

[Cite as *In re E.G.*, 2018-Ohio-3800.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106807

IN RE: E.G.

[Appeal by E.W., Father]

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 14901816

BEFORE: Laster Mays, J., Stewart, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: September 20, 2018

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ANITA LASTER MAYS, J.:

{¶1} The question on appeal is whether the Cuyahoga County Juvenile Court has authority and jurisdiction to amend its final judgment entry in a custody proceeding to recognize that the mother is also known as the name listed on the child’s New York birth certificate. We find that it does under the facts of this case.

I. Background and Facts

{¶2} Ten year-old daughter E.G. was born to unmarried appellee M.G. (“Mother”) in the city of New York. Appellant E.W. (“Father”) is not named on the birth certificate. The New York Department of Children and Family Services was involved with Mother and E.G. due to Mother’s drug abuse.

{¶3} Mother and Father married in 2012, and the parties moved to Cuyahoga County. The parents divorced in December 2014, and Father was awarded custody of E.G.’s younger sibling. An action for custody of E.G. was already pending in the Cuyahoga County Juvenile Court due to the May 28, 2014 removal of E.G. from Mother’s custody by the Cuyahoga County Department of Children and Family Services (“CCDCFS”). The court awarded temporary custody of E.G. to the agency.

{¶4} After genetic testing confirmed Father’s paternity, the magistrate recommended awarding legal custody of E.G. to Father. On January 27, 2015, Father moved the juvenile court to adopt the paternity results and amend E.G.’s birth certificate. The motion was accompanied by the test results, proposed agreed entry, and birth certificate. On February 3, 2015, the juvenile court granted the motion, adopted the

agreed journal entry establishing paternity, and ordered that the New York City Office of Vital Records: (1) amend the birth certificate to add Father's name, (2) change E.G.'s last name to that of the Father, and (3) seal the original birth certificate to be released only by court order.

{¶5} Father, E.G., and the younger sibling moved to Medina County, Ohio. Mother returned to New York. Later in 2015, the Medina County Juvenile Court awarded legal custody of E.G. to Father's parents.

{¶6} Father's efforts to have the New York birth certificate amended were unsuccessful. Correspondence issued to Father on August 30, 2017, by the New York City Department of Health required that the Cuyahoga County Juvenile Court amend the February 3, 2015 journal entry to include Mother's name as it appears on the New York birth certificate. The second letter of Mother's first name in the journal entry differs from that on the birth certificate. The birth certificate lists a middle name but the journal entry does not. The New York agency refused to amend the birth certificate without the addition.

{¶7} On October 5, 2017, Father filed a motion with the juvenile court requesting that the entry be modified to reflect that Mother is also known by the name listed on the birth certificate. A copy of the New York letter was attached to the motion, along with the February 3, 2015 juvenile court's journal entry granting custody, the agreed judgment entry signed by Mother and Father, and the birth certificate. There was no opposition to Father's motion.

{¶8} On October 18, 2017, without a hearing, the magistrate denied the motion and determined that the juvenile court “is unable to verify that the finding [recognizing Mother’s name as listed on the birth certificate] would be correct.” Father subsequently filed motions: (1) for findings of fact and conclusions of law, (2) to set aside the magistrate’s order and/or objections to the magistrate’s order, and (3) requesting a hearing to introduce evidence verifying Mother’s alias.

{¶9} On November 29, 2017, the parties were ordered to brief the issue of the juvenile court’s jurisdiction to determine an adult’s name or alias. Only Father filed a responsive brief. Father argued that the request was only to add Mother’s birth certificate name as an “also known as” identifier and did not request a legal name change or name amendment. Father also reminded the court that it had already recognized Mother as the natural mother of E.G.

{¶10} On January 9, 10, and 11, 2018, the juvenile court denied Father’s motions, overruled Father’s objections, and adopted the magistrate’s decision.

{¶11} Father filed a timely appeal.

II. Assignments of Error

{¶12} Father proffers five assignments of error:

- I. The trial court erred by denying the motion for order recognizing mother’s alternate spelling of her name.
- II. The trial court erred by overruling the objections to the magistrate’s decision and/or overruling the motion to set aside the magistrate’s order.

- III. The trial court erred by affirming, approving, and adopting the magistrate's order.
- IV. The trial court erred by impliedly denying the motion for findings of fact and conclusions of law.
- V. The trial court erred by denying the motion for hearing.

III. Discussion

{¶13} No briefs have been filed by appellees in this case. As a result, this “court may accept the appellant’s statement of the facts and issues as correct and reverse judgment if appellant’s brief reasonably appears to sustain such action.” *Smallwood v. Shiflet*, 8th Dist. Cuyahoga No. 103853, 2016-Ohio-7887, ¶ 8, fn. 1, quoting App.R. 18(C).

A. Refusal to recognize alias

{¶14} Father’s first assigned error challenges the juvenile court’s refusal to recognize the alternative spelling of Mother’s name on the ground that it could not “verify that the finding would be correct.” Judgment entry No. 0910806441 (Jan. 9, 2018). The entry does not specify whether the finding is based on jurisdictional or evidentiary grounds, and the court denied Father’s request for findings of fact and conclusions of law.

{¶15} Father filed the sole response to the juvenile court’s inquiry regarding jurisdiction to recognize Mother’s alias. Father concedes that jurisdiction to change an adult’s legal name lies within purview of the probate court pursuant to R.C. Chapter 2717 and the authority to alter a child’s name during parentage proceedings is governed by

R.C. 3113.13. However, Father argues, the statutes do not apply in this case because the court has not been asked to legally change the Mother's name. Father seeks recognition that Mother is also known by the name stated on E.G.'s birth certificate. He suggests that the spelling of the first name and omission of the middle name as provided by CCDCFS may be the result of a clerical error.

{¶16} Father's January 27, 2015 motion to adopt the administrative order establishing parentage and amend E.G.'s birth certificate was supported by: (1) a copy of the April 1, 2014 order of the Cuyahoga County Child Support Enforcement Agency ("CSEA") establishing paternity, (2) the genetic testing laboratory report, (3) a proposed agreed entry by the parties, and (4) a copy of E.G.'s birth certificate.

{¶17} The birth certificate contains the Mother's alias name. The CSEA paternity order spells Mother's first name as stated in the juvenile court's February 3, 2015 judgment entry granting Father's motion, includes Mother's middle name as set forth in the New York birth certificate, and lists the Mother's last name as that of the Father's since the parties were married at the time the testing was conducted in April 2014. Mother's first name on the laboratory report matches that of the court, the middle name is omitted, and the last name is a hyphenated version of Mother's maiden and married name.

{¶18} The January 29, 2015 magistrate's decision is based on a review of Father's motion and the cited exhibits, and provides that the CSEA paternity order and the parties' agreed entry shall be considered the final order on the issue of paternity. The

juvenile court also states in its entry that it reviewed Father's motion and attached exhibits and adopts the magistrate's decision,

The [a]dministrative [o]rder from CJFS [CSEA] dated April 11, 2014 SETS #7088453421 is adopted as a judicial order of this [c]ourt; * * * [and] the [a]greed [j]udgment [e]ntry * * * is adopted by this [c]ourt in its entirety as the final [o]rder on the issue of paternity.

Judgment entry No. 0907706018 (Feb. 3, 2015). The agreed entry references the New York birth certificate by record number. The record demonstrates that the juvenile court's determination was based on a review of documents containing a total of four monikers for Mother including the "also known as" identity requested by Father.

{¶19} Father suggests resolution by a nunc pro tunc order. We agree. "A nunc pro tunc order may be issued by a trial court, as an exercise of its inherent power, to make its record speak the truth" and it "has the same legal force and effect as if it had been issued at an earlier time, when it ought to have been issued." *Scaglione v. Saridakis*, 8th Dist. Cuyahoga No. 91490, 2009-Ohio-4702, ¶ 9, quoting *State v. Greulich*, 61 Ohio App.3d 22, 24-25, 572 N.E.2d 132 (9th Dist.1988).

{¶20} Proper use of a nunc pro tunc order is

"limited to what the trial court actually did decide. *Webb v. Western Reserve Bond & Share Co.*, 115 Ohio St. 247, 153 N.E. 289 (1926). That, of course, may include the addition of matters omitted from the record by inadvertence or mistake of action taken. *See Black's Law Dictionary*, 964 (5th Ed.1979). Therefore, a nunc pro tunc order is a vehicle used to correct

an order previously issued which fails to reflect the trial court's true action."

Id. at *id.*

{¶21} A nunc pro tunc order may not be employed to change substantive provisions of a judgment, and a court may exercise the power even "after the lapse of several years." *Ruby v. Wolf*, 39 Ohio App. 144, 177 N.E. 240 (8th Dist.1931). The power to enter the order is to be exercised with caution to protect the integrity and stability of judgments. *Id.* at ¶ 146.

{¶22} A nunc pro tunc order "can be used to supply information which existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors." *Scaglione* at ¶ 9, quoting *Greulich* at 24, citing *Jacks v. Adamson*, 56 Ohio St. 397, 47 N.E. 48 (1897).

{¶23} The juvenile court's record lists several forms of Mother's name. Documents containing those names were expressly relied on by the juvenile court in entering a final judgment. A nunc pro tunc entry listing the variations of Mother's name contained in the juvenile court's records does not constitute a substantive change. A trial court may enter a nunc pro tunc entry based on the "personal recollection of the court, or upon records or minutes or [upon] the testimony of witnesses having knowledge thereof." *Ruby* at 146. "It is axiomatic that a trial court may take judicial notice of its own docket." *State v. Kartson*, 8th Dist. Cuyahoga No. 95104, 2011-Ohio-1930, ¶ 29,

quoting *Indus. Risk Insurers v. Lorenz Equip. Co.*, 69 Ohio St.3d 576, 580, 635 N.E.2d 14 (1994).

{¶24} Father also offers to provide additional evidence if required by the juvenile court to support the request that would arguably include birth records from CCDCFS from Mother's case file. Where extraneous evidence is required for clarification, a hearing may be entertained. *Ruby* at 148.

{¶25} A nunc pro tunc entry in this case based on the juvenile court's record, as may be supplemented by a hearing should the juvenile court require one, that recognizes Mother's alias name as stated on the birth certificate would facilitate execution of the juvenile court's February 3, 2015 judgment entry. The juvenile court has jurisdiction and authority to enter a nunc pro tunc order based on the facts in this case. Our decision renders the remaining assigned errors moot under App.R. 12(A)(1)(c).

IV. Conclusion

{¶26} The juvenile court's judgment is reversed, and the case is remanded for further proceedings in accordance with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

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The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the court of common pleas, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, J., CONCURS;

MELODY J. STEWART, P.J., CONCURS IN JUDGMENT ONLY