

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

DECISION AFTER HEARING
PETITION FOR CHANGE OF NAME

Submitted: March 17, 2003

Decided: June 17, 2003

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Respondent/Pro Se

Petitioner, Kimberly Daniels (“Mother” or “Kimberly”), filed a petition to change the name of her minor child (“Minor” or “Christopher”), from Christopher George Kepley to Christopher Michael Daniels. At the hearing, the Minor’s biological father, George Kepley (“Natural Father” or “George”) opposed the name change. The

Court heard the testimony of the Mother, Natural Father and Reverend George Elwood Kepley (“Rev. Kepley”) and reserved decision as follows:

FACTS

Mother and Natural Father were married in May 1996, separated in February 1997, and divorced in September 1999. Mother was re-married on April 27, 2002 and currently has her husband’s last name, “Daniels”. Minor was born on January 28, 1997 and is currently six years old. He presently attends kindergarten.

At the hearing, Mother, pregnant with her second child, testified that Christopher resides with her, her husband, and her parents in Bear, DE. Other than Christopher and the child she is expecting, she and her husband have no other children. Mother denied having interfered with Natural Father’s wishes to see Christopher during the past three years. According to Mother, Natural Father did not ask for visitation with Christopher from May of 2000, until after her filing of name change petition on February 24, 2003.

An Interim Consent Order issued by the Family Court on November 8, 1999 (Plaintiff’s Exhibit 1) indicated that Mother and Natural Father share the legal custody of the Minor. Mother has exclusive residential custody. Natural Father is seeking to share the residential custody. The Order also indicates that Natural Father is entitled to “liberal visitation at mutually convenient times to the parties as has been occurring since separation”, and may have Christopher for an overnight during the week if he can make arrangements with Mother. The Interim Order was never finalized.

Mother testified that Natural Father has not filed anything seeking any additional visitation with Christopher until recently, February 11, 2003, when he filed

rule to show cause petition alleging that Mother was in contempt of the “February 11, 2003 visitation order” (sic) by refusing his visitation requests. Natural Father further asked the Court to schedule a time and day for him to visit Christopher. As to the alleged violation of visitation order, Mother indicated that no such “February 11, 2002” order was ever issued. When questioned about whether she has ever denied Natural Father’s visitation request, Mother testified that had occurred only once, when he contacted her, for the first time in three years, on February 11, 2003, requesting to visit Christopher for one hour.

On cross examination and under inquiry of the Court, Mother admitted that there were “a couple of occasions”, prior to May 2000, when she refused Natural Father’s visitation request because it was “inconvenient”. She explained that on these occasions, Natural Father would call “out of no where” on a Friday, having had no contact with her for weeks and would ask to see Christopher for the weekend. These were times when she had already made plans for Christopher. She also refused Natural Father’s request for visitation in situations where he made the request on the day of his intended visitation with Christopher.

As to payment of child support, Mother testified that Natural Father made sporadic payments until she filed for child support through Division of Child Support Enforcement Unit in May 2000. During the mediation for child support, on August 14, 2000, Natural Father denied paternity of Minor. Based on Natural Father’s request, a paternity test was given on August 22, 2000 and results confirmed his paternity on September 5, 2000. Natural Father began to make regular child support payments after December 2000. In the Family Court Support Order Agreement dated January 14, 2002

(Plaintiff's Exhibit 3), Natural Father was found in contempt of the court for failing to make child support payments since September 19, 2001.

Record indicates that Natural Father was under a November 14, 2000 Family Court Support Order to pay \$602.34 (\$494.00 current support +\$86.67 arrears/retroactive support + \$21.67 in fees) per month in child support. He failed to comply and owed arrears of \$3,708.55 as of January 7, 2002. His non-compliance led to the entering of the January 14, 2002 Support Order which directed him to pay a lump sum of \$1,000 on the arrears by January 25, 2002 and attached his wages.

At the time of the name change hearing, Natural Father is current with the child support payment.

Mother believes that it is in the best interest of the Minor to change his name. Mother wishes Minor's last name to match that of her husband and her expected child, who will be Minor's half-brother. Mother insists that the name change is the Minor's own idea. Mother testified that through Minor's kindergarten teacher, she learned that Minor started to use the surname of "Daniels" at the beginning of kindergarten. Once, according to the teacher, Minor tried to check out a book from the school library using the last name of "Daniels". The school librarian, not finding the name of "Daniels" on Minor's school record, refused to lend him the book. Minor was confused and embarrassed, according to Mother.

Further, Mother testified that Minor has not seen his Natural Father since May 2000 and does not know him. He knows Mother's husband to be his "daddy" and requested, immediately after Mother's wedding on April 27, 2002, to have his name changed to match that of his new daddy and his anticipated little brother. Mother

testified that when Christopher was the ring bearer at her wedding, he thought that Mr. Daniels was also “marrying him” in order to make three of them into a family. Mother testified that Christopher feels like an outcast when he does not share the last name of the family he lives with.

When the Court inquired why the Minor’s middle name should be changed from “George” to “Michael”, Mother responded that the Minor asked to have his daddy’s name and wants to be “Christopher Michael Daniels, Jr.”. Since Mr. Daniels’ first and middle names are in the order of “Michael Christopher” not “Christopher Michael”, Mother told Minor that he can have “Christopher Michael Daniels” as his name without the “Jr.” suffix. When the Court inquired what name the Minor goes by, Mother responded “Christopher”.

Mother testified that Minor does not know that his natural father’s name is George since he has blocked his natural father from his memory and does not know who his natural father is anymore. Since May 2000, Christopher has not seen Natural Father and Natural Father has only asked to see Christopher once. Prior to May 2000, Natural Father only visited with Christopher once or twice on a Saturday and rarely had Christopher staying with him overnight. Mother said Natural Father discontinued the visits by ceasing to call or make other efforts.

Mother believes that a name change would have a positive effect on the Minor. She feels it would further develop and strengthen the bond between Minor and his “daddy”, Mr. Daniels, and would not affect Minor’s relationship with Natural Father since a relationship does not exist between them.

According to Mother, because the Minor wants to be part of their family unit, a denial of her petition would have a detrimental effect on the Minor. Because Minor does not know who his family unit is, based on his name, Minor has nothing to associate his name with. Nonetheless, Mother testified that Minor is of an age that he does not yet comprehend what last names mean to people.

On cross, Mother testified that she believes the name change would not affect Christopher's sense of family history and past. And, should Christopher request to learn about his biological paternal family at a later time, she would be happy to assist him in that.

In sum, Mother requests the Court to grant the name change so that Minor does not suffer any further discomfort or confusion from not being able to identify with a family unit. Mother believes that they are an integrated family, therefore, it would be in Minor's best interest to have his surname changed to Daniels so that he can identify more closely with those people he considers to be his family, and with whom he lives and spends most of his time.

Reverend George Elwood Kepley, paternal grandfather of Christopher, testified that Christopher used to visit often, more than twice a month, but that he has not seen Christopher for about three years. He feels it is important for a child to keep his name, and that a change of name would "strip the child of his inheritance", "steal the child's identity", and "rob him of the availability to go back through the family tree". He feels it is dishonorable to take away a child's name so that he will no longer be associated with his father. Rev. Kepley believes "Kepley" is an honorable name and Christopher has a right to know his father and uncle in Delaware and his few other family members in

North Carolina. He does not think a child's name should be changed based on a change of marital status of the child's mother.

Natural Father testified that within a month after Christopher was born, Kimberly left him and took Christopher with her to reside with her mother. At that time, Natural Father was seeing Christopher every day.

At their custody hearing, Natural Father wanted shared residential custody but was opposed by the Mother. She did agree to his "liberal visitation" of Christopher.

Regarding his initial payments of child support, Natural Father testified that he and Mother had a private agreement of \$50 per week and had been paying regularly prior to her filing for child support. He did not have any document to evidence this fact.

As to his delinquency with payment of child support that led to the January 14, 2002 support order, Natural Father testified that at the time, his other son, Nicholas James Kepley, had a medical condition and needed surgery. As a result he missed a lot of work in order to take care of his son and was laid off. He later found a new job and worked for two weeks without paying child support, which resulted in him being held in contempt of court. However, he believes that he is current with child support at the moment and does not owe any arrears.

As to the paternity test, Natural Father testified that he had reason to doubt that Christopher might not be his child but did not want to reveal the reason. Shortly after he has requested the DNA test Mother began to refuse his visitation requests on the basis of "inconvenience".

Regarding his attempts at visitation, Natural Father testified that, on the days he went to pick up Minor, Mother's brother Justin or other family member would act

antagonistically towards him and make him feel unwelcome. He eventually stopped asking her to let him visit Minor even though he still wanted to see him. Natural Father testified that he loves Minor as much as his other son and wants to be part of Minor's life in every way he can.

As to this Petition, Natural Father testified that he believes it is in the best interest of the child to allow Minor to keep his current name so that he knows who his father is. He does not believe the change of name was Minor's idea. He believes Minor, at the age of six, is too young to understand the significance of his last name. He thinks it is Mother's idea to change Minor's name. He believes that Mother does not want him to see Minor because, during their custody battle, she had made false accusations about Natural Father being a drug user.

In addition to his opposition to a change of Minor's last name, Natural Father does not see any reason for Minor to change his middle name. He believes that Mother is being "vindictive".

On cross examination, Natural Father admitted that he does not know the name of Minor's doctor, the size clothing Minor wears, or the name of the school that Minor attends. He explained that his lack of knowledge of Minor's personal information is a result of Mother's refusal to let him have any contact with the Minor. As to Natural Father's long delay in seeking to enforce the existing visitation order, he explained that he does not understand his legal rights and was unfamiliar with the court system. Additionally, he does not believe a court order could get him back into Minor's life because of Mother's opposition. Nonetheless, Natural Father says he is now determined to get back to Christopher's life and has since gone back to the court to do so.

In sum, Natural Father believes that it is in the best interest of Minor to retain his current name because, 1.) Minor is his son who should want to have his father's name and want to know his father, 2.) Minor is too young to know the significance of his name and if such name change were granted, Minor's family tree would be uprooted, 3.) a change of name would have a negative effect on the father and son relationship, 4.) it would affect Minor's relationship with his brother, Nicholas James Kepley, who was born on July 1, 2001 and currently resides with Natural Father, 5.) it would create confusion for Minor because not all of the residents of Minor's current home share the last name of "Daniels", and 6.) Natural Father realizes that not fighting "as hard as I should have" to be in Minor's life was a mistake he now intends to rectify.

LEGAL STANDARD

In deciding change of name petitions, this Court has adopted the best interests of the child standard. *In Re: Change of Name of Anderson to Lance*, CCP, C.A. No. 2001-11-152, 2001 Del. C.P. LEXIS 112 (Dec. 19, 2001); *In Re: Change of Name of Snyder to Cammock*, CCP, C.A. No. 2000-09-318, Welch, J., 2000 WL 33653411 (Nov. 20, 2000); *In Re: Change of Name of Evans to Brown*, CCP, C.A. No. 1998-10-147, Welch, J. (Mar. 11, 1999); *In Re: Change of Name of Walter to Coffin*, CCP, C.A. No. 1998-06-222, Fraczkowski, J. (Sept. 30, 1998).

In considering whether to permit a parent to change a child's last name the Court notes that neither parent has a superior right to determine the last name of a child. Therefore, each parent has an equal right and interest in determining the last name of

their child. Consequently, there is no presumption in favor of the custodial parent in the selection of the child's last name. Id.

The factors the Court uses to determine the best interests of the child are:

1. Misconduct by one of the child's parents;
2. A parent's failure to support the child;
3. A parent's failure to maintain contact with the child;
4. The length of time that a surname has been used for or by the child;
5. Whether the child's surname is different from the surname of the child's custodial parent;
6. The child's reasonable preference for a surname;
7. The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
8. The degree of community respect associated with the child's present surname and the proposed surname;
9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed surname; and
10. The identification of the child as part of a family unit.

Id.

ANALYSIS

Based upon the evidence presented at the hearing, the Court finds several of the factors relevant in this case.

Natural Father has had no contact with Minor since May of 2000, in spite of an Interim Order dated November 8, 1999. While citing resistance from Mother and intimidation by Mother's family, even Natural Father realizes he didn't "fight hard enough" to see Minor. Three years without contact with a child, where a visitation order is in place granting "liberal visitation," is difficult behavior for the Court to understand.

In addition, Minor's surname is different from the surname of the child's custodial parent. While not conclusive, the fact remains that this factor is present.

Also, Minor apparently has difficulty with the fact that his surname is different than the custodial family name as indicated by the library book incident. He apparently wishes to identify as part of the custodial family unit, i.e., the Daniels family. This encompasses factors 5, 9, and 10.

The Court finds that Natural Father and his family are confusing this Petition for a change of name with the complete termination of parental rights. There were many references to "right of inheritance", "roots", "family tree", "history of your people", etc. That is not the issue before this Court. Nothing this Court will do here will change the parentage, lineage or the blood lines that flow through Minor's body. Natural Father and his family need to realize this and Natural Father, if he wishes to be thought of by Minor as his Father, to be concerned more with the ongoing relationship than the name.

Yes, the effect of the change of Minor's surname may effect the development of the child's relationship with the Natural Father. (Factor No. 7). However, Natural Father's absence from his child's life far more than three years may effect the relationship, in the future, for beyond the order of this Court today. The future of that relationship is, in large part, up to the Natural Father.

As to the request to change Minor's middle name to "Michael", the Court finds no justification for that request. In fact, in order to maintain some resemblance of Natural Father's name, and to encourage the father to continue with his recent interest in seeing Minor, the Court finds that it is the best interest of the child for Minor to have the "middle name" of Kepley. Not as a hyphenated ("-") last name, but as a middle name.

The Court finds that it is in the best interests of the child, Christopher George Kepley, for reasons as stated, to have the unhyphenated name: Christopher Kepley Daniels.

An order shall be entered in accordance with the above findings of the Court.

IT IS SO ORDERED.

Joseph F. Flickinger III
Associate Judge