STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0456

In the Application of Jose Luis Gutierrez
for a change of legal name to Lazarus Twist.

Filed December 19, 2022
Affirmed
Wheelock, Judge

Carlton County District Court
File No. 09-CV-21-336

Jose Luis Gutierrez, Moose Lake, Minnesota (pro se appellant)

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent Dakota County)

John J. Choi, Ramsey County Attorney, Jill Gerber, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the denial of his application for a name change. We conclude that (1) denial of the name change does not burden the exercise of appellant's religious beliefs and maintains the state's compelling interest in public safety, and (2) the district court did not abuse its discretion in determining that appellant did not meet his burden to

prove that the name change will not compromise public safety. For those reasons, we affirm.

FACTS

Appellant Jose Luis Gutierrez was civilly committed to the Minnesota Sex Offender Program (MSOP) indeterminately as a sexually dangerous person and as a sexual psychopathic personality in 2018. *In re Civ. Commitment of Gutierrez*, No. A18-1290, 2018 WL 6729833 (Minn. App. Dec. 24, 2018), *rev. denied* (Minn. Feb. 19, 2019). Gutierrez's criminal history includes felony convictions for terroristic threats and twice violating domestic-abuse orders for protection in Dakota County; third-degree criminal sexual conduct, terroristic threats, and false imprisonment in Ramsey County; and fifth-degree assault and false imprisonment in Hennepin County.

In February 2021, Gutierrez applied to the district court to legally change his name to Lazarus Twist. Respondent Dakota County filed an objection to the name change on the bases that the name change was being made with the intent to defraud or mislead and would compromise public safety. Respondent Ramsey County also filed an objection on the same grounds as Dakota County. Gutierrez filed a written response to the counties' objections.

In November 2021, Gutierrez represented himself at a hearing on the matter and argued that his name-change request was made in good faith and with no intent to defraud or mislead. He further argued that there was "no legitimate governmental interest" in the counties' objections on the basis of public safety because he is detained in a secure treatment facility and will only be released if a court deems him not to be a risk to the public. Gutierrez described his request as a "religious name change" and argued that denial

of the request would violate his "constitutional rights to be recognized as a new person and in spirit." He explained that the first name is a reference to "Lazarus" as a signifier of coming back from the dead that is contained in the Bible, the holy scripture of the Christian religion. He explained that the last name, Twist, is both an "acronym" for "the will of supreme truth" and a reference to the literary character Oliver Twist from a novel by Charles Dickens. The counties waived their appearance at the hearing.

Following the hearing, the district court denied Gutierrez's name-change application, filing an order with a memorandum of its findings. Gutierrez appeals.

DECISION

A convicted felon's name-change request is governed by statute. Minn. Stat. § 259.13 (2022). Under the statute, a prosecuting authority that obtained a conviction of the person seeking the name change has the right to object to the request on the basis that it (1) aims to defraud or mislead, (2) is not made in good faith, (3) will cause injury to a person, or (4) will compromise public safety. *Id.*, subd. 2. The burden then falls to the person requesting the name change to prove by clear and convincing evidence that the 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.*, subd. 3. The statute requires, however, that the district court must grant the name change "if failure to allow it would infringe on a constitutional right of the person." *Id.*, subd. 4.

This court generally reviews a district court's denial of a name change for an abuse of discretion. *In re Welfare of C.M.G.*, 516 N.W.2d 555, 561 (Minn. App. 1994). But the question of whether denying a name-change application infringes on a constitutional right

is reviewed de novo. *See State v. Pedersen*, 679 N.W.2d 368, 372-73 (Minn. App. 2004), *rev. denied* (Minn. Aug. 17, 2004) (stating that we review de novo whether a statute is unconstitutional as applied).

Gutierrez argues that the district court (1) erred by failing to consider his protected constitutional right to freely express his religion through his name change and (2) abused its discretion by determining that he failed to meet his burden to prove that his name change will not compromise public safety. We review each issue in turn.

I. The district court properly considered the *Hill-Murray* factors to determine that denying Gutierrez's name change did not violate his constitutional rights.

Gutierrez first argues that the district court erred because it "failed to consider" the four-factor compelling-state-interest balancing test and whether his religious beliefs were sincerely held. We disagree.

The United States and Minnesota Constitutions protect the right to practice one's religion. U.S. Const. amend. I; Minn. Const. art. I, § 16. To determine if that right has been violated, Minnesota courts apply the compelling-state-interest balancing test. *Hill-Murray Fed'n of Tchrs. v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992). The balancing test has four prongs: (1) whether the religious belief is "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 regulation "uses the least restrictive means." *Id.*

The district court's order addressed each of the balancing test's four prongs. First, the district court found Gutierrez's religious beliefs to be sincere,[1] stating that it "assume[d]" as much because Gutierrez stated that the requested name change is based on his religious practice. The district court noted Gutierrez's explanation of the religious references contained within the chosen name and observed that his "degree of thought and knowledge was impressive."

In addressing the second prong, however, the district court found that Gutierrez failed to show how denial of his request burdens his exercise of his religious beliefs. Specifically, Gutierrez provided no evidence demonstrating that he "must change his name to 'Lazarus Twist'" in order to "practice his religion as he desires."

Those challenging the application of a law under the second *Hill-Murray* factor "have the burden of establishing that challenged provisions infringe on their religious autonomy or require conduct inconsistent with their religious beliefs." *Edina Cmty. Lutheran Church v. State*, 745 N.W.2d 194, 204 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). Gutierrez's written response to the counties' objections alleges that his "religious beliefs are embedded in his name change," and although he argued that denying the request would infringe on his right to be "recognized as a new person and in spirit," he

[1] Gutierrez seems to argue on appeal that the presence of a sincerely held religious belief is an overriding factor or one that is weighted more heavily in the balancing test. Gutierrez cites no relevant authority for this proposition; rather, he directs us to cases such as *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570 (2d Cir. 2002), and *Patrick v. LeFevre*, 745 F.2d 153 (2d Cir. 1984), in which the issue of a sincerely held religious belief was contested, and in which the factual circumstances and legal issues differ from those here.

bases this assertion on the facts that he "really like[s]" his new name and that it "has a very deep meaning." Beyond this, Gutierrez provides no examples of how denial of his name change requires conduct inconsistent with his religion or risks interference with his religious beliefs or practice. *See Hill-Murray*, 487 N.W.2d at 866 (stating that remote assertions of interference with religious autonomy are insufficient to establish a burden on religious exercise). Thus, Gutierrez's name-change request fails to satisfy the second prong of the *Hill-Murray* compelling-state-interest balancing test.

Further, on the third prong, the district court found the state's interest to be overriding and compelling due to the public's interest in ensuring that information about Gutierrez's criminal history is readily available. In so finding, the district court looked to Gutierrez's "serious history of felony-level offenses spread out over a decade." The record supports the district court's finding here.

Appellate courts have upheld a district court's recognition of a compelling public interest in maintaining a defendant's record of violence. *See, e.g.*, *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). Gutierrez has multiple convictions that span many years for violent offenses including criminal sexual conduct, assault, terroristic threats, false imprisonment, and violations of orders for protection. Additionally, in an earlier case in which we affirmed Gutierrez's civil commitment as a sexually dangerous person and as a sexual psychopathic personality, we concluded that the evidence supported the district court's finding that Gutierrez is likely to reoffend and is dangerous to others. *Gutierrez*, 2018 WL 6729833, at *5-6. The state has a compelling interest in public safety that is implicated if Gutierrez is permitted to change his legal name to Lazarus Twist because the

name change will make it more difficult to access records of his criminal history. We conclude that the district court properly considered this compelling interest and determined it to be overriding when denying Gutierrez's name-change application.

On the fourth and final prong, the district court found that no less-restrictive alternative exists. The only options available under the statute are to grant or deny the name change.[2] Minn. Stat. § 259.13, subds. 3, 4. In sum, we conclude that the district court considered the four-factor balancing test as required and that denial of the name change does not impermissibly infringe on Gutierrez's constitutional rights because it does not burden his exercise of his religious beliefs, the state's interest in protecting public safety is compelling and overriding, and no less-restrictive means other than denying the request are available.

II. The district court did not abuse its discretion in determining that Gutierrez failed to meet his burden to prove that his name change will not compromise public safety.

Gutierrez further argues that the district court should have found that he met his burden to prove that his name change should be granted over the counties' objections. We review a district court's denial of a name change for an abuse of discretion. *C.M.G.*, 516 N.W.2d at 561. "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is

[2] Gutierrez argues that the district court improperly "injected itself" in the matter by stating in the order that "[p]erhaps if Applicant can remain crime free for several more years this can be revisited." We understand this statement to refer to the fact that there is no statutory restriction on Gutierrez's ability to apply to change his legal name at another time and under other circumstances when he may be able to meet his statutory burden. *See* Minn. Stat. § 259.13, subd. 3.

against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

Minn. Stat. § 259.13, subd. 3, prohibits a district court from granting a name change over the objection of the prosecuting authority unless the person seeking the name change proves by clear and convincing evidence that the request (1) is not based on an intent to defraud or mislead, (2) is made in good faith, (3) will not cause injury to a person, and (4) will not compromise public safety. Here, the district court found that Gutierrez did not prove by clear and convincing evidence that the name change will not cause harm to a person and will not compromise public safety. It therefore determined that Gutierrez did not meet his statutory burden.

Gutierrez first argues that the counties did not provide proof to support their objection on the basis that granting his name change will compromise public safety. Gutierrez misunderstands how section 259.13 operates. Under the statute, once an objection is filed, the burden to prove that the change *will not* compromise public safety is placed on the person requesting the name change. Minn. Stat. § 259.13, subd. 3. Thus, the burden was on Gutierrez rather than the counties. Gutierrez goes on to assert that he met his burden, "showing by clear and convincing evidence that [his] name-change request is not based on an impermissible factor." Our review of the record does not support this claim.

At the hearing, Gutierrez testified that because he is detained indefinitely at MSOP, he does not pose a public-safety concern. The district court considered in its order that Gutierrez is currently committed to a secure facility but recognized that Gutierrez's status

could change. In contesting the counties' objections, Gutierrez did not provide any other evidence to the district court showing that the requested name change will not compromise public safety.[3] The district court reviewed the history and nature of Gutierrez's offenses in finding that Gutierrez did not meet his "relatively heavy burden," a finding that is supported by the record. We thus conclude that the district court did not abuse its discretion in determining that Gutierrez did not prove by clear and convincing evidence that changing his name to Lazarus Twist will not compromise public safety and in subsequently denying his name-change application.

Affirmed.

[3] On appeal, Gutierrez asserts that we "should be convinced" he will "identify himself as both 'Lazarus Twist' and his current name going forward." However, Gutierrez made no such assertion below. Further, Gutierrez's reply brief introduces the assertion that requests for name changes by other clients who are committed to MSOP have been granted. Any such information is not included in the record, was not argued below, and is therefore outside the scope of our review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating appellate courts generally will not consider matters not argued to and considered by the district court); *see also* Minn. R. Civ. App. P. 128.02, subd. 3 (the reply brief must be confined to new matter raised in respondent's brief); *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (stating that generally, issues not raised or argued in appellant's principal brief cannot be raised in a reply brief).