STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2153

In the Matter of the Application of: Hollis John Larson for a Change of Name.

Filed December 30, 2019
Affirmed
Reyes, Judge

Carlton County District Court
File No. 09-CV-18-1001

Hollis J. Larson, Moose Lake, Minnesota (pro se appellant)

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

In this appeal from a district court decision to deny an application for a name change, pro se appellant argues that the district court (1) abused its discretion by determining that appellant requested the name change based on impermissible factors and erred by (2) holding that the name change did not infringe on his constitutional rights; (3) not drawing an adverse inference against the prosecuting authority; (4) not granting appellant's motion for judgment as a matter of law or judgment on the pleadings; and (5) granting

appellant's in forma pauperis (IFP) petition only to conclude no constitutional infringement. We affirm.

FACTS

Appellant Hollis John Larson has been indeterminately civilly committed to the Minnesota Sex Offender Program as a sexually dangerous person since 2008. *See In re Civil Commitment of Larson*, No. A08-1188, 2009 WL 1049171 (Minn. App. Apr. 21, 2009), *review denied* (Minn. June 30, 2009). He professes a religious belief involving Hinduism, Taoism, Buddhism, and Agnosticism. He is seeking to change his name to "Better Off Dead" in accordance with that religious belief and to express his freedom of speech.

Anoka County (the county), the authority that prosecuted his past sexual crimes, objected to appellant's name-change application under Minn. Stat. § 259.13 (2018). The county argued that allowing appellant to change his name would burden public safety and requested that the district court deny the application. Appellant presented his case pro se to the district court on November 15, 2018. The county waived its right to appear at trial.

The district court denied appellant's motion for a name change, finding that (1) appellant failed to show that prohibiting him from changing his legal name would infringe on a constitutional right and (2) his name change was misleading and confusing. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by concluding that appellant's name-change application violated the conditions set out in Minn. Stat. § 259.13, subd. 3.

Appellant argues that the district court abused its discretion because he does not intend to defraud or mislead, and because his new and old names will be inextricably linked, changing his name would not compromise the public's ability to maintain or access his records. We are not persuaded.

This court reviews an order denying a name change for an abuse of discretion. *In re Welfare of C.M.G.*, 516 N.W.2d 555, 561 (Minn. App. 1994). A district court abuses its discretion if its findings of fact are unsupported by the record, if it improperly applies the law, or if it resolves the matter in a way that is "against logic and the facts on record." *Foster v. Foster*, 802 N.W.2d 755, 757 (Minn. App. 2011) (quotation omitted).

Section 259.13 outlines the process by which a convicted felon can change his name. When appellant applied for a name change, the county had the right to file an objection, which it did. Minn. Stat. § 259.13, subd. 2. Following the county's objection, the district court could not grant appellant's request unless he filed a motion for an order permitting the requested name change. *Id.*, subd. 3. Appellant had the burden to prove by clear and convincing evidence that the name-change request "is not based upon an intent to defraud or mislead, is made in good faith, will not cause injury to a person, and will not compromise public safety." *Id.* Appellant testified, but cannot establish, that he did not intend to defraud or mislead and stated in his motion for a name change that "virtually every/any document created by his current captors with the name 'Better Off Dead' will

also state 'fka Hollis John Larson.'" Because his new and old names would be inextricably linked, appellant contends that changing his name would not compromise the public's ability to maintain or access his records. In its objection, the county argued that granting appellant's name change would compromise public safety because it would interfere with the state's ability to maintain his records and retain identification information for use in future investigations or prosecutions, and it would prevent the public from having immediate access to his criminal records.

The district court found that "[c]hanging one's name to a common expression such as 'Better Off Dead' has every potential to be misleading, [and] confusing," triggering a circumstance prohibited by the statute. *See* Minn. Stat. § 259.13, subd. 3. Moreover, the district court upheld the prosecution's objection, which focused exclusively on public safety. *See id.* We can infer from the district court's order that it agreed that granting appellant's name change would burden public safety, and it did not find appellant credible. We defer to the district court's determinations of credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because "Better Off Dead" is an idiom and contains no pronouns, it is an inherently misleading name. *See In re Boone*, 924 N.W.2d 44, 47 (Minn. App. 2019) (noting district court always has discretion to deny a name-change petition if it finds intent to defraud or mislead). Moreover, we are not convinced that appellant will identify himself as both "Better Off Dead" and his current name going forward. Appellant failed to meet his burden to show by clear and convincing evidence that his name-change request is not based on an impermissible factor. We conclude that the district court did not abuse its discretion by denying the name-change request.

II. The district court provided sufficiently particularized findings and did not err in concluding that denying the name change would not infringe on appellant's constitutional rights.

Appellant argues that the denial of his name-change application infringes on his constitutional rights of freedom of religion and freedom of speech, violating section 259.13, subdivision 4, which requires granting a name change if not doing so would infringe on a constitutional right. We disagree.

We review the denial of a name-change application for an abuse of discretion, but we review the distinct question of whether denying a name-change application infringes on a constitutional right de novo. *See State v. Pedersen*, 679 N.W.2d 368, 372-73 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004) (stating that we review de novo whether application of a statute is unconstitutional as applied). Particularized findings of fact are necessary to enable appellate review, to ensure that the district court properly applied the law, and to assure the parties that the district court fairly considered the issues. *See Reyes v. Schmidt*, 403 N.W.2d 291, 293 (Minn. App. 1987).

A. Freedom of religion

The Minnesota Supreme Court employs a heightened "compelling state interest balancing test" when determining whether a challenged law infringes on or interferes with religious practices. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992). This test has four prongs: (1) whether the objector's beliefs are sincerely held; (2) whether the state regulation burdens the exercise of religious beliefs; (3) whether the state interest in the regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means. *Id.* The *Hill-Murray* test involves both

questions of fact and law. To determine the first, second, and fourth factors, the district court must assess the sincerity and implications of appellant's religious beliefs. To determine the third factor, the district court must make a legal determination based on the statute and caselaw. We review mixed questions of fact and law for erroneous applications of law, but give discretion to the district court's factual findings and ultimate conclusion and review those conclusions under an abuse-of-discretion standard. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002).

Regarding the first factor, appellant described his religion as including the belief that the only way for him to "achieve reconciliation with the divine" is to escape the cycle of birth, life, death, and rebirth by being and remaining dead. Hence, the name "Better Off Dead." After hearing appellant's testimony, the district court determined that "[p]etitioner failed to show that prohibiting him from changing his legal name to 'Better Off Dead' infringes on a constitutional right." The court elaborated that "[t]he expression 'Better Off Dead' does not have a known connection to any particular religious faith or belief." The district court's finding was sufficiently particularized because it implies that the *Hill-Murray* factors weighed against appellant.[1] We infer from the court's conclusion that it did not find appellant credible and as a result did not believe he sincerely held his belief. We defer to this credibility determination. *Sefkow*, 427 N.W.2d at 210; *Hill-Murray*, 487

[1] While we conclude that the district court presented sufficient findings to support its decision in this case, we encourage district courts to make detailed findings in their analysis of the *Hill-Murray* factor test as opposed to relying solely on a form order.

N.W.2d at 865 ("It is . . . proper for the courts to inquire as to whether a belief is held in good faith."). State regulation cannot burden an insincere belief, so the second factor also is not met. As a result, we need not determine the third or fourth *Hill-Murray* factors.[2] The purpose of the *Hill-Murray* balancing test is to protect religious freedom by restricting government action, but if there is no genuine religious belief against which to weigh the state's interest, the outcome of such an incomplete balancing test is inconsequential.[3] We conclude that the district court did not improperly reject appellant's freedom-of-religion argument.

B. Freedom of speech

Appellant described his desired name change "as an exercise of his fundamental right to free speech and freedom of expression." He testified that the name change is "a peaceful form of protest against [the government], all these entities that caused me this pain and suffering and leading to my . . . philosophy in life." Appellant elaborated that changing

[2] Even if we were to weigh these factors, we note that the supreme court has acknowledged the state's interest in public safety as a compelling government interest. *See, e.g.*, *State v. Hershberger*, 462 N.W.2d 393, 398-99 (Minn. 1990); *see also State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000) (acknowledging that the public has a "compelling interest" in maintaining an individual's record of violent offenses). Furthermore, the only available options for the state were to accept or deny the name-change petition, meaning that denying the petition was the least restrictive means to uphold public safety.

[3] Though no Minnesota state case addresses this logical proposition, we find persuasive caselaw from the U.S. District Court for the District of Minnesota. *See, e.g.*, *Brooks v. Roy*, 881 F. Supp. 2d 1034, 1039, 1053-54 (D. Minn. 2012) (describing sincerely held religious belief as "threshold issue" in religious freedom claims, "whether under the United States or Minnesota Constitutions or under RLUIPA" and describing the four prongs in *Hill-Murray* as "essentially the same analysis undertaken with regards to a RLUIPA claim").

his name would be the best way for him to officially communicate his life philosophy to society.

The district court determined that "[appellant] failed to show that prohibiting him from changing his legal name to 'Better Off Dead' infringes on a constitutional right." Implicit in this conclusion is the belief that denying the name change did not burden appellant's freedom of speech. Appellant failed to provide specific authority regarding the free-speech right to change one's name under these circumstances, and there appears to be none. We conclude that the district court did not improperly reject appellant's freedom-of-speech argument and did not abuse its discretion by denying his name-change petition.

III. The district court did not abuse its discretion by declining to make an adverse inference from the county's decision not to appear at the motion hearing or present additional documents or evidence.

Appellant contends that the district court should have made adverse inferences against the county. We are not persuaded.

Appellant never made this argument at trial and forfeits it on appeal. This court may only consider issues presented to and assessed by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Even so, appellant's argument is misguided. The district court has the discretion to make an adverse inference. *See, e.g., Connolly v. Nicollet Hotel*, 104 N.W.2d 721, 730 (Minn. 1960) (discussing district court's discretion to instruct jury to make adverse inference regarding failure to call witness).

Adverse inferences apply when there is a failure to testify, call a witness, or produce evidence. *Id.* at 721, 730-731. Appellant fails to identify authority entitling him to an adverse inference under these facts. Section 259.13 does not require the county to appear

at trial to supplement its written objection, nor does it place the burden of providing sufficient evidence to rebut appellant's contention of constitutional infringement on the county. As such, the district court did not abuse its discretion by declining to draw an adverse inference against the county.

IV. The district court did not err by declining to address appellant's motion for judgment as a matter of law or judgment on the pleadings.

Appellant argues that he provided sufficient evidence that denying a name change would infringe on his constitutional rights, and because the district court must accept the facts he presented in his pleadings, it must accept his motion. We disagree.

Appellant never made this argument at trial and forfeits it on appeal. *See Thiele*, 425 N.W.2d at 582. Nevertheless, appellant's argument fails on the merits. "Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion." *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006–OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

A. Judgment as a matter of law

We review a district court's decision on a motion for judgment as a matter of law (JMOL) de novo. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018) (citation omitted).

Appellant misapplies the JMOL motion standard. The motion applies only to a jury trial, not to a court trial. *Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 369 (Minn. App. 2017), *aff'd on other grounds*, 909 N.W.2d 550 (Minn. 2018), *reh'g denied* (May 3, 2018).

Because no jury trial occurred here, the district court did not need to consider the JMOL motion.

B. Judgment on the pleadings

"We review a district court's decision on a rule 12.03 motion de novo to determine whether the complaint sets forth a legally sufficient claim . . . ." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted); *see also* Minn. R. Civ. P. 12.03. Judgment may not be granted on the pleadings when there are any unresolved questions of fact raised by the pleadings. *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. App. 1986).

Here, the district court had to resolve factual issues including appellant's rationale for seeking a name change, whether granting it would burden public safety, whether denying appellant's name-change application infringed on his constitutional rights, whether appellant's beliefs were genuine, and whether denying a name change would prevent him from expressing these beliefs. *See Hill-Murray*, 487 N.W.2d at 865. Because there were questions of fact outstanding, the district court did not err by denying appellant's rule 12.03 motion.

V. The district court did not abuse its discretion by granting appellant's motion to proceed IFP and subsequently denying his petition to change his name for lack of constitutional infringement.

Appellant argues that by granting his IFP petition, the district court conceded constitutional infringement of his rights because the statute allows proceeding IFP "only when the failure to allow the name change would infringe upon a constitutional right." Minn. Stat. § 259.13, subd. 5. We are not persuaded.

Appellant never made this argument at trial and as a result forfeits it on appeal. *See Thiele*, 425 N.W.2d at 582. Even if we were to consider appellant's argument, it is misguided. District courts have broad discretion to determine whether a litigant should pay expenses under IFP statutes. *See Thompson v. St. Mary's Hosp. of Duluth*, 306 N.W.2d 560, 563 (Minn. 1981); *see also* Minn. Stat. § 563.01, subd. 3 (2018). Because determining the means to pay costs is a question of fact reviewed for clear error, and determining infringement on appellant's constitutional rights is a mixed question of law and fact, granting an IFP petition here is a mixed question of law and fact. This court reviews mixed questions of law and fact for erroneous application of law but reviews the district court's ultimate conclusion under an abuse-of-discretion standard. *Porch*, 642 N.W.2d at 477.

Appellant assumes that if the district court granted his IFP status, then it must conclude that denying the name change would infringe on his constitutional rights. But a district court's order on a pretrial motion, and its implications, are subject to revision before the district court issues a final ruling. *See* Minn. R. Civ. P. 54.02. We conclude that the district court acted within its discretion by granting the IFP and subsequently denying the name change for lack of infringement on appellant's constitutional rights.

Affirmed.