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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE PATERNITY )  
OF S.A.S.G. )

NATALIE A. SPRAGUE, )

Appellant-Respondent, )

No. 49A04-0704-JV-235

vs. )

JAMES R. GREEN, )

Appellee-Petitioner. )

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APPEAL FROM THE MARION CIRCUIT COURT  
The Honorable Nissa Ricafort, Judge Pro Tempore  
Cause No. 49C01-0601-JP-381

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**November 21, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Natalie A. Sprague (“Mother”) appeals the trial court’s order to change the surname of her minor child, S.A.S. We affirm.

### **Issue**

Mother questions whether the trial court abused its discretion by granting the petition for name change<sup>1</sup> filed by S.A.S.’s biological father, James R. Green (“Father”).

### **Facts and Procedural History**

On or about March 1, 2005, Mother and Father conceived S.A.S. Mother and Father were never married to each other and had little contact during the pregnancy. On December 30, 2005, S.A.S. was born. On December 31, 2005, Father signed the birth certificate and paternity affidavit. On these documents, the child’s surname was designated as Sprague.

On January 31, 2006, Mother filed a petition to establish paternity. On March 30, 2006, Father filed a petition to set aside paternity affidavit, a petition for genetic testing, and a petition for hearing following genetic testing. On April 3, 2006, the trial court set aside the paternity affidavit. On July 31, 2006, Father admitted paternity following genetic testing. On November 3, 2006, a preliminary hearing was held. On November 17, 2006, the trial court granted custody of S.A.S. to Mother, granted parenting time to Father, and ordered Father to pay child support of \$94.00 per week. The trial court held a final hearing on January 31, 2007. On March 14, 2007, the trial court entered its findings of fact and

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<sup>1</sup> While the record before us does not contain any of Father’s trial court filings, and the chronological case summary does not acknowledge a separate petition for name change, we presume that Father filed a request for name change at some time during the proceedings related to Mother’s petition to establish paternity.

judgment establishing paternity, custody, parenting time and support. The court ordered, among other things, that Father provide health insurance for S.A.S. and pay \$85.58 per week in child support, plus \$14.52 per week toward his support arrearage of \$4,042.00. This order included the court's finding that "it is in the minor child's best interests that the child's [sur]name shall be changed to ... Green." Appellant's App. at 10.

Mother has a nine-year-old child who has the same surname as his biological father, to whom Mother was once engaged. Father now lives with the mother of his other daughter, who was born six months prior to S.A.S. and has Father's last name.

Mother now appeals the trial court's granting of Father's petition for name change.

### **Discussion and Decision**

Mother argues that the trial court erred in granting Father's petition for name change.

It is well settled in Indiana that a biological father seeking to obtain the name change of his nonmarital child bears the burden of persuading the court that the change is in the best interest of the child. Absent evidence of the child's best interests, the father is not entitled to obtain a name change. We review the trial court's order in such cases under an abuse of discretion standard. An abuse of discretion will be found only where the decision is clearly against the logic and effect of the facts and circumstances before the court or the court has misinterpreted the law. We will not reweigh the evidence, and will view the evidence in the light most favorable to the appellee.

*In re Paternity of J.C.*, 819 N.E.2d 525, 527 (Ind. Ct. App. 2004) (citations omitted).

As discussed by both Mother and Father in their briefs, there is a statutory presumption in favor of a parent of a minor child who: "(1) has been making support payments and fulfilling other duties in accordance with a decree issued under [the dissolution, child support, or custody and parenting time statutes]; and (2) objects to the

proposed name change of the child.” Ind. Code § 34-28-2-4(d). This presumption does not apply here, as it can only apply to a noncustodial parent. *See Petersen v. Burton*, 871 N.E.2d 1025, 1028 (Ind. Ct. App. 2007). The noncustodial parent in this case, Father, did not oppose a name change but rather petitioned for one. In the absence of this presumption, Father was simply required to show to the trial court that a name change was in the best interests of S.A.S.

At the final hearing on Father’s petitions, Father argued that it would be S.A.S.’s best interests to have the same last name as her half-sister, who is only six months older than S.A.S. It is certainly possible that sharing the same last name will foster a familial connection between the girls and Father that will benefit all of them, including S.A.S. Because Mother’s nine-year-old son does not have the last name of Sprague, changing S.A.S.’s last name to Green will presumably not affect her relationship with her half-brother.

While S.A.S. will no longer share Mother’s last name, we have recognized before that “[i]t is reasonable to say, due to the nature of that relationship, that something such as a name will not affect significantly the mother-child condition.” *In re Paternity of Tibbitts*, 668 N.E.2d 1266, 1269 (Ind. Ct. App. 1996), *trans. denied* (1997). Additionally, at the time of the hearing, Father had complied with the trial court’s order of November 17, 2006, by making consistent weekly support payments of \$94.00, and exercising parenting time with S.A.S. With this evidence before it, the trial court acted within its discretion by granting Father’s petition for name change.

Affirmed.<sup>2</sup>

DARDEN, J., and MAY, J., concur.

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<sup>2</sup> Mother asks us to review two additional issues: (1) that the trial court erred in setting aside the paternity affidavit because Father failed to challenge the affidavit in a timely manner, pursuant to Indiana Code Section 16-37-2-2.1(i), and (2) that the trial court erred in granting Father's petition for name change because he did not publish notice of the petition as required by Indiana Code Section 34-28-2-3. We note that Mother did not raise these issues before the trial court, nor did she present a cogent argument in her appellate brief on either of these points. Thus, these issues are waived for review. *See In re Change of Name of Fetkavich*, 855 N.E.2d 751, 754 (Ind. Ct. App. 2006) (father's contention that trial court lacked jurisdiction over case because mother failed to timely publish first notice is waived where father raises the issue for first time on appeal); Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]")