

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

In Re)
Alexis Rose Panuski) **C.A. No. CPU4-10-001761**

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Submitted: April 19, 2010
Decided: April 26, 2010

PETITION FOR CHANGE OF NAME

DECISION AND ORDER

A petition was filed to change the name of a minor child. A hearing was held on April 19, 2010. This is the Court's decision and order on the petition.

Petitioner, Susan T. Panuski, the natural mother of Alexis Rose Panuski, filed a petition to change the name of her minor daughter pursuant to 10 Del.C. §5901 *et seq.* The natural father of the child is William R. Panuski.

These underlying facts were developed at the hearing, at which mother and father testified. Mother and father were and are married. Their minor child was born in New Castle County in January 2009.

In March 2009 father was arrested and charged with some 29 offenses alleging use of computer to unlawfully depict a child engaging in a prohibited sexual act. 11 Del.

C. §1109(4). The offenses were alleged to have occurred earlier in 2009. Pursuant to a plea agreement father pled guilty and was sentenced in February, 2010, on two counts and the State entered a *nolle prosequi* on the remaining counts.

The sentence on both counts requires father to serve 4 years incarceration at level 5, followed by 2 years supervised probation at level 3, followed by one year supervised probation at level 2. In pertinent part the sentencing order directs father to have no contact with any minor under the age of 18 years; to register as a sex offender at Tier II as defined by statute; and to register with the State Bureau of Identification as a Sex Offender pursuant to applicable law. Father is to participate in a sex offender program while incarcerated and while on probation.

Mother expressed deep concern and revulsion at the impact that father's situation has and will have on the child and on her. Mother is adamant in her plan to file for divorce. The parties executed a custody stipulation after the arrest but prior to father's sentencing. The stipulation provided that mother would have sole custody of the child until the parties or court order might change the agreement. Mother recounted her concern for the child because father was charged and pled guilty to the offenses which violate a child's dignity and well being. She is very worried about the impact father's designation and registration as a sex offender will have on the child in her formative years and as she matures and attends school. Mother intends to assume her maiden name as part of the divorce proceeding and has petitioned that the child's name be the same as her maiden name, Testerman.

Father recounted that he regrets his actions that led to his sentence. He believes that when he completes his period of incarceration that he may be permitted a

modification of his sentencing order which would allow him to have contact with his daughter but appears to understand this may not happen. He believes that his inability to build a relationship with his daughter for the next four years will be corrected in the future. He wants the daughter to continue with his name as it gives her an identity with him and his family, of whom, as he stated, there are not many left.

Both mother and father did recognize that a change of name would not affect directly any parental rights that father could assert in the future.

The accepted benchmark to measure the propriety of a name change for a minor child is stated as “the best interest of the child”. See *In re Change of Name of Walter to Coffin*, CCP, C.A. No. 1998-06-222; *In re Change of Name of Evans to Brown*, Del. CCP, C.A. No. 1998-10-147; *In re change of name of Zachary Ryan Smith to Zachary Ryan Smith Morgan* 2003 WL 23469571 (Del. Com. Pl.).

The child’s best interest can be ascertained by ten generally accepted standards or criteria.

1. A parent’s financial support. Father will be in no position to support the child for at least four years. Future support may be impacted by the requirement that he register as a sex offender and be subject to a Tier II scrutiny. Underlying this problem is the fact that it is father’s own doing that puts him in this position. This factor supports the granting of this petition.

2. Parent’s failure to maintain contact with child. By his sentencing order father cannot have contact with a child below 18 years of age. Undoubtedly this will be in full effect for four years. In future years there may be an adjustment but it is highly unlikely that any adjustment would follow immediately on release and the nature and

extent of any adjustment is questionable. This factor suggests the petition should be granted.

3. The length of time the surname has been used. This factor does not loom large since the child is an infant and the use of the name has not been widespread. This factor might be considered neutral.

4. Misconduct by a parent. This factor dictates a change of name is appropriate. Tragically the misconduct is not only of a criminal nature but the nature of the offenses poses strong concern for the child's best interest. See *Degerberg v. McCormick*, 187 A.2d 436, Del. Ch. 1963, at 439: "... Misconduct by a father may, of course, be such as to justify a finding that he has forfeited his right to complain of a change of name of his child. ...".

5. Whether the changed name is different from the custodial parent's surname. Mother is adamant on filing for divorce and assuming her maiden name. If granted the name change would meet the test of this factor.

6. The child's reasonable preference for a surname. The child's age makes this factor neutral in this case.

7. Effect of a changed surname on the child's relationship with each parent. A change in name would have a positive effect on mother's relationship with the child. Since father will not be in the child's life for at least four years, and possibly for much longer and most likely in controlled settings if there is a change, this factor suggests a name change is appropriate.

8. The degree of community respect associated with the child's present surname and proposed surname. Since father is now incarcerated for offenses involving

abuse of children and since, on release, he will be required to register as a sex offender for a very long time, this factor dictates that a name change would be in the child's best interest. The registrations to which father is subject is public and is accessible to the general public. The association of the child's name with a name on the registration list would not be in the child's best interest.

9. The difficulties, harassment, or embarrassment the child may experience from bearing the proposed name. This child would not have any of the problems this factor addresses with the proposed changed name. Conversely, with the present name, the problems addressed by this factor could be devastating to the child. The analysis in factors 8 and 9 support each other.

10. The identification of the child as part of the family unit. Unfortunately in this case there is no family unit and there will be none for at least four years. The future possibility for a family unit is highly questionable and probably non-existent. This factor militates for a change of the child's name.

Analysis of these factors leads to the conclusion that it would be in the best interest of the child if her name is changed as petitioned. Father is the author of his dilemma and should understand that his concern for the child should dictate to him that her best interest for her formative years and future life is served by changing her name as requested. Mother has demonstrated the merit of her petition by a full preponderance of evidence.

The Court finds and concludes that it is in the best interest of the minor child that her present name be changed to Alexis Rose Testerman. An order to this effect will be entered with the Clerk's Office.

IT IS SO ORDERED

Alfred Fraczkowski¹
Judge

¹ Sitting by appointment pursuant to Del. Const., Art. IV, §38 and 29 Del. C. §5610.