IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE:	)	
	)	
JACOB ALEXANDER POWERS,	)	**C.A. No.: CPU4-11-004470**
	)	
TO	)	Petitioner's D.O.B.: 3/12/2002
	)	
JACOB ALEXANDER McKINLEY	)	**CHANGE OF NAME**
	)	

Ms. Jaden Powers McKinley
202 Fox Den Road
New Castle, DE 19720
Pro-Se Petitioner (Minor)

Mr. Stephen Hepburn
10 Falcon Court
Wilmington, DE 19808
Pro-Se Respondent

Date Submitted: September 12, 2011
Date Decided: September 20, 2011

FINAL ORDER AND OPINION

This is the Court's Final Order and Opinion in the above-captioned matter. A hearing in this matter took place on Monday, September 12, 2011. Following the conclusion of the receipt of testimony and evidence, the Court reserved decision.

I. Introduction

Jacob Alexander Powers ("Petitioner/Minor") filed the instant Name Change Petition through his mother, Jaden Powers McKinley ("Petitioner") with the Civil Division Clerk of the Court on or about July 29, 2011. The Petitioner or minor resides with his mother, new step father and two other stepchildren at 202 Fox Den Road, New Castle, DE 19720. He is a resident in New Castle County and was born March 12, 2002 in Bartoe, Florida.

Petitioner seeks to change his name from Jacob Alexander Powers to Jacob Alexander McKinley.

The sole reason for the Petition, according to paragraph 4 is to "match mom/mother's married Powers to McKinley" June 18, 2011. The mother, Jaden Powers now bears the name McKinley and is married to her new husband who has two other children besides Jacob.

In accordance with the Petition, it was certified there were no creditors or other persons who would be defrauded or adversely affected by the proposed name change and the Petition had been published in the Newark Post, once a week for (3) consecutive weeks without objection.

Petitioner has no pending criminal charges and was not subject to supervision by the Department of Correction and/or was not required to register with the Delaware State Police.

Petitioner's father Stephen Hepburn ("respondent") appeared at the hearing and opposed the name change petition. His testimony will be summarized below.

II. The Facts

Jaden Powers ("Jaden") was married in June, 2011 and she and Jacob now live with her husband and two other children. Jaden testified that she wants Jacob to have the same last name so that he can be part of the family unit. Jaden also testified the last sur-name Powers was a non-existent name she gave her child as a result of residing in Florida and for the purposes of protection of her identity through the Attorney General's office in Ann Arundel County, MD because of an incident with a "federal convicted felon". Jaden now desires to have Jacob's name changed to match her new family married name. It is also a common name at his school and he would have a new identity and be a part of a family unit.

On cross-examination, Jaden testified the reason for last name McKinley is that it is a recognized name at Caravel Academy. The remainder of Jacob's family has the same name and she believes Jacob would like to have the same last sur-name, McKinley.

Respondent Stephen Hepburn was sworn and testified. Respondent is Jacob's father. He testified Jacob's mother has already had five (5) different last names. He is in opposition to Jacob changing his name to the new family unit name McKinley. He believes the existing name of Jacob Powers gives Jacob a sense of self and he is therefore in clear opposition to the Name Change Petition being granted by this Court.

III. 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 if 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.

(b) 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.

***3** (c) ...

(d) 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.

As set forth in *Degerberg v. McCormick, et al.*, Del. Ch. 187 A .2d 436 (1963), the following law applies:

The right of one parent, against the objection of the other, to change the surname of a child has been the subject of frequent judicial consideration. The great majority of cases presenting the problem have arisen under change of name statutes, or as incidental to divorce proceedings. In a few cases the natural respondent has sought relief where the divorced mother has registered children in school under the surname of a step respondent. The decisions are annotated in *53 A.L.R.2d 914*.As the annotator there observes, the courts have generally considered the welfare of the child as the controlling consideration regardless of the manner in which the problem may arise. So, in the present case, the question to be considered is the best of the child.

* * *

In determining whether or not it is in the child's best interest to permit a change in his surname certain factors have been regarded by the courts as of prime importance. *First of all, recognition is accorded to the usual custom of succession to the paternal surname, and, it is said, this succession is a matter in which the respondent, as well as the child, has an interest which is entitled to protection. Re Epstein*, 121 Misc. 151, 200 N.Y.S. 897;*Re Larson*, 81 Cal.App.2d 258, 183 P.2d 688;*Kay v. Kay*, Ohio Com ., Pl., 51 Ohio Op. 434, 112 N.E.2d 562. *Secondly, the interest manifested by the respondent in the welfare of the child as evidenced by*

> *support, visitation and promptness of complaint as to the attempted change of name. Kay v. Kay, supra. Thirdly, the effect of a change of surname on the relationship between the respondent and his child. Mark v. Kahn, 333 Mass. 517, 131 N.E.2d 758, 53 A.L.R.2d 908;Rounick's Petition, 47 Pa. Dist. & Co. 71;Kay v. Kay, supra.*
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> * * *
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> Authority, both judicial and psychiatric, recognizes that a change of surname of a child of divorced parents may contribute to estrangement of the child from his respondent. So, in *Mark v. Kahn, supra,* the court said: "The bond between a respondent and his children in circumstances like the present is tenuous at best and if their name is changed that bond may be weakened if not destroyed." And, in *Re Epstein, supra,* it is said that the court should not "foster any unnatural barrier between the respondent and son." To the same effect, see *Application of Wittlin,* City Ct., 61 N.Y.S.2d 726;*Rounick's Petition, supra; Kay v. Kay, supra.* The views expressed in these cases find support in the testimony of psychiatrists adduced in this case.

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 as to whether "the best interests of the child" would be served by granting the proposed name change were as follows:

> 1. A parent's failure to financially support the child;
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> 2. A parent's failure to maintain contact with the child;
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> 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;
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> 5. Whether the 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 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.1998-06-222, Fraczkowski, J. (September 30, 1998), *In re Change of Name of Evans to Brown*, Del. CCP C.A. No.1998-10-147, Welch, J. (March 11, 1999). Clearly what constitutes the "best interests of the child" involves a factual analysis involving the relationship and family structure of a 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]

IV. Discussion

Before the Court heard testimony, the Court carefully explained to the *pro-se* parties in this case the relevant factors outlined above in the law section which the Court would consider in either to grant or deny the Name Change Petition filed with the Clerk of the Court. In short, the legal standard, the best interest of the child, was fully explained to the *pro-se* parties and the

[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.

Court discussed with both parties all relevant factors that the Court considered listed above. Nonetheless, each party offered very limited sworn testimony and did not discuss eight of the nine factors in order for the Court to determine or consider at trial whether it would be in the best interest of Jacob to have his last name changed to McKinley. In short, this Court has a very limited record in order to make a decision in determining whether it was in the best interest of Jacob Alexander Powers Petition to change his name to Jacob Alexander McKinley.

V. Conclusions of Law

The Court finds that the Petitioner failed to prove by a preponderance of the evidence that it was in the best interest of the minor child, Jacob Alexander Powers to change his name to Jacob Alexander McKinley.

VI. Opinion and Order

The Court finds based upon the testimony at trial, in the absence of any relevant factual or sworn testimony and considering the factors considered in a Name Change Petition in the instant matter, the Court **DENIES** the Petition.

Each party will bear costs equally. A Form of Order is not attached because the Name Change Petition was not granted.

IT IS SO ORDERED this 20th day of September, 2011.

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John K. Welch, Judge

/jb
cc: Mr. Jose Beltran
CCP, Civil Case Manager

[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.