

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

NEW CASTLE COUNTY

IN RE:)
) C.A. No.: CPU4-09-005843
KYLE WILLIAM MARK LAWSON,)
) Petitioner's D.O.B. 2/01/95
TO)
)
KYLE WILLIAM MARK OBERLE,) CHANGE OF NAME

Ms. Jennifer Arnett Oberle Howard
2636 Drayton Drive
Wilmington, DE 19808
Petitioner Pro-se

Mr. Gavin Mark Lawson
57 Richardson Circle
Dover, DE 19901
Respondent Pro-se

Final Order and Opinion

This is the Court's Final Order and Opinion in the above-captioned matter. A hearing was held in the Court of Common Pleas, Civil Division on Monday, August 17, 2009. Following the receipt of testimony and documentary evidence, the Court reserved decision.

Introduction.

Petitioner, Jennifer Oberle Howard ("Howard" or "petitioner") filed a Name Change Petition in the above captioned matter. Petitioner resides at 2636 Drayton Drive, Wilmington, DE 19808. Kyle Mark Wayne Lawson was born on February 1, 1995 in Newark, Delaware in New Castle County. The factual basis in paragraph 4 for the Petition is the petitioner desires to adopt the heritage and surname of her maternal grandfather and wishes to change Kyle's last name to Oberle.

In accordance with *CCP Civ. R. 81(c)* of the Court of Common Pleas and 10 *Del.C. §5901*, et seq. as set forth in paragraph 5 of the petition, petitioner represented that were no creditors or other persons who would be defrauded or adversely affected if the

Name Change Petition was granted. Petitioner has published the petition three (3) consecutive weeks in the New Castle Weekly without objection. Finally, petitioner asserts she has no pending criminal charges; she is not subject to supervision by the Department of Correction or Probation and Parole; and is not required to register with the Delaware State Police or any other law enforcement authority.

The Facts.

At trial petitioner testified that she wanted to change Kyle's name because he has had limited contact with his father who has not supported him either when financially or emotionally during the past years. Petitioner believes the father, Gavin Mark Lawson ("respondent"), is not a good role model for Kyle and has served various prison terms at the Department of Correction for the State of Delaware. Petitioner claims that respondent is also not current in his child support obligation and owes approximately \$12,000.00 in arrears. He was just recently released from Level V at Department of Corrections after a 4-5 year sentence.

Petitioner testified respondent has no contact with the child, although he did make some limited phone calls recently. The respondent and petitioner were married for approximately six (6) years. Petitioner asserts the granting of the name change would have a "positive affect" with a "fresh start on life" for Kyle if granted by this Court. Kyle's younger brother's name is also Oberle, which he wishes the Court to have Kyle's surname to. William A. Oberle was born September 21, 2002 and this would cause a unification of the family unit by having a common last name.

Petitioner recently married in October and believed it was in the best interest to have Kyle's name changed to Kyle William Mark Oberle.

On cross-examination petitioner testified that Kyle's father is over \$12,000.00 in arrears for child support from the Family Court. The respondent served two and a half years in prison and did not pay child support while he was in the custody of the Department of Correction. Petitioner testified the respondent has played "no part" in her child's life since the divorce and that he has a substance abuse problem which he has now admitted.

The respondent's case-in-chief was presented. He offered little, if any substantive testimony in opposition to petitioner's Name Change Petition. Gavin Mark Lawson testified he loves his son and agrees he has a substance abuse problem and the reason he did not visit Kyle was that he was incarcerated in prison at the Department of Correction. Respondent agreed he is in child support arrears.

The Law.

Sec. 5901. Petition for change of name.

(a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person's name and the name he or she desires to assume.

Sec. 5902. Requirements for minor's petitions.

If the name sought to be changed under this chapter is that of a minor, the petition shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of 14, the petition shall also be signed by the minor.

Sec. 5903. Publication of petition prior to filing.

No petition for change of name under this chapter shall be granted unless it affirmatively appears that the petition has been published in a newspaper published in the county in which the proceedings is had, at least once a week for 3 weeks before the petition is filed.

Sec. 5904. Determination by Court.

Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the petition may be granted.

Sec. 5905. Costs.

The costs of any proceeding under this chapter shall be paid by the petitioner.

* * *

Rule 81. Petitions for change of name.

(b) A petition which seeks a change of name for a minor shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of fourteen, the petition shall also be signed by the minor.

*3 (c) ...

(d) If the petition is signed by only one parent, it shall be served, before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs.

As set forth in *Degerberg v. McCormick, et al.*, Del. Ch. 187 A .2d 436 (1963), the following law applies:

The right of one parent, against the objection of the other, to change the surname of a child has been the subject of frequent judicial consideration. The great majority of cases presenting the problem have arisen under change of name statutes, or as incidental to divorce proceedings. In a few cases the natural respondent has sought relief where the divorced mother has registered children in school under the surname of a step respondent. The decisions are annotated in *53 A.L.R.2d 914*. As the annotator there observes, the courts have generally considered the welfare of the child as the controlling consideration regardless of the manner in

which the problem may arise. So, in the present case, the question to be considered is the best of the child.

* * *

In determining whether or not it is in the child's best interest to permit a change in his surname certain factors have been regarded by the courts as of prime importance. *First of all, recognition is accorded to the usual custom of succession to the paternal surname, and, it is said, this succession is a matter in which the respondent, as well as the child, has an interest which is entitled to protection. Re Epstein, 121 Misc. 151, 200 N.Y.S. 897; Re Larson, 81 Cal.App.2d 258, 183 P.2d 688; Kay v. Kay, Ohio Com. Pl., 51 Ohio Op. 434, 112 N.E.2d 562. Secondly, the interest manifested by the respondent in the welfare of the child as evidenced by support, visitation and promptness of complaint as to the attempted change of name. Kay v. Kay, supra. Thirdly, the effect of a change of surname on the relationship between the respondent and his child. Mark v. Kahn, 333 Mass. 517, 131 N.E.2d 758, 53 A.L.R.2d 908; Rounick's Petition, 47 Pa. Dist. & Co. 71; Kay v. Kay, supra.*

* * *

Authority, both judicial and psychiatric, recognizes that a change of surname of a child of divorced parents may contribute to estrangement of the child from his respondent. So, in *Mark v. Kahn, supra*, the court said: "The bond between a respondent and his children in circumstances like the present is tenuous at best and if their name is changed that bond may be weakened if not destroyed." And, in *Re Epstein, supra*, it is said that the court should not "foster any unnatural barrier between the respondent and son." To the same effect, see *Application of Wittlin, City Ct., 61 N.Y.S.2d 726; Rounick's Petition, supra; Kay v. Kay, supra*. The views expressed in these cases find support in the testimony of psychiatrists adduced in this case.

In a recent decision by this Court, the following factors were considered relevant as to a determination of whether the best interests of a petitioner was served by the granting of the proposed name change. See, *In re Change of Name of Evans to Brown*, Del. CCP, C.A. No.1998-10-147, Welch, J. (March 11, 1999). The factors the Court

considered in determining as to whether “the best interests of the child” would be served by granting the proposed name change were as follows:

1. A parent's failure to financially support the child;
2. A parent's failure to maintain contact with the child;
3. The length of time that a surname has been used for or by the child;
4. Misconduct by one of the child's parents;
5. Whether the surname is different from the surname of the child's custodial parent;
6. The child's reasonable preference for a surname;
7. The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
8. The degree of community respect associated with the child's present surname and proposed surname;
9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;
10. The identification of the child as a part of the family unit.

The law as it applies in the instant case is set forth in Chapter 59, Title 10 of the Delaware Code as well as CCP Civ. R. 81. The legal standard is the “best interest of the child” standard in contested change of name petitions involving minors.¹ See, *In re Change of Name of Walter to Coffin*, Del. CCP C.A. No.1998-06-222, Fraczkowski, J. (September 30, 1998), *In re Change of Name of Evans to Brown*, Del. CCP C.A. No.1998-10-147, Welch, J. (March 11, 1999). Clearly what constitutes the “best interests of the child” involves a factual analysis involving the relationship and family structure of

¹ Even when petitions were or are heard in the Family Court, as set forth in *In the interest of Michael Cardinal and Catherine Cardinal v. Tanya E. Perch*, Family Court, 611 A.2d 515 (1991) “the great weight of judicial authority today supports the proposition that a child's last name should be determined on “best interest” standard.

a minor. See, *In re Change of Name of James Roy Runyon, Jr., to James Roy McGarrity*, Del. CCP C.A. No.1999-06-185, Smalls, C.J. (August 13, 1999).²

Discussion.

In the instant case, applying the above factors and case law to the instant trial record as set forth in the Statement of Facts, it is clear that it would be in the best interest of Kyle to have his last name changed to the surname Oberle.

Conclusions of Law.

It would be in the best interest to have Kyle William Mark Lawson's Name Petition GRANTED to Kyle William Mark Oberle.

Opinion and Order.

The Court finds Petitioner has proven in the instant trial record that Name Change Petition by petitioner that it would be in the best interest by a preponderance of the evidence to GRANT said petition and change Kyle's last name to Oberle.

IT IS SO ORDERED this 25th day of August, 2009.

John K. Welch
Judge

/jb

cc: Mr. Jose Beltran, Civil Case Manager

² Other jurisdictions have addressed the factual analysis applied involving relationship of the minor in determining what is the best interests of the child. In *Schiffman v. Schiffman*, Cal.Supr., 620 P.2d 579 (1989), the Court outlined a similar analysis to that used by this Court in determining what is in the best interest of the child.