

May 20, 2004

Ms. Kimberly Proud
3290 Hartly Road
Hartly, DE 19953

Mr. Michael Warncke
c/o Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: In the matter of Amanda K. Warncke and Keersten N. Warncke
Civil Action No.: 04-03-0047NC
Petition for Name Change
Kent County Court of Common Pleas

Date submitted: May 3, 2004
Date decided: May 20, 2004

Order and Decision on Petition for Name Change for Minor Children

Dear Ms. Proud and Mr. Warncke:

A hearing for the above-referenced matter was held on April 2, 2004. This matter involves a request for a name change pursuant to Chapter 59 of Title 10 of the Delaware Code for two minor children, Amanda K. Warncke ("Amanda") and Keersten N. Warncke ("Keersten"). The petition requests that their names be changed to Amanda K. Proud and Keersten N. Proud, respectively, and was filed by their natural mother, Kimberly Proud, who is pursuing the name change on their behalf. The petition is contested by their natural father, Michael Warncke. At the conclusion of the hearing, the Court requested closing remarks in writing and reserved decision. This is the Court's decision after the hearing and closing remarks.

Through the evidence introduced at the hearing, it was established that Ms. Kimberly Proud and Mr. Michael Warncke are the natural parents of Amanda and Keersten, two girls who are both under five years of age. Neither daughter knows their father as he has been incarcerated due to a rape conviction where Ms. Proud's nine year old daughter was the victim. Ms. Proud has full custody of both minor children. Currently, Mr. Warncke does not have any visitation rights with the children, although he

indicated that he will have some type of supervised contact and visitation rights once he completes a counseling program. Additionally, Mr. Warncke has not paid any child support since his incarceration.

Ms. Proud has filed the petition for name change for Amanda and Keersten desiring to change their last names from Warncke to her last name of Proud. She believes that it is in the best interest of her children to change their last name to her last name for their safety, well being and not to remind them of the last name of the man who raped their older half-sister. Mr. Warncke contests the petition for name change indicating that he wants to be a part of his daughters' lives, especially when he is released from incarceration. Ms. Proud attested to the statutory requirements for a change of name during her testimony at the hearing. She indicated that no creditors or any other persons would be defrauded or adversely affected by the name changes, no criminal proceedings are pending against the petitioners and that the petition was verified and duly noticed in the *Dover Post* pursuant to Delaware statute. See 10 *Del. C.* Chapter 59.

The legal standard for change of name petitions for minors is whether the change of name is in the "best interest of the child." *In re Change of Zachary Ryan Smith to Zachary Ryan Smith Morgan*, 2003 WL 23469571 at 4 (Del. Com. Pl.). "Clearly what constitutes the 'best interests of the child' involves a factual analysis involving the relationship and family structure of the minor." *Id.* The factors the Court considers in determining whether the "best interest of the child" is served by granting a proposed name change are 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 proposed 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.

Id.

In considering the ten factors for determining whether the "best interest of the child" would be served by granting a proposed name change, I find that it would be in the

Page Three
May 20, 2004

best interest of Amanda and Keersten to change their last names from Warncke to their mother's name of Proud. Mr. Warncke is currently incarcerated for raping their half-sister. He has been unable to maintain any contact with his daughters as a result of his actions. As a result, his children do not even know him. Additionally, due to his incarceration, he is unable to provide any financial support for his children. Amanda and Keersten are being raised by Ms. Proud, who has full custody of them, and should be identified as part of her family unit. Furthermore, there is a significant risk of difficulties, harassment or embarrassment that they may experience from bearing their present last name, which is the name of the man who raped their half-sister. It is apparent that Mr. Warncke's criminal misconduct has had a detrimental effect on the family unit of which Amanda and Keersten are a part. It is obviously in the best interest of these children to lessen the detrimental effect of Mr. Warncke's criminal misconduct on their family unit to the extent possible. Therefore, a change of their surname from Warncke to Proud is warranted.

The Court finds that the Petitioner has proven by a preponderance of the evidence that the name change requested in the petition for Amanda and Keersten is in their best interests. As such, the Court grants the above-referenced name change petition, changing the surname of Amanda and Keersten from Warncke to Proud.

IT IS SO ORDERED THIS 20th DAY OF MAY, 2004.

JUDGE

pc: Clerk of the Court