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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-762

In the Matter of the Application of: Geri Anne Petron, On Behalf of
R. J. T. and B. J. T., For a Change of Name to R. J. P. and B. J. P.

Filed January 23, 2012
Reversed
Larkin, Judge

Todd County District Court
File No. 77-CV-10-1109

Thomas W. Lies, Michael S. Gaarder, Pennington, Lies & Cherne, P.A., St. Cloud, Minnesota (for appellant father)

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Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Minge, Judge.

U N P U B L I S H E D   O P I N I O N

LARKIN, Judge

Appellant challenges the district court's grant of respondent's petition for name change, arguing that the district court abused its discretion by changing the parties' minor children's middle names and surnames from those of appellant. Because the district court did not comply with the guidelines set forth in *Robinson v. Hansel*, 302 Minn. 34, 223 N.W.2d 138 (1974), we reverse.

FACTS

Respondent-mother Geri Anne Petron and appellant-father Preston James Thom are the parents of two minor children: R.J.T., born June 15, 2002, and B.J.T., born January 14, 2004. R.J.T. and B.J.T. were each given father's middle name and surname at birth. The parties were never married, and mother has full legal and physical custody of the children. Father pays child support and has court-ordered parenting time with the children every other weekend during the school year, every other Wednesday through Sunday during the summer, and on alternating holidays. Mother married Michael Petron in 2009, and they were expecting a child at the time of the underlying action.

In November 2010, mother petitioned the district court to change R.J.T.'s and B.J.T.'s middle names and surnames. Specifically, mother sought to change the children's middles names to John and Joseph and their surnames from that of father to that of her new husband. Father objected to the proposed name changes. Following a hearing, the district court granted mother's petition, against father's objection. This appeal follows.

D E C I S I O N

"We review a district court's grant of a request to change a child's name for abuse of discretion." *Foster v. Foster*, 802 N.W.2d 755, 756 (Minn. App. 2011). "A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute in a way that is against logic and the facts on record." *Id.* at 757 (quotation omitted).

"[N]o minor child's name may be changed without both parents having notice of the pending of the application for change of name, whenever practicable, as determined by the court." Minn. Stat. § 259.10, subd. 1 (2010). If the parent requesting the name change meets certain statutory procedural requirements, the district court must grant the request unless, among other considerations not relevant here, "the court finds that such name change is not in the best interests of the child." Minn. Stat. § 259.11(a) (2010).

"[T]he welfare of the children must ultimately be the controlling consideration in any" name-change determination. *Robinson*, 302 Minn. at 35, 223 N.W.2d at 140. But special concerns arise when a parent attempts to add the name of a stepparent to a minor child's surname or to change a minor child's surname from that of a natural parent to that of a stepparent. *See id.* at 35-36, 223 N.W.2d at 140. "A change in surname, so that a child no longer bears his father's name, not only obviously is of inherent concern to the natural father, so that he should have standing to object, but is in a real sense a change in status having significant societal implications." *Id.* at 35, 223 N.W.2d at 140. "Society has a strong interest in the preservation of the parental relationship." *Id.* "A change of name may not be in the child's best interest if the effect of such change is to contribute to the further estrangement of the child from a father who exhibits a desire to preserve the parental relationship." *Id.* at 36, 223 N.W.2d at 140 (quotation omitted). Thus, "judicial discretion in ordering a change of a minor's surname against the objection of one parent should be exercised with great caution and only where the evidence is clear and compelling that the substantial welfare of the child necessitates such change." *Id.*

Father argues that the district's court order was an abuse of discretion under *Robinson*, because the record lacks clear and compelling evidence demonstrating that the substantial welfare of the children necessitated the name change. Mother counters that the *Robinson* clear and compelling standard is no longer applicable, arguing that, "[i]n elucidating the *Robinson* requirements, the Supreme Court in [*In re Application of*] *Saxton* did not repeat the 'clear and compelling' standard" and that it therefore "was not an abuse of discretion for the district court to fail to use the 'clear and compelling' standard in ordering the name change."

In *Saxton*, the district court denied a mother's request to change the parties' minor children's surname from that of father, from whom she was divorced, to a hyphenated name consisting of mother's maiden name and father's surname. 309 N.W.2d 298, 299-300 (Minn. 1981). In affirming the district court's decision, the supreme court explained that once a surname has been selected for a child, "a change in the child's surname should be granted only when the change promotes the child's best interests." *Id.* at 301. The court enumerated five nonexclusive factors for determining whether a proposed surname change is in a child's best interests. *Id.* The *Saxton* factors include: (1) how long the child has had the current surname; (2) any potential harassment, difficulties, or embarrassment the child may experience from bearing the present or the proposed surname; (3) the child's preference; (4) the effect of the change on the child's relationship with each parent; and (5) the degree of community respect associated with the present and proposed surnames. *Id.*

We disagree with mother's contention that *Saxton* eliminated the clear and compelling evidence standard or in any way diluted the *Robinson* guidelines as applied to a request to change a minor child's surname, over the objection of the natural father, from that of the natural father to that of a stepfather. Although the *Saxton* name-change petitioner argued that the *Robinson* court's interpretation of the name-change statute was improper, the supreme court rejected this argument, stating:

> In *Robinson* we noted that the *best interests* of the child controlled the resolution of the issue [of whether a change in a child's name should be ordered over the objection of a natural parent] and held "judicial discretion in ordering a change of a minor's surname against the objection of one parent should be exercised with *great caution* and only where the evidence is *clear and compelling* that the substantial welfare of the child *necessitates* such change.". . . We decline to alter the guidelines set in *Robinson*.

309 N.W.2d at 300-01 (quoting *Robinson*, 302 Minn. at 36, 223 N.W.2d at 140) (emphasis added).

Mother nevertheless argues that because the supreme court did not restate or discuss the clear and compelling evidence standard in its ensuing explanation of the best-interest standard, the supreme court abandoned the former in favor of the latter. We disagree. We first observe that the *Saxton* court's emphasis of the best-interest standard as the paramount consideration is consistent with the supreme court's approach in *Robinson*. *See Robinson*, 302 Minn. at 35, 223 N.W.2d at 140 (stating that "the welfare of the children must ultimately be the controlling consideration"). And although the child's welfare must be the paramount consideration, the best-interest determination must be made in the context of the guidelines enunciated in *Robinson*. The *Robinson*

guidelines consist of several standards and requirements, including the best-interest standard, the great-caution requirement, the clear and compelling evidence standard, and the necessity requirement. *See Saxton*, 309 N.W.2d at 300-01. We do not construe the supreme court's decision to explain the best-interest component of the *Robinson* guidelines in *Saxton* as an implicit rejection of the other components.

We conclude that the *Robinson* guidelines govern the district court's decision in this case, and we now review its decision for compliance with those guidelines. *See id.* at 301 ("The [district] court's reliance on our opinion in *Robinson* was . . . proper[.]"); *see also Foster*, 802 N.W.2d at 757 (stating that a district court abuses its discretion if it misapplies the law). The district court found that the children have had father's surname since birth and that "[n]either child is of an age to validly assert a preference as to his last name." Regarding the degree of community respect associated with the present and proposed names, the district court found that "[b]oth parties assert that the other's last name would be a detriment to the children because of criminal activity related to their name." But the court found that this was "not a determinative factor." The district court found that "[t]he children may experience difficulties, harassment, or embarrassment in school having a different surname than that of the parent with whom they reside." Although the district court did not explicitly address the effect of the change on the child's relationship with each parent, its supporting memorandum states that "[t]he children should be told that the name change will not affect their relationship with their biological father."

The district court ultimately concluded that it was in "the best interests of the children that to the extent possible they bear the last name of the party with whom they reside" because "[t]o do otherwise will raise questions for both children in school and cause them embarrassment." The district court also concluded that the name change is in the children's best interests because it "will provide both children an ability to better identify with the nuclear family in which they live."

Having compared the district court's findings and conclusions with the facts and reasoning in *Robinson*, we conclude that the district court abused its discretion. In *Robinson*, mother was awarded custody of the parties' four minor children, who had their father's surname. 302 Minn. at 35, 223 N.W.2d at 140. Mother remarried and petitioned the district court to add the surname of her current husband to the children's surnames. *Id.* Father objected. *Id.*, 223 N.W.2d at 139. The district court granted the petition primarily because the youngest child, who was born after his parents were separated but before they divorced, considered mother's husband to be his father and used his stepfather's last name as his own. *Id.* at 36-37, 223 N.W.2d at 140. The supreme court reversed the district court's grant of the name change, reasoning that "[i]t [was] clear that [the] natural father had exercised a substantial amount of visitation rights granted him by the divorce decree, demonstrating his effort to maintain a familial relationship with his son and daughters." *Id.* at 37, 223 N.W.2d at 141. The supreme court also reasoned that

> [although] there was some evidence that [the older children] had experienced "some difficulty in the way of harassment by schoolmates and friends, and difficulty has also been experienced in obtaining insurance coverage, and an application for scholarships to college[,]" [t]he [district] court

> did not treat this as compelling a change of name. The nature of the evidence demonstrated the difficulties to be both minor and transitory. The children's participation in school and school activities had not been adversely affected. Whatever the nature of the "harassment" of the children by their peers, it would seem that it was in this case surely no more severe than faced by thousands of other similarly situated children in a day when broken homes have become commonplace.

Id. The supreme court concluded that the evidence supporting the name change was "neither clear nor compelling." *Id.* at 36, 223 N.W.2d at 140.

In this case, the district court's findings and conclusions do not reflect evidence that is any more clear and compelling than the evidence in *Robinson*. In sum, mother would like her children to share her surname, which is the surname of her husband. And the children may suffer some embarrassment because their given surnames are not the same as that of their mother. The children use both their father's and stepfather's surnames on school- and church-related materials. But father, who the district court found "pays child support and has parenting time with the children," objects to the name change. These findings simply do not show clear and compelling evidence that the substantial welfare of the children necessitated the name change over the objection of father.

We also observe that in *Robinson*, the supreme court reversed the district court's grant of a name-change request where the mother merely sought to add her current husband's surname to the children's surname, which was that of the natural father; the mother did not attempt to eliminate the father's surname altogether. *Id.* at 35, 223 N.W.2d at 140. But in this case, mother seeks not only to eliminate the father's surname

from the children's names, but also to eliminate the father's middle name from the children's names. Yet mother does not offer any argument, and the district court did not offer any explanation, detailing why changing the children's middle names is in their best interests and otherwise meets the *Robinson* guidelines.

Mother argues that *Robinson* is distinguishable because in this case, the children "were not raised in a marriage." We are not persuaded. *Robinson* focused on preservation of the parent-child relationship in the absence of marriage. The court explained that:

> Society has a strong interest in the preservation of the parental relationship. Even though a divorce decree may terminate a marriage, courts have traditionally tried to maintain and to encourage continuing parental relationships. The link between a father and child in circumstances such as these is uncertain at best, and a change of name could further weaken, if not sever, such a bond.

Id. at 35-36, 223 N.W.2d at 140. Unlike the *Robinson* parties, the parties in this case were never married. But under *Robinson*, the relevant, common concern is maintenance of the parental relationship in the absence of a marital relationship. Thus, the lack of a marriage does not affect our analysis.[1]

[1] We acknowledge that an opinion of this court has considered the absence of a marital relationship, but the facts of this case are readily distinguishable. *See Aitken Cnty. Family Serv. Agency v. Girard*, 390 N.W.2d 906, 908 (Minn. App. 1986) (reversing the district court's order changing the children's surname from that of their custodial mother to that of their noncustodial father and stating that the concern regarding ongoing parental relationships was "notably absent . . . where the children's parents were never married and the children [had] never regularly used their father's name").

Mother also argues that the district court "exercised great caution by applying the *Saxton* factors" and in doing so, "ensured that the evidence is clear and compelling that the substantial welfare of the children necessitates [the] name change." We disagree. Although the district court addressed the *Saxton* factors, its analysis was cursory. For example, the primary concern underlying the *Robinson* guidelines is maintenance of the parental relationship. The corresponding *Saxton* factor is the effect of the name change on the children's relationship with each parent. In this case, the district court only implicitly addressed this factor, stating: "The children should be told that the name change will not affect their relationship with their biological father . . . ." But the district court did not explain its implicit conclusion that the name change will not affect the parent-child relationships. This level of best-interest analysis is inadequate under *Robinson*. And the district court's mere assertion that it is best for children to "bear the last name of the party with whom they reside" is insufficient to override the policy concern that underlies the *Robinson* guidelines.

In sum, a district court should change a minor child's surname from that of a natural parent to that of a stepparent "with great caution and only where the evidence is clear and compelling that the substantial welfare of the child necessitates such change." *Robinson*, 302 Minn. at 36, 223 N.W.2d at 140. Although the record shows that the district court was doing what it thought was best for the children, it does not demonstrate compliance with the *Robinson* guidelines. Because the record does not reflect an exercise of great caution, or clear and compelling evidence that the substantial welfare of the

children necessitated the change, the order changing the children's middle names and surnames from that of their father was an abuse of discretion. We therefore reverse.

Reversed.

Dated:

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Judge Michelle A. Larkin