

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

IN RE CHANGE OF NAME OF:)	
)	
Zachary Ryan Smith)	
)	
to)	C.A. No. 2003-12-099
)	
Zachary Ryan Smith Morgan)	

Submitted: March 8, 2004
Decided: March 19, 2004

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Respondent

FINAL ORDER AND DECISION

Trial in the above-captioned matter took place in the Court of Common Pleas on March 8, 2003. Following the conclusion of the receipt of evidence and submission of testimony, the Court reserved decision. This is the Court's Final Order and Decision.

Procedural Setting

The record indicates that petitioner, Zachary Ryan Smith ("Zachary") through his mother, Dana Hall Morgan, ("Mrs. Morgan") filed the instant Name Change Petition pursuant to 10 Del. C. § 5901, et seq. requesting that this Court approve her minor child's name be changed to

“Zachary Ryan Smith Morgan.” The reason for the name change as set forth in the Petition was that Petitioner “wishes her son to possess the same name as everyone else in the house and for all her future children to have the same surname.”

Mrs. Morgan attested to the statutory requirements in her petition that no creditors or other persons would be defrauded or adversely affected by the name change, no criminal proceedings are pending against petitioner and that the petition was verified and duly noticed in the Newark Post. See, 10 Del. C. § 3701.

The father of Zachary, William F. Smith (“Smith”) entered his appearance and opposed the Name Change Petition filed by Mrs. Morgan.

THE FACTS

At trial the following witnesses testified. Larry Rolfes, (“Mr. Rolfes”) a counselor and licensed psycho-therapist, testified on behalf of the petitioner. Upon the request of the petitioner, Mr. Rolfes was qualified as an expert witness with no objection by respondent. Mr. Rolfes testified that he has been “working” with Zachary for a period of two years and sees him two times a month for approximately forty-five minutes each visit. Mrs. Morgan sought Mr. Rolfes help when Zachary began having behavioral problems in day care. Mr. Rolfes testified that Zachary believes John Morgan is his father. Zachary tells Mr. Rolfes that his name is “Zachary Morgan.” According to Mr. Rolfes, new concepts need to be introduced to Zachary very slowly. In his opinion, Zachary would not understand a change of name and would rebel if he were forced to go by the name “Smith.” Mr. Rolfes also testified that Zachary is “close” with his paternal grandmother.

On cross-examination, Mr. Rolfes testified that while he only sees Zachary bi-monthly for forty-five minutes, that is considered more frequent than most of the children he sees. The reason why Zachary has behavioral problems and does not adjust well to change is because he suffers from Attention Deficit Hyperactivity Disorder (“ADHD”). Mr. Rolfes further testified that it would be fair to say that Zachary would be angry were he to learn he had been denied a relationship with his natural father.

Rose Hebert (“Ms. Hebert”), Petitioner’s mother, was duly sworn and testified. She testified that Zachary is her grandson and she has a good relationship with him. She sees Zachary about once a week. Ms. Hebert testified that in September of 2000, William Smith viciously attacked her in a shopping center parking lot. She had been driving along Route 273 in New Castle County when Smith pulled up along side her and began yelling and motioning for her to pull over. She continued driving and Smith attempted to run her off the road. She pulled her car into University Plaza. She did not see Smith follow her into the shopping center and after waiting a few minutes she entered one of the shops. Once inside she called the police. Ms. Hebert testified that she told the police she no longer saw Smith and that once she returned to her residence she would phone in a report of the incident. Before leaving the store, Ms. Hebert testified that she looked around the parking lot for Smith’s truck. She did not see it so she felt it was safe for her to go to her car. Once she was near her car, Smith, jumped out between the parked cars wielding an aluminum baseball bat. He told Ms. Hebert “First you are going to hurt, then I am going to kill you.” He then proceeded to beat her repeatedly with the baseball bat. Ms. Hebert testified that she was hospitalized for several days for numerous injuries. She still suffers from the effects of a severe blow to her head during the attack. For this incident, Smith is currently incarcerated.

Dana Morgan (“Mrs. Morgan”), Zachary’s mother, was duly sworn and testified. Mrs. Morgan testified that she resides at 4419 Sandy Drive in Wilmington with her husband, John Morgan. She testified that her son Zachary is currently attending pre-school and will attend kindergarten next school year. He is five years old. She testified that she was never married to William Smith, the respondent. She testified of one incident during their relationship where they had a disagreement which ended up with Smith punching her in the mouth, knocking a tooth lose. This prompted her to petition Family Court for a Protection From Abuse Order (“PFA”). Mrs. Morgan and Zachary were the petitioners. Zachary had been present when the abuse occurred. A copy of the PFA dated September 18, 1998, was admitted into evidence as Petitioner’s Exhibit “1”.

Mrs. Morgan testified that Zachary’s paternal grandfather, Smith’s father, petitioned the Family Court for Grandparent Visitation. Apparently “Smitty”, as he is known to Mrs. Morgan, fell ill and did not appear before the Court. His petition was denied by the Court on April 16, 2002. (Petitioner’s Exhibit “2”). Mrs. Morgan testified that she has never prevented “Smitty” from visiting Zachary.

Mrs. Morgan testified that she eventually petitioned the Family Court for child support. Smith denied paternity at the child support hearing. Mrs. Morgan testified that she had never told Smith that he was not Zachary’s father. A Consent Order and Notice for Genetic Testing was entered by the Court on March 21, 2000, and was signed by Smith. (Petitioner’s Exhibit “3”). The genetic testing confirmed that Smith was Zachary’s biological father.

Mrs. Morgan further testified that Smith was eventually granted temporary contact with Zachary. The Temporary Contact Order dated October 23, 1998, provided for visitation at the Hudson Center one night a week. (Petitioner’s Exhibit “4”). For reasons that were unclear to

Mrs. Morgan, the Hudson Center terminated the visitation. She now has sole custody of Zachary as a result of Chief Judge Kuhn's order preventing Smith from contact with Zachary, Mrs. Morgan, and her family. (Petitioner's Exhibit "5"). Chief Judge Kuhn points out in her order how the Court was disturbed by the graphic testimony it heard regarding the attack by Smith on Rose Hebert.

Mrs. Morgan testified that Zachary is currently living with her and her husband, John Morgan. She has been taking Zachary for counseling with Mr. Rolfes for two years. Zachary had always been a very angry child. Mrs. Morgan testified she feels the turmoil surrounding Zachary in his early years was the cause of his anger. She testified that Zachary has been making significant progress as a result of the counseling sessions with Mr. Rolfes. She further testified that Zachary has only known John Morgan as his father. John has raised Zachary and the two of them are quite close. Zachary goes by the name of "Zachary Mogan." Mrs. Morgan does not wish to hyphenate Zachary's name because she feels that will confuse him. She wants Zachary to have the same last name as her and her husband and any future children they may have. She testified that once Zachary is ready she would tell him the truth about his biological father.

On cross-examination, Mrs. Morgan denied ever saying that she would see to it that Smith never saw his son again. She loves her son Zachary and wants what is best for him. She further testified that in regards to custody, she went along with what the Family Court had ordered.

Smith was duly sworn and testified. Smith testified that Zachary is his son, but that his son does not know who he is. He has been kept from his son and "the system allows this to happen." Mrs. Morgan is in control of when he gets to see his son. He also testified that he

feels the Family Court system is “not fair to men.” He testified that it is his son’s god given right to know who is father is. He does not believe that adding the last name of Morgan will be in Zachary’s best interest. He testified that he is Zachary’s father not John Morgan. He admitted that he did break the law and that he made one mistake, referencing the assault on Zachary’s grandmother. He testified that the criminal justice system is “screwed up.”

On cross-examination, Smith testified that he agreed Zachary would be upset were he to learn of the assault on his grandmother; however, he felt “justified” in doing what he did to Rose Hebert.

The Law

Sec. 5901. Petition for change of name.

- (a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person’s name and the name he or she desires to assume.

Sec. 5902. Requirements for minor’s petitions.

If the name sought to be changed under this chapter is that of a minor, the petition shall be signed by at least one of the minor’s parents, if there is a parent living, or is both parents are dead, by the legal guardian of such minor. When the minor is over the age of 14, the petition shall also be signed by the minor.

Sec. 5903. Publication of petition prior to filing.

No petition for change of name under this chapter shall be granted unless it affirmatively appears that the petition has been published in a newspaper published in the county in which the proceedings is had, at least once a week for 3 weeks before the petition is filed.

Sec. 5904. Determination by Court.

Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the petition may be granted.

Sec. 5905. Costs.

The costs of any proceeding under this chapter shall be paid by the petitioner.

* * *

Rule 81. Petitions for change of name.

- (a) A petition which seeks a change of name for a minor shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of fourteen, the petition shall also be signed by the minor.
- (b) . . .
- (c) If the petition is signed by only one parent, it shall be served, before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs.

In a recent decision by this Court, the following factors were considered relevant as to a determination of whether the best interests of a petitioner was served by the granting of the proposed name change. See, *In re Change of Name of Evans to Brown*, Del. CCP, C.A. No. 1998-10-147, Welch, J. (March 11, 1999). The factors the Court considered in determining whether "the best interests of the child" would be served by granting a proposed name change were as follows:

1. A parent's failure to financially support the child;
2. A parent's failure to maintain contact with the child;
3. The length of time that a surname has been used for or by the child;
4. Misconduct by one of the child's parents;
5. Whether the name 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 proposed surname;
9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;
10. The identification of the child as a part of the family unit.

The statutory law as it applies in the instant case is set forth in Chapter 59, Title 10 of the Delaware Code as well as CCP Civ. R. 81. The legal standard is the "best interest of the child"

standard in contested change of name petitions involving minors.¹ See, In re Change of Name of Walter to Coffin, Del. CCP C.A. No. 1998-060222, Fraczkowski, J. (September 30, 1998), In re Change of Name of Evans to Brown, Del. CCP C.A. No. 1998-10-147, Wlech, J. (March 11, 1999). Clearly what constitutes the “best interests of the child” involves a factual analysis involving the relationship and family structure of the minor. See, In re Change of Name of James Roy Runyon, Jr. to James Roy McGarrity, Del. CCP C.A. No. 1999-06-185, Smalls, C.J. (August 13, 1999).²

Final Order and Opinion

Under the law as it exists in this Court of statutory jurisdiction as set forth above, the Court of Common Pleas has clearly adopted the best interests of the child’s standard in considering Name Change Petitions. See, e.g., In re Change of Name Jacob T. Walter to Jacob T. Coffin, CCP C.A. NO. 1998-06-222, Fraczkowski, J. (September 30, 1998). That case concluded as follows:

The Court concludes that when a petition is filed under 10 Del. C. Ch. 59 for the change of name for a minor that in determining whether there appears to be no reason for such grant, as required by 10 Del. C. § 5904, the Court must extend to the minor the same consideration that is given to a minor under the general domestic relations law of the State of Delaware. The Court concludes that the reasoning in Cardinal v. Perch, Del. Fam., 611 A.2d 515 (1991) is appropriate in this case. By implication the Delaware Court of Chancery in Degerberg v. McCormick, Del. Ch., 184 A.2d 468 (1962) adopted this view when it stated that in any petition involving the requested name change for a minor that ultimately the Court must question and decide what is the best interest of the child. This view appears to find support in other jurisdictions. Mark v. Kahn, et al., Mass, S.Ct. 131 N.E.2d 758 (1956), and see annotation in 53 A.L.R.2d 908. The decision in In re Marley, Del. Super., C.A. No. 95A-11-004 (1996) is not controlling here since it involved a petition for change of name filed by an adult in her own right. (Emphasis supplied)

¹ Even when petitions were or are heard in the Family Court, as set forth in In the interest of Michael Cardinal and Catherine Cardinal v. Tanya E. Perch, Family Court, 611 A.2d 515 (1991) “the great weight of judicial authority today supports the proposition that a child’s last name should be determined on “best interest” standard.

² Other jurisdictions have addressed the factual analysis applied involving relationship of the minor in determining what is the best interests of the child. In Schiffman v. Schiffman, Cal. Supr., 620 P.2d 579 (1989), the Court outlined a similar analysis to that used by this Court in determining what is in the best interest of the child.

In this proceeding, the Court must make a factual determination whether it is the best interest of Zachary to have the surname of “Morgan” added to his name. Applying all the law set forth above, it is clear to this Court that in considering the factors outlined in the *Evans* case listed above, that it would be in the best interest of Zachary to have the surname of Morgan. His father, Smith, is currently incarcerated and no evidence has been presented to show that he financially supports Zachary. Smith has been unable to maintain contact with his son as a result of a Family Court Order. He is a convicted felon and it is his own intentional acts that have prohibited him from seeing his son. Zachary has been using the surname “Morgan” since Mrs. Morgan married her current husband approximately four years ago. Misconduct on the part of Zachary’s father is apparent to the Court.

Smith viciously attacked Zachary’s grandmother and testified to the Court’s horror that he felt justified in doing so. The surname of “Morgan” would be the same as Zachary’s mother whom by Family Court Order has sole custody of him. It appears from the testimony presented that Zachary prefers his new surname. A change to the surname of “Morgan” will most likely have a positive effect upon the Zachary’s relationship with his mother. The change could not possibly have any more of a negative impact on the relationship between father and son as have the father’s own intentional acts. It is arguable due to the incarceration of the father that the degree of community respect associated with “Smith” is less than that of Morgan; however, Smith is a common surname. Difficulties may arise for Zachary when he begins kindergarten since he knows himself as “Zachary Morgan” but legally his name would be “Zachary Ryan Smith.” His name would be different from any future children born to Mrs. Morgan and her husband. Zachary should share the identity of the family unit that is raising him. In addition, the

name "Smith" is not being removed from the child's name so he will not lose his identity with his father's side of the family.

The Court finds that petitioner has proved the instant name change petition would be in Zachary's best interest by a preponderance of the evidence based upon the above factual and legal analysis. The Court therefore GRANTS the instant name change petition.

IT IS SO ORDERED this 19th day of March, 2004.

JOHN K. WELCH
ASSOCIATE JUDGE