STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0010

In the Matter of the
Application of Ozhaawaskoo Giishig
for a Change of Name.

Filed December 2, 2008
Remanded
Hudson, Judge

Carlton County District Court
File No. 09-CV-07-2915

Ozhaawaskoo Giishig, Moose Lake Annex, 1111 Highway 73, Moose Lake, Minnesota 55767 (pro se appellant)

Kathleen A. Heaney, Sherburne County Attorney, Arden Fritz, Assistant County Attorney, Government Center, 13880 Highway 10, Elk River, Minnesota 55330 (for respondent state)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

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

HUDSON, Judge

Appellant Ozhaawaskoo Giishig challenges the denial of his application to change his name. Because the district court's finding of fact are insufficient to support the denial, we remand for further proceedings.

FACTS

In 1992, appellant changed his name for religious reasons from Guy Israel Greene to his present name, Ozhaawaskoo Giishig. Appellant was incarcerated at the time of his name change. Between the years of 1992 and 2006, under his present name, Ozhaawaskoo Giishig, appellant was convicted of five felonies. Appellant was also civilly committed in 2006 and subsequently filed this application for a name change. In connection with the application, he also filed a motion to proceed in forma pauperis. In his district court affidavit, appellant stated that his name, Ozhaawaskoo Giishig, is an Ojibwe "spirit name" which he was given by a medicine man. Appellant further stated that his spirit name is only to be spoken and prayed with for religious purposes at Native American ceremonies. Appellant stated that he wrongfully applied for the name change in 1992 because he did not understand the significance of his Ojibwe spirit name.

Pursuant to Minn. Stat. § 259.13, subd. 2 (2006), the county objected to appellant's name change application. The county argued that the name change would compromise public safety because appellant committed five felonies under his present name. The county further argued that past criminal records must be easily accessible by the public authority, and allowing appellant to change his name would obstruct easy access to this information. Appellant contends that granting his name change would not jeopardize public safety because he is under civil commitment and that this status is unlikely to change. In a separate motion, appellant again argued that his freedom of religious expression was infringed by the use of his spiritual name in public.

In October 2007, the district court denied appellant's request to proceed in forma pauperis and specifically found that appellant failed to show how his freedom of religion was infringed by denial of his name change application. But the order neither granted nor denied appellant's application for name change. Appellant then filed a motion to reconsider the denial of his motion to proceed in forma pauperis. In December 2007, the district court again denied appellant's request to proceed in forma pauperis and, based on his "long record of felony convictions," denied appellant's name change application as well. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion when it denied both his application for a name change and his motion to proceed in forma pauperis. We review the district court's decision to grant or deny a name change under an abuse-of-discretion standard. *In re Welfare of C.M.G.*, 516 N.W.2d 555, 561 (Minn. App. 1994). Although a reviewing court will not reverse a district court on a matter in its discretion except for a clear abuse of discretion, the court must exercise its discretionary power "with close regard to all the facts of the case and in furtherance of justice." *Mehralian v. State*, 346 N.W.2d 363, 365 (Minn. App. 1984), *review denied* (Minn. July 26, 1984). In determining whether an abuse of discretion is shown, a reviewing court construes the district court's findings in light of the record. *Id*.

A name change for a person with a felony conviction is controlled by Minn. Stat. § 259.13 (2006). When a felon applies for a name change, the statute gives the prosecuting authority the right to object if the name change request aims to defraud or

mislead, is not made in good faith, will cause injury to a person, or will compromise public safety. Minn. Stat. § 259.13, subd. 2 (2006). The burden then shifts to the applicant to prove by clear and convincing evidence that the name change request is not based on any of those reasons. Minn. Stat. § 259.13, subd. 3. (2006). But the statute requires that the district court grant the name change if failure to allow it would infringe on a constitutional right of the person. Minn. Stat. § 259.13, subd. 4 (2006). An applicant is permitted to proceed in forma pauperis only when the failure to allow the name change would infringe upon a constitutional right. Minn. Stat. § 259.13, subd. 5 (2006).

Appellant argued to the district court that failure to allow the name change infringed on his freedom of religious expression, a constitutional right. Thus, appellant maintained, he should have been granted the name change and allowed to proceed in forma pauperis. Article I, section 16, of the Minnesota Constitution states:

> The right of every man to worship God according to the dictates of his own conscience shall never be infringed . . . nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state[.]

"Religious liberty is a precious right." *State v. Hershberger*, 462 N.W.2d 393, 398 (Minn. 1990). The Minnesota Supreme Court has consistently held that Article I, section 16, of the Minnesota Constitution affords greater protection against government action affecting religious liberties than the First Amendment of the federal constitution. *Hill-*

Murray Fed'n of Teachers v. Hill-Murray High Sch., 487 N.W.2d 857, 864–65 (Minn. 1992), *Hershberger*, 462 N.W.2d at 397. As a result, government action that is permissible under the federal constitution because it does not prohibit religious practices but merely infringes on or interferes with religious practices, may nonetheless violate the Minnesota Constitution. Similarly, if a challenged statute does not violate the Minnesota Constitution, it also does not violate the lesser protections of the federal constitution. *Rooney v. Rooney*, 669 N.W.2d 362, 370 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *cert. denied*, 541 U.S. 1011, 124 S. Ct. 2075 (2004). *Hershberger*, 462 N.W.2d at 397. The Minnesota Supreme Court employs a heightened "compelling state interest balancing test" when determining whether a challenged law infringes on or interferes with religious practices. The test has four prongs: (1) whether the objector's beliefs are sincerely held; (2) whether the state regulation burdens the exercise of religious beliefs; (3) whether the state interest in the regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means. *Hill-Murray*, 487 N.W.2d at 865.

Under the plain language of the felon name change statute, once a prosecuting authority (here, the county) filed a timely objection, the district court was barred from granting the name change unless appellant proved by clear and convincing evidence that his application was not based upon a prohibited factor. However, if appellant proved that failure to grant the name change infringed on a constitutional right, the district court was obligated to grant the name change. Here, the record reveals that the prosecuting authority did object to the name change on the basis that it would compromise public

safety. The county proffered a detailed federal and state analysis and specifically discussed appellant's felony convictions and civil commitment. In response, appellant argued that the name change would not compromise public safety and denial of his application would indeed infringe on a constitutional right—his freedom of religious expression.

But in its order denying the name change, the district court did not address or otherwise analyze the parties' arguments. The district court's sole findings were: "1. Official records reveal that the applicant has a long record of felony convictions; 2. [t]he prosecuting attorney has objected to this name change application within the time period provided by law; 3. [v]enue in this matter was transferred from Nicollet County." The district court did not address the factors under Minn. Stat. § 259.13, subd. 2 (2006), which give the prosecuting authority the right to object. Of particular concern, the district court did not substantively address whether appellant's name change would compromise public safety. Nor did the district court conduct the constitutional "compelling state interest balancing test" set forth in *Hill-Murray* to determine whether failure to allow the name change would infringe on a constitutional right of appellant. We are especially concerned with the paucity of findings because the district court order gives the impression that if a felon applies for a change of name, the prosecuting authority need merely object and the application will be summarily denied.

We have often noted that explanation of the district court's analysis reveals the court's consideration of the parties' arguments and the court's reasoning, thereby promoting confidence in the court's decision and facilitating appellate review. *See*

Stephens v. Stephens, 407 N.W.2d 468, 470–71 (Minn. App. 1987) (concluding the district court's findings were not sufficiently specific to facilitate appellate review); *Reyes v. Schmidt*, 403 N.W.2d 291, 293 (Minn. App. 1987) (holding that particularized findings of fact are necessary to assist appellate review, to ensure that prescribed standards were utilized by the district court, and to assure the parties that an important question was fairly considered and decided by the district court). On this record, it is impossible to determine whether the district court abused its discretion when it denied appellant's name change application and motion to proceed in forma pauperis. Accordingly, we remand for the district court to consider appellant's name change application in light of Minn. Stat. § 259.13, subd. 2 (2006), and *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857 (Minn. 1992).

Remanded.