COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

CHARLES W. WELCH, III
JUDGE

August 18, 2010

Ms. Sherena DeLeon
1679 S. State Street, B-6
Dover, DE 19901

Mr. Brandon Eskridge
9415 Middleford Road
Seaford, DE 19973

RE: In the matter of Ayonna Shaynne Eskridge and Aysia Symone Eskridge
C.A. Nos.: CPU5-10-001296 and CPU5-10-001297

Decision on Petitioner's Motion for New Trial

Dear Ms. DeLeon and Mr. Eskridge:

After a hearing in the above-referenced matter, the Court denied the Petitioner's petition for a name change for her minor children by decision dated July 20, 2010. Following the Court's decision, the Petitioner filed a letter explaining that she was unable to express her thoughts and feelings at the hearing because she was extremely upset and emotionally distressed. The Petitioner attached additional information and documentation to her letter to support her contention that the Respondent has not financially supported the children, and does not have a good reputation in the community. She explained in her letter that she did not bring the attached documents to the hearing because she did not expect the Respondent to show up. Since the Petitioner is attempting to introduce new evidence, the Court considers the Petitioner's letter as a motion for a new trial.

Motions for a new trial are considered pursuant to Court of Common Pleas Civil Rule 59(a). This rule provides as follows:

> A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in this Court. On a motion for

> a new trial, the Court may open the judgment if one has been entered, take additional testimony and direct the entry of a new judgment.

CCP Civ. R. 59(a) (2010). The granting of a new trial is at the discretion of the trial judge. *Eustice v. Rupert,* 460 A.2d 507, 510 (Del. 1983) (citing *Storey v. Camper,* 401 A.2d 458, 465 (Del. 1979)).

The legal standard for a change of name petition for a minor child is whether the change of name is in the "best interest of the child." *In re Change of Name of Smith,* 2003 WL 23469571, at *4 (Del. Com. Pl.). The additional information provided by the Petitioner addresses several of the ten "best interests of the child" factors, including the Respondent's alleged failure to financially support the children, his failure to maintain contact with the children, his misconduct, the degree of community respect associated with his surname, and the embarrassment the children may experience from bearing the Respondent's name.

New trials based on additional evidence or newly discovered evidence are not favored by the court. *In Re Missouri-Kansas Pipe Line Co.,* 2 A.2d 273, 277 (Del. 1938). A litigant, even a *pro se* litigant such as the Petitioner, is required to make the "fullest possible preparation of the case before trial." *Id.* "The Court will not grant reargument where one party is simply unhappy with its rulings, makes the same arguments that he or she made at trial, or attempts to [submit] evidence which could have been but was not [introduced] at trial." *In re Bulat*, 2008 WL 4694593, at *1 (citing *N.E.E. v. K.E.*, 2008 WL 1953487, at *1 (Del. Fam. Ct.)). Petitioners requesting a new trial based on new evidence must show that the evidence came to their knowledge only *after* the trial, and that even if they exercised reasonable diligence, they could not have discovered such evidence for use in the trial. In addition, this new evidence must be so material and relevant that it would *probably* change the result of the trial. *In Re Missouri-Kansas Pipe Line Co.,* 2 A.2d at 278.

In her motion, the Petitioner does not claim that the evidence she wishes to present was unknown at the time of trial, but, rather, that she was unprepared because she

did not expect the Respondent to appear at the hearing, and was too emotionally distressed to fully present her case. The failure to introduce the new evidence at trial is entirely the result of the Petitioner's failure to properly prepare for the hearing. There is nothing in the Petitioner's motion that changes the evidence that was presented and considered at trial. Therefore, there is no basis for a new trial based on the introduction of new evidence.

In her motion for new trial, the Petitioner also alleges that the Respondent presented false information under oath. She does not contend that his actions prevented her from fairly and adequately presenting her case, though. This Court has not been presented with any compelling evidence that the opposing party committed any misrepresentation during the course of his testimony, let alone of such egregious nature so as to involve "a corruption of the judicial process itself." *See MCA, Inc. v. Matshushita Elec. Indus. Co. Ltd.,* 785 A.2d 625, 639 (Del. 2001), *cert. denied, Epstein v. Matsushita Elec. Indus. Co. Ltd.,* 535 U.S. 1017 (2002). Conflicting testimony is generally not a reason to grant a new trial even if the preponderance of the evidence is in the favor of the party applying for a new trial. *Storey,* 410 A.2d at 464. Therefore, there is no basis for a new trial based on the contention that the Respondent made misrepresentations under oath.

The Court finds that the Petitioner has failed to provide evidence that a new trial is warranted under Civil Rule 59(a) on the grounds of newly discovered evidence or misrepresentations of the opposing party under oath. As such, the Court denies the Petitioner's motion for a new trial.

IT IS SO ORDERED THIS 18th DAY OF AUGUST, 2010.

Sincerely,

Charles W. Welch, III

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