IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE:	)	
	)	
RYLEE GRACE MANCUSO,	)	Petitioner's D.O.B.: 11/21/07
ARIANNA ELISE MANCUSO,	)	Petitioner's D.O.B.: 2/23/06
And ALEXIS PAIGE MANCUSO,	)	Petitioner's D.O.B.: 11/21/07
	)	
TO	)	**C.A. No.: CPU4-11-004747**
	)	
RYLEE GRACE HUTCHINSON,	)	
ARIANNA ELISE HUTCHINSON,	)	**CHANGE OF NAME**
And ALEXIS PAIGE HUTCHISON	)	
	)	

Mr. Richard Hutchison
491 Boyds Corner Road
Middletown, DE 19709
Pro-Se Petitioner

Ms. Amy B. Mancuso
1400 Church Road
Oreland, PA 19075
Pro-Se Respondent

Date Submitted: January 9, 2012
Date Decided: January 18, 2012

FINAL ORDER AND OPINION

This is the Court's Final Order and Opinion in the above-captioned matter. A hearing in this matter took place on Monday, January 9, 2012. Following the conclusion of the receipt of testimony and evidence, the Court reserved decision.

I. Introduction

Richard Hutchison, ("Petitioner") on behalf of his three (3) minor children, certified in his Petition for Name Change that he resides at 491 Boyds Corner Road, Middletown, DE 19709. Petitioner is a resident of New Castle County. He has three children, Arianna, born February 23, 2006, Alexis, born on November 21, 2007 and Rylee, her twin, born November 21, 2007. He wishes to change their last name to Hutchison. The stated reason for the proposed name change

as contained in paragraph 4 of his petition is simply to have the children take their father's last name instead of their mother's last name. Currently they bear their mother's last name. In accordance with Court of Common Pleas Civil Rule 81C, Petitioner certified there were no creditors or other persons who would be defrauded or adversely affected by the proposed name change. Petitioner also certified that that he was not required to register with the Delaware State Police or any other lawful authority and that he was not proposing the petition to adversely affect any one or creditors.[1]

Petitioner's mother Amy Mancuso ("Respondent") appeared at the hearing and opposed the name change petition. Her testimony will be summarized below.

II. The Facts

Hutchison was duly sworn and testified as follows:[2]

The Court heard brief sworn testimony from Petitioner who testified according to his recollection, and as contained in Plaintiff's Exhibit No. 1, which was received into evidence, that the Respondent did not contest Arianna being formally changed to his last name if the Family Court blood test proved he was father of Arianna. He testified he has volunteered at his oldest daughter's school and pays for all three (3) financial obligations for school. He claims the Respondent will be getting married in the near future and will be changing her name and therefore sees no opposition to having his three children bear his last name. According to Petitioner, when Respondent's mother was in the hospital while his child was being born, he requested his name be placed on the birth certificate but respondent's mother intervened and

[1] On August 17, 2011, Judge Joseph F. Flickinger, III denied Mr. Hutchison's request for *informa pauperis* status.
[2] Before the parties were sworn, the Court explained carefully on the record that the factors which are considered by this Court in determining what is the best interest of the children standard in contested Name Change Petitions involving minors. *See In Re: Change of Name of Walter to Coffman*, 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).

declined to have his name placed on the same. According to Petitioner, separate genetic testing came back positive that he was the legal father of all three children. According to the Consent Order for Genetic Testing (Plaintiff's Exhibit No.: 1), paragraph c indicated that if the results of the testing include Richard Hutchison as the father, the parties would agree that without a further hearing the Court will enter an Order adjudicating him the father of the children. According to Petitioner, Ms. Amy Mancuso ("Respondent") signed the same on April 17, 2006. The document was also notarized and signed by Mr. Hutchison himself on the same date, April 17, 2006 and was a Consent Order for Genetic Testing. As will be discussed below, the Court allowed the parties ten (10) days to supplement the record with any final Family Court Order or disposition. The Court has, in fact, received the Honorable Martha L. Sackovich, June 30, 2006 Order that determined blood genetic testing concluded that Arianna Elyse Mancuso was fathered by petitioner and the parties consented to change the name on the birth certificate to Arianna Elyse Hutchison in accordance with the agreement of the parties.

Respondent also testified at the hearing. Ms. Mancuso told the Court she was never interested in a change of name for any of her children, and in fact, claims never formally signed the Petition dated April 17, 2006 as indicated by Petitioner. Respondent claims she never had a hearing or was part of a Consent Order for Genetic Testing. She claims she has custody and takes care of the children herself and she does not desire to have their name changed to Hutchison.[3]

[3] Respondent offered several exhibits into evidence which included Defendant's Exhibit No.: 1 which was an announcement for pre-school news that the last names of children have moved onto to identifying their last names when they come into the childcare school and the transition "went very well". The Court notes that document does not list *per-se* Respondent's children. Respondent also moved in as Defendant's Exhibit No.: 2 & 3, pictures of her children wherein they received Certificates from school where their father indicated and told school staff that their names were Hutchison. Mancuso also produced Defendant's Exhibit No.: 3 received into evidence without objection, which indicated an email from school which her children's certificates were corrected to indicate her name, Mancuso and not Mr. Hutchison.

Respondent also testified Petitioner's name was never on the birth certificate and claims the Order which was presented to the Court marked as Plaintiff's Exhibit No.1, was later dismissed by the Family Court. She claims her children like their name and do not want it changed and the school has recognized Mancuso as the name of all three children and they have adapted well to school's protocol and system with Mancuso as their last name. Respondent also offered into evidence without objection list Respondent's Exhibit No.: 5 & 6, which were the actual birth certificates of all three (3) which did not name Mr. Hutchison as the father. Respondent denies she has any plans to marry or change her last name contrary to petitioner's testimony.

On cross-examination, Respondent conceded her oldest daughter, her fourth daughter, bears a separate father's last name, Dana Manatola. According to Respondent, the Consent Order for Genetic Testing was dismissed in 2010 by the Family Court.

Respondent argues it is not in the best interest of her children to have their name changed to Hutchison based upon the amount of time the 3 children had the name Mancuso, and the fact the school that they have been involved in carry on her last name. She asserts that any name change would have a detrimental effect on the children to have their name changed at this point.

III. 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.[4] *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 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).[5]

IV. Discussion

Before the Court heard sworn testimony by both parties, it carefully explained to the *pro-se* Petitioner and Respondent the relevant factors outlined above in the law section which the Court would consider to either grant or deny the Name Change Petition filed with the Clerk of the Court. The Court also inquired pre-hearing if the parties were interested in stipulating to a hyphenated last name: Mancuso-Hutchison. Both Petitioner and Respondent declined. As the Court ruled in *In Re: Name Change Powers to McKinley*, CCP, Case No.: CPU4-11-004470, Welch J. (September 20, 2011), the best interest of the child, was also fully explained to the *pro-se* parties and discussed with both parties all relevant factors that the Court considered listed above in the Law section. Nonetheless, each party offered very limited sworn testimony and did not discuss seven of the nine factors in order for the Court to determine or consider at trial whether it would be in the best interest of all three children to have his last name changed to Hutchison.

In short, this Court has a very limited record in order to make a decision whether the Petitioner has proved by a preponderance of evidence that it is in the best interest of all three children to change their name to Hutchison.

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[4] 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.

[5] 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.

The Court has now received a final Order as noted above from the Family Court following April 17, 2006 that the Family Court formally changed the name of Arianna Elyse Mancuso, born February 23, 2006 to Arianna Elyse Hutchison. The Consent Order which is notarized and witnessed, and was subsequently affirmed in a later Order that Family Court changed the name from Arianna Elyse Mancuso to Arianna Elyse Hutchison by Honorable Martha L. Sachovich on June 30, 2006. Based upon this record, the Court finds it would be in the best interest for the remaining two children, Alexis Paige and Rylee Grace to have the same name Mancuso and that Petitioner Richard Hutchison has not met his burden of preponderance of evidence to have the two (2) children's name changed to Hutchison. The Court must recognize the Final Order in Family Court to Grant Arianna Mancuso to Arianna Hutchison. The specific paragraph (c) in the original genetic testing Order indicates that the Court would enter an order adjudicating him the father of the child and enter an Order changing Arianna Elyse Hutchison as the final name of Arianna Elyse Mancuso. Such a Final Order was, in fact, produced. Based upon the record at hand, the Court does affirm that final adjudication of Family Court and change Arianna's last name to Hutchison. As to Rylee Grace and Alexis Paige, their names shall remain Mancuso.

V. Conclusions of Law

The Court finds that the Petitioner failed to prove by a preponderance of the evidence that it was in the best interest of Rylee Grace and Alexis Paige change their last name to Hutchison. However, pursuant to Family Court Order, Arianna Elyse has already been changed to Hutchison.

VI. Opinion and Order

The Court finds based upon the testimony at trial, including all relevant exhibits received into evidence and considering the ten factors in a Name Change Petition in the instant matter that it **DENIES** the Petition as to the remaining minor children Rylee Grace and Alexis Paige.

Each party will bear costs equally.

IT IS SO ORDERED this 18th day of January 2012.

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John K. Welch, Judge

/jb
Encl. (June 30, 2006 Order of Honorable Martha L. Sachovich).

cc: w/encl: Mr. Jose Beltran
CCP, Civil Case Manager