STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0314

In the Matter of the Application of
Debora Lee Neu, Brian Joseph Neu for a Change of Name of Minor.

Filed January 21, 2020
Affirmed
Segal, Judge

Stearns County District Court
File No. 73-CV-18-5779

Enamidem Celestine Okon, Moose Lake, Minnesota (pro se appellant)

Debora and Brian Neu, St. Cloud, Minnesota (pro se respondents)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal, Judge.

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

SEGAL, Judge

In this appeal from a district court's grant of respondent-grandparents' request to change the surname of appellant-father's child, father argues that the district court (1) erred by denying father's request for an evidentiary hearing; (2) failed to adequately address the factors listed in *In re Application of Saxton*, 309 N.W.2d 298, 301 (Minn. 1981), for assessing whether to change a child's name; and (3) made findings of fact not supported by the record. We affirm.

FACTS

The child in this case was born in January 2010. The child's mother died when the child was approximately six years old. Appellant-father was convicted of aiding and abetting criminal sexual assault and sentenced when the child was about three years old. The child moved in with respondent-maternal-grandparents when she was approximately five years old and has continued to live with them since that time. Grandparents were granted guardianship of the child on June 14, 2016.

On July 10, 2018, grandparents petitioned the district court to change the child's surname from father's to their surname. A hearing was held on October 26, 2018. Grandparents appeared with the child and argued for the name change, maintaining that it was important for the child to share their surname. The child also spoke with the district court judge and indicated that it was her preference to change her surname because her father had done "something very wrong." Father did not appear before the district court, but did receive notice and filed a written objection.

The district court issued its order granting the application for a name change on November 27, 2018. In its order, the district court found that the name change was appropriate because it was the child's preference to change her surname, there would be little effect on the child's relationship with father because she has little to no contact with him, and there may be harassment or embarrassment associated with father's surname because of his conviction.

On December 7, 2018, father moved for a new order, a new hearing and amended findings of fact, arguing that grandparents had no legal or statutory right to initiate the name-change proceedings and that there was no clear and compelling evidence to support the name change. Father also maintained that the district court erred when it failed to issue "a writ" that would require him to "testify in person, present [a] defense, rebut[] evidence and question witnesses." The district court denied father's motions in a detailed order on January 16, 2019. Father appeals.

D E C I S I O N

Father challenges the district court's grant of an application for a name change. He also argues that the district court erred by failing to require that he be physically present in the courtroom during the October 26, 2018 hearing. Grandparents did not file a brief in this appeal and the appeal proceeded under Minn. R. Civ. App. P. 142.03.

I. The district court did not abuse its discretion by concluding that it was in the child's best interests to change the child's surname.

This court reviews a district court's grant of a request to change a minor child's name 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 when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute 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).

Minnesota Statutes sections 259.10-.11 (2018) govern the procedures for changing a name. Section 259.10, subdivision 1, provides that if a name change involves a minor, the application must be made by the child's guardian and that both of the child's parents must be provided notice. A district court shall grant an application for a name change involving a minor unless the court finds the change is not in the best interests of the child. Minn. Stat. § 259.11(a); *Foster*, 802 N.W.2d at 757. A best-interests-of-the-child analysis concerning a name change includes the consideration of the following factors:

> (1) how long the child has had the current name, (2) any potential harassment or embarrassment the [child may experience from the present or proposed surname], (3) the child's preference, (4) the effect of the change on the child's relationship with each parent, and (5) the degree of community respect associated with the present and proposed names.

C.M.G., 516 N.W.2d at 561 (citing *Saxton*, 309 N.W.2d at 301). If a parent objects to a name change, a district court should exercise "great caution" and grant the name change "only where the evidence is clear and compelling that the substantial welfare of the child necessitates such change." *Saxton*, 309 N.W.2d at 301 (quoting *Robinson v. Hansel*, 223 N.W.2d 138, 140 (Minn. 1974)).

Father argues that the district court abused its discretion because it did not properly consider or weigh the five factors when granting grandparents' request for the name change. We conclude that the district court acted within its broad discretion and correctly applied the requisite factors. On the first factor, the district court found that the child has used the father's surname since birth. On the second factor, the district court examined the potential harassment and embarrassment associated with the father's surname because of

father's conviction. The court noted that father's crime was "sexual in nature" and that grandparents sought to protect the child "from difficulties that could come from keeping" father's surname.

With respect to the third factor, the district court found that it is the child's preference to change her surname. The court noted that the child was eight years old and wanted to change her surname because she wanted to share the same name as her extended family. The district court also indicated that she desired to change her name because "her father did something bad."

In analyzing the fourth factor, the district court found the name change would "not greatly affect the preservation and development of the child's relationship with" father because he is incarcerated and has little contact with the child. The court further found there would be little effect on the child's relationship with father if the child's name was changed.

Finally, the court analyzed the degree of community respect associated with grandparents' surname. The district court noted that there was a high degree of respect for grandparents' surname because they have lived in the community for several years, have strong military ties and significant extended family members. Accordingly, the district court granted the application for a name change.

We conclude that the district court did not abuse its discretion by granting the application for a name change. The record supports the district court's determination that there were clear and compelling reasons for the change. Grandparents' testimony indicates that father has not played a major role in the child's life since his incarceration, with the

only contact being a five-minute weekly telephone conversation. This testimony supports the finding that the name change would have little effect on the child's relationship with father. The record further indicates that father has been convicted of aiding and abetting criminal sexual conduct and that grandparents were concerned that the child would be ashamed or embarrassed as she grew older and learned of father's conviction, thus supporting the district court's determination that there may be embarrassment or harassment associated with father's surname.

Grandparents' testimony regarding their standing in the community, including their military background, supports the district court's determination that there is a degree of respect associated with their surname. Finally, the child's testimony before the district court supports the district court's determination that it was her preference to change her surname. Because evidence in the record supports the district court's determination that there were clear and compelling reasons for the name change, we conclude the district court did not abuse its discretion.

Father raises several additional arguments asking us to reweigh the evidence presented to the district court on the question of whether there were clear and compelling reasons to grant the application for a name change. He suggests that the child's preference for her name change was "tainted by manipulative conduct" and that there is a great deal of respect associated with his surname. Under an abuse-of-discretion standard of review, we are not permitted to reweigh evidence, but rather are limited to evaluating whether the record supports the district court's findings and whether the court properly applied the law.

Dobrin v. Dobrin, 569 N.W.2d 199, 202 (Minn. 1997). Since we conclude that the findings are supported by the record, these arguments fail.

II. The district court did not err by failing to require father to be present at the hearing on the application for a name change.

Father also argues that the district court erred by failing to issue a writ that would require him to be present in the court during the October 26, 2018 hearing so that he would be able "to testify in person, present [a] defense, rebut[] evidence, and question witnesses." In support of this argument, father cites Minn. R. Civ. P. 50.02 and 59.01. Both sections relate to motions seeking a new trial. However, we have previously stated that proceedings commenced "independently of a pending action by petition or motion" are not trials, but are special proceedings. *County of Stearns v. Schaaf*, 472 N.W.2d 191, 192 (Minn. App. 1991). The request for a name change is commenced by filing an application, independent of a pending action. *See* Minn. Stat. § 259.10, subd. 1. The name-change proceeding is, thus, a special proceeding, rather than a trial. And the two rules cited by father, both of which apply to trial proceedings, are therefore not relevant to this case.

Father's argument also fails on the merits. Minnesota Statutes section 259.10, subdivision 1, does not require that a district court issue a writ requiring a parent to be present at a hearing on an application for a name change. Rather, all that is required is that a parent be provided notice, which father acknowledged he received. Further, there is nothing in the record to support father's contention that he even requested a writ to be present at the hearing, or that the district court denied such a request. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts address only those

questions previously presented to and considered by the district court). Accordingly, father has failed to demonstrate an error by the district court.

Affirmed.