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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2275**

In the Matter of the Application of Kathryn Ruth Loew,
on behalf of a Minor for a Change of Name

**Filed July 18, 2011
Affirmed
Connolly, Judge**

Dakota County District Court
File No. 19AV-CV-10-933

Kathryn R. Loew, Lakeville, Minnesota (pro se respondent)

Andrew J. Howard, Howard & Kieffer Law, LLC, Maple Grove, Minnesota (for
appellant)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and
Muehlberg, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's decision to grant respondent's motion to change the surname of the parties' minor child. Because the district court did not err in applying the *Saxton* factors and any evidentiary errors by the district court were not prejudicial to appellant, we affirm.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Respondent-mother Kathryn Loew filed an application for a name change in March 2010 on behalf of her minor son, born on June 7, 2009. Mother wanted to change the son's name from appellant-father's surname, Budd, to her surname, Loew. Father objected to the name change on grounds that it was not in the best interests of the child. Mother and father are not, and have never been, married. Mother lives in Minnesota and is son's primary custodial parent. Father lives in Florida.

A hearing was held in Dakota County in May 2010. Father testified in opposition to changing the child's surname to Loew. Mother testified in support of the change. The district court concluded that it was in the child's best interests to change the child's surname. Father filed a motion for a new trial. The district court denied the motion and issued an order with amended findings. Father appeals, challenging the district court's evidentiary rulings at the hearing and seeks a new hearing on the name change.

DECISION

The decision to admit or exclude evidence is within the district court's broad discretion and will not be disturbed absent "some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at 46 (quotation omitted). "An evidentiary error is not prejudicial unless it might reasonably have influenced the trier of fact and

changed the result of the trial.” *Melius v. Melius*, 765 N.W.2d 411, 418 (Minn. App. 2009) (citing *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006)).

I. Father is not entitled to a new hearing because he has failed to demonstrate prejudicial error.

A district court “shall” grant an application to change a child’s name unless “the court finds that such name change is not in the best interests of the child.” Minn. Stat. § 259.11(a) (2010). In determining the child’s best interests, “the court may consider, but is not limited to” five factors set forth in *In re Saxton*, 309 N.W.2d 298, 301 (Minn. 1981). *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). The *Saxton* factors are: “(1) how long the child has had the current name; (2) any potential harassment or embarrassment the change might cause; (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.” *Id.* (citing *Saxton*, 309 N.W.2d at 301).

Father argues that the district court abused its discretion when it applied a different evidentiary standard to mother during the hearing on the name change and allowed her to introduce irrelevant evidence and did not allow father to introduce irrelevant evidence in response. He claims that the different evidentiary standards applied during the hearing prejudiced him because mother’s irrelevant evidence “colored and affected the [district] court’s decision throughout.” Father contends that the prejudicial, irrelevant evidence includes mother’s testimony about (1) the “poor interpersonal relationship” between mother and father; (2) father’s absence at son’s birth; (3) the safety features within the

parties' homes; and (4) father's and mother's parenting styles. As applied to the five factors used in determining whether a name change is in a child's best interests, father is correct that this evidence is not relevant. *See* Minn. R. Evid. 401 (defining "relevant evidence" as evidence that tends to make the existence of any fact of consequence more or less probable than it would be without the evidence).

In responding to father's objection to the different evidentiary standards at trial, the district court stated that it permitted mother to introduce some evidence that it did not think was relevant because she was appearing pro se, but did not permit father to introduce irrelevant evidence in response because he was represented by counsel. Courts have a duty to allow reasonable accommodation to pro se litigants so long as no prejudice results. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). Father acknowledges that reasonable accommodations are allowed for pro se litigants, but argues that the district court's accommodation prejudiced him because it relied on the irrelevant evidence in determining that the name change was in his son's best interests. Father's argument is ultimately unpersuasive, however, because the district court's order reflects its consideration of the appropriate factors and its findings under the appropriate factors support the court's determination that the name change is in the son's best interests and were made without reliance on any irrelevant evidence. Thus, any error by the district court in admitting evidence was harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

A. The length of time the child has had the current name

The district court found, at the time of trial, that the son had the surname Budd since his birth, which was a period of less than 12 months. This is not a long period of time, supports the name-change determination, and does not reflect consideration of any irrelevant evidence.

B. Any potential harassment or embarrassment the change might cause the child

The district court recognized that children prefer to have the same name as the parent with whom they grow up and found that “if the [son]’s name is not changed, there may be some confusion and possible embarrassment to the child when the child is identified as having a different surname from his mother, whether that be at school or any other setting where the child has to explain why his name is different from his mother, the primary custodial parent.” This finding supports the name-change determination and does not reflect consideration of irrelevant evidence.

C. The child’s preference

The district court found that the son “is not of a suitable age to express a preference with respect to his surname” and therefore this factor is neutral. This finding does not rely on irrelevant evidence.

D. The effect of the change on the child’s relationship with each parent

The district court found that “[c]hanging the [son]’s name would provide more consistency for the child” in his relationship with his mother because she is the son’s primary custodial parent. It also found that “[t]here is no evidence that a change in the

child's name would result in a bond between the [son] and the father being weakened or broken" or "discourage a positive relationship with the [son]'s father." These findings support the name-change determination and do not rely on irrelevant evidence.

E. The degree of community respect associated with the present and proposed names

The district court found that this factor was neutral because "[n]either the present or proposed surname conveys any particular suggestion of respect or embarrassment within the community." This finding does not rely on irrelevant evidence.

The weight of the factors supports the district court's determination that a name change is in the best interests of the son. Significantly, father does not challenge the district court's decision under a theory of insufficient evidence or claim that it is contrary to law. Because the district court's findings under the appropriate factors for determining the best interests of the child do not rely on irrelevant evidence and support its decision, the result of the hearing would not have changed absent the admission of irrelevant evidence. Father has failed to demonstrate prejudicial error; therefore, we deny his request for a new hearing.

II. The district court did not abuse its discretion when it did not allow father to introduce evidence about his motive for objecting to, and mother's motive for requesting, the name change.

Father argues that the district court abused its discretion when it did not admit evidence about the motives of each party either in support of or against the name change. We reject this argument because motive of the parents is not a factor to consider when determining the best interests of the child in a name-change action on behalf of a minor.

See Minn. Stat. § 259.11(a) (2010); *LaChapelle*, 607 N.W.2d at 166 (citing *Saxton*, 309 N.W.2d at 301). Because motive is not a factor to consider in determining the best interests of the child, the district court did not abuse its discretion by failing to admit evidence on motive.

Nevertheless, father did testify about his motive in objecting to son's name change. He testified that he wants his son to have the same surname he has because he doesn't "have any other children," and he's "the last of [his] family name." Mother also testified about her motive in requesting son's name change. She testified that she "want[s] her] son to grow up to have respect for his name and the family that has helped [her] to raise him . . . all of which has come from his mother that has cared for him from day one." Father does not explain why this testimony is insufficient to provide evidence of motive or how the outcome of the trial would have been different if he was allowed to introduce specific evidence of motive. Because father has failed to demonstrate prejudicial error, the district court's error, if any, in failing to admit evidence of motive does not require a new hearing.

Affirmed.