

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002497-MR

NINA SPARROW (now HALL)

APPELLANT

v. APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 01-CI-00142

RICHARD SPARROW II

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: COMBS, GUIDUGLI, and SCHRODER, Judges.

COMBS, JUDGE: Nina Hall appeals from a decree of divorce and order that amends the birth certificate of her daughter, Makinleigh Kate Hall, by substituting "Hall" as her middle name and "Sparrow" as her surname. We reverse.

Nina Hall and Richard Sparrow were married October 6, 2000. They separated six months later, in April 2001, and Nina petitioned for divorce. Their daughter, Makinleigh, was born August 17, 2001. The application for her birth certificate indicated that the baby's name was Makinleigh Kate Hall, that Nina Leigh-Ann Hall was her mother, and that Richard Leon Sparrow II was her father. The State Registrar of Vital Statistics

accepted the application submitted by Nina Hall and issued a proper certificate of live birth on September 19, 2001.

In conjunction with the divorce petition, an evidentiary hearing was held before the Domestic Relations Commissioner (the DRC) of Mercer Circuit Court in September 2001. During that hearing, Richard Sparrow requested that the child's surname be changed from Hall to Sparrow. Makinleigh's mother resisted. Nina Hall felt that the baby's father had shown little or no interest in the child and that, therefore, the child had no parental relationship with him that would be worthy of her bearing his surname. Additionally, Nina had moved from Mercer County to Madison County and wanted her daughter's surname to reflect her association with her daughter. Nina's counsel questioned the jurisdiction of the court to address the issue. The DRC viewed this issue as critical in the life of the child and asked the parties to negotiate an acceptable surname. They were unable to reach an agreement. The Commissioner's report was duly filed, and the parties then filed exceptions.

At a hearing before the circuit court regarding the exceptions, the issue of the name change was addressed. Once again, Nina's counsel contended that the circuit court lacked jurisdiction to consider the issue. In the alternative, counsel argued that the court would be required to find that a name change served the best interests of the child. In that event, she suggested, the parties' last names should be hyphenated to effect a new surname for the child. The court summarily rejected

the contentions as to hyphenation and addressed counsel as follows:

You [the mother] may get the middle name. The child's mother's maiden name will be the child's middle name; the father's last name will be the child's last name. . . .That's pretty basic and elemental, I believe.

The court's order incorporating this result followed.

On appeal, Nina argues that the circuit court erred by ordering the name change. She contends that 401.020 vests exclusive jurisdiction for the change of name of a child in the district court. We agree.

In Blasi v. Blasi, Ky., 648 S.W.2d 80 (1983), the Kentucky Supreme Court rejected the respondent's contention that the Jefferson Circuit Court, pursuant to its continuing jurisdiction over custody matters, could order a divorced parent to petition the district court for a name change. The court held as follows:

The Kentucky General Assembly has made it clear that the change of name of a child by a parent is not a "custody matter" for the purposes of KRS 403.270. Exclusive jurisdiction for the change of name of a child is placed by statute in the district court. KRS 401.020.

Had the General Assembly intended for the circuit court to have jurisdiction to effect a name change it would have specifically granted such jurisdiction. Indeed, such is the case regarding the restoration of the maiden name of a litigant in a dissolution of marriage proceedings. KRS 403.230. To that extent the circuit court's jurisdiction is concurrent with the district court as expressed in KRS Chapter 401. In all other respects the jurisdiction of the district court granted by KRS Chapter 401 is exclusive. (Emphasis added.)

Id. at 81. We specifically acknowledged this holding in Ash v. Thompkins, Ky. App., 914 S.W.2d 788 (1996). See also Likins v. Logsdon, Ky. 793 S.W.2d 118 (1990) and Leadingham v. Smith, Ky. App., 56 S.W.3d 420 (2001).

We are not at liberty to alter the directive of our legislature. KRS 24A.020 provides that "[w]hen jurisdiction over any matter is granted to District Court by statute, such jurisdiction shall be deemed to be exclusive unless the statute specifically states that the jurisdiction shall be concurrent." We believe that the statute dictates the reversal of the decision of the trial court.

Accordingly, the judgment of the Boyle Circuit Court is reversed.

ALL CONCUR.

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