

STATE OF MICHIGAN
COURT OF APPEALS

TRAVIS THOMET,

Plaintiff-Appellant,

v

AIMEE NICOLE McCOMBS,

Defendant-Appellee.

UNPUBLISHED

October 7, 1997

No. 194288

Kent Circuit Court

LC No. 94-003012 DC

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Plaintiff appeals by right a decision of the Kent Circuit Court denying his petition to change the name of the minor child of these parties -- the child having been born out of wedlock and the parties never having been married -- so that her surname matches his own instead of defendant's. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court appears to have denied the motion by applying the best interest of the child test adopted as to name changes for legitimate children in *Garling v Spiering*, 203 Mich App 1; 512 NW2d 12 (1993). It is, however, unnecessary to decide whether the trial court properly applied the best interest test, since that test has no application on the facts of this case.

The child was born on January 8, 1994, and on May 3, 1994, both parties executed an "affidavit of parentage", their signatures being witnessed by two witnesses and notarized as well, in which they mutually specified that the "child's name on the birth certificate should be Brianna Lynn Margaret Thomet." Section 2824(2) of the Public Health Code permitted both parents, on written request, to designate the surname of a child born out of wedlock. Accordingly, until legally changed by mutual act of the parents, the child's proper surname is Thomet, not McCombs. In this respect, the statute supplements the common law right of the child to adopt any name she desires when she is of suitable age and discretion to do so. *Piotrowski v Piotrowski*, 71 Mich App 213; 247 NW2d 354 (1976). As the child's legal name is already Thomet, the trial court erred in declaring the child's name to be anything else without mutual agreement of the parents or based on a petition by defendant to change the child's name based on the best interest of the child.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad