County Court of Common Pleas. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, 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:
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