September 24, 2008

Ms. Crimson M. Vigil
1540 Sunnyside Road
Smyrna, DE 19977

Mr. Gerald Bulat
Plummer Community Correction Center
38 Todds Lane
Wilmington, DE 19801

RE: In the matter of Sequoia Brielle Bulat
Civil Action No.: 08-03-0197NC
Petition for Name Change
Kent County Court of Common Pleas

Order and Decision on Petitioner's Motion for a New Trial

Dear Ms. Vigil and Mr. Bulat:

After a trial for the above-referenced matter, the Court denied the Petitioner's request for a name change for her minor child. Following the Court's decision, the Petitioner filed a timely motion for a new trial pursuant to Court of Common Pleas Civil Rule 59(a). In her motion, the Petitioner requests another chance to more accurately and thoroughly present information and witness testimony, including omitted information, to address the ten "best interests of the child" factors the Court considered in reaching its original decision. The Petitioner contends that had she been aware of the ten factors at the time of the trial, the outcome would have been different.

Under Court of Common Pleas Civil Rule 59(a):

> A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted by this Court. On a motion for a new trial, the Court may open the judgment if one has been entered, take additional testimony and direct the entry of a new judgment.
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> CCP Civ. R. 59(a).

The granting of a new trial is at the discretion of the trial judge. *Eustice v. Rupert,* 460 A.2d 507, 510 (Del. 1983) (citing *Tyndall v. Tyndall,* 214 A.2d 124, 126 (Del. 1965)).

The legal standard for a change of name petition for a minor child is whether the change of name is in the "best interest of the child." *In re Change of Name of Zachary Ryan Smith to Zachary Ryan Smith Morgan,* 2003 WL 23469571, at *4 (Del. Com. Pl.). Ms. Vigil contends that had she known of the ten factors to be considered by the Court for the determination as to the "best interests of the child", she would have provided additional information and witness testimony to specifically address those factors. She believes that this additional information would have changed the decision of the Court.

New trials based on additional evidence or newly discovered evidence are not favored by the court. *In Re Missouri-Kansas Pipe Line Co.,* 2 A.2d 273, 277 (Del. 1938). A litigant, even a *pro se* litigant such as the Petitioner, is required to make the "fullest possible preparation of the case before trial." *Id.* "The Court will not grant reargument where one party is simply unhappy with its rulings, makes the same arguments that he or she made at trial, or attempts to [submit] evidence which could have been but was not [introduced] at trial." *N.E.E. v. K. E.,* 2008 WL 1953487, at *1 (Del. Fam. Ct.). The petitioner requesting a new trial based on new evidence must show that the evidence came to her knowledge only *after* the trial and that even if she exercised reasonable diligence, she could not have discovered such evidence for use in the trial. Further, this new evidence must be so material and relevant that it would *probably* change the result of the trial. *In re Missouri-Kansas Pipe Line Co.,* 2 A.2d at 278.

In her motion, the Petitioner does not claim that the evidence she wishes to present was unknown at the time of trial, but, rather, that had she known of the ten factors the Court used to make its decision she would have presented different and more thorough evidence. The failure to introduce this evidence at trial is entirely the result of the Petitioner's own lack of reasonable diligence in knowing the law that the Court must consider. There is nothing in the Petitioner's motion that changes the evidence presented and considered at trial. Therefore, there is no basis for a new trial based on the introduction of new evidence.

In her motion for a new trial, the Petitioner also alleges that the opposing party was not honest under oath. However, she does not contend that the opposing party's

actions prevented her from fairly and adequately presenting her case. This Court has not been presented with any evidence that the opposing party committed any misrepresentation during the course of his testimony, let alone of such egregious nature as to involve a "corruption of the judicial process itself." *See MCA, Inc. v. Matshushita Elec. Indus. Co. Ltd.,* 785 A.2d 625, 639 (Del. 2001), *cert. denied, Epstein v. Matsushita Elec. Indus. Co. Ltd.,* 535 U.S. 1017 (2002). Conflicting testimony is generally not a reason to grant a new trial, even if the preponderance of the evidence is in favor of the party applying for a new trial. *Storey v. Camper,* 401 A.2d 458, 464 (Del. 1979). Therefore, there is also no basis for a new trial based on the contention that the opposing party made misrepresentations under oath.

The Court finds that the Petitioner, Ms. Vigil, has failed to provide evidence that a new trial is warranted under Court of Common Pleas Civil Rule 59(a) on the grounds of newly discovered evidence or misrepresentations of the opposing party under oath. As such, the Court denies the Petitioner's motion for a new trial.

IT IS SO ORDERED THIS 24TH DAY OF SEPTEMBER, 2008.

CHARLES W. WELCH, III
JUDGE

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