J-S70012-12

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: PETITION FOR NAME CHANGE FOR MINOR A.M.M.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: A.M.	:	No. 23 EDA 2012

Appeal from the Order entered December 14, 2011,
Court of Common Pleas, Chester County,
Civil Division at No. 2011-11162 NC

BEFORE: DONOHUE, OLSON and FITZGERALD*, JJ.

MEMORANDUM BY DONOHUE, J.: Filed: January 10, 2013

A.M. ("Father") appeals *pro se* from the order entered by the Chester County Court of Common Pleas on December 14, 2011, denying his third petition to change his minor daughter's surname from her mother's maiden name to his name. Upon review, we affirm.

We summarized the facts of this case when deciding the appeal from the trial court's denial of Father's second name change petition as follows:

> On April 22, 2004, A.M.M. ('Child') was born out of wedlock to A.M. ('Mother') and Father. Child was given Mother's maiden name.[1] Mother and Father became estranged. Mother eventually married J.S. Following this marriage, Mother began using both her maiden name and J.S.'s last name, so that Mother was known as A.M.S.
>
> On December 28, 2008, Father filed a 'Petition for Name Change' with the Chester County Court of Common Pleas. The case was assigned to the

[1] "The child of an unmarried woman may be registered with any surname requested by the mother. If no other surname is so requested, the child shall be registered with the mother's surname." 28 Pa. Code § 1.6.

*Former Justice specially assigned to the Superior Court.

Honorable Phyllis Streitel, who held a hearing on the petition on February 9, 2009. Following the hearing and argument, Judge Streitel entered an order denying Father's petition without prejudice. Father did not file post-trial motions to this order and did not appeal the order. Instead, on July 6, 2009, Father again filed a 'Petition for Name Change' with the Chester County Court of Common Pleas. The petition was assigned to the Honorable Edward Griffith.

On August 10, 2009, a hearing on the petition was scheduled before Judge Griffith. The court made the following inquiry of Father:

> THE COURT: Before we go any further, weren't you in front of Judge Streitel with the exact same request?
>
> [FATHER]: Yes.
>
> THE COURT: And she turned you down?
>
> [FATHER]: She denied it without prejudice.
>
> THE COURT: What is the change between February and today?
>
> [FATHER]: I filed other –
>
> THE COURT: What facts have changed between February and today?
>
> [FATHER]: I was going to present evidence today.
>
> THE COURT: What evidence today? What are you going to present that is different than what you presented before Judge Streitel in February?

> [FATHER]: Evidence. Her testimony as to the evidence that she was lying while she was testifying.
>
> THE COURT: In February?
>
> [FATHER]: Correct.
>
> THE COURT: How are you going to do that?
>
> [FATHER]: She had said --
>
> THE COURT: How are you going to do that? Do you have a witness or something?
>
> [FATHER]: I have documents from her school that she claimed she was registered at.
>
> THE COURT: Did you call somebody from the school? Is there a person that is going to be here? You can't bring just documents. Do you have a witness?
>
> [FATHER]: It's the school's directory.
>
> THE COURT: Do you have a witness?
>
> [FATHER]: No, I don't.
>
> THE COURT: You are not going to be able to introduce any documents.
>
> [FATHER]: I understand.
>
> . . .
>
> THE COURT: . . . I already spoke with Judge Streitel. I don't think you have anything to do today. So I am going to deny your request. You are excused.

N.T., Aug. 10, 2009, pp. 2-4. Judge Griffith entered an order, dated August 10, 2009, which denied

> Father's petition and prohibited Father from filing any additional name change petitions for Child over the next five years.

In re: A.M.M., 2739 EDA 2009, 1-3 (Pa. Super. March 24, 2010) (unpublished opinion).

On August 24, 2009, Father appealed the trial court's denial of his second name change petition. On March 24, 2010, this Court affirmed the trial court's denial, as Father had no new admissible evidence to present in support of his petition, and thus the trial court was required to find as it did pursuant to the coordinate jurisdiction rule. ***Id.*** at 4-5. We reversed the trial court's order prohibiting Father from filing any additional petitions to change Child's name for five years, stating the appropriate remedy for "repetitious, baseless name change petitions solely to harass Mother" would be the award of costs and attorney's fees. ***Id.*** at 9 n.4 (citing, *inter alia*, 42 Pa.C.S.A. §§ 2503(9), 1726).

On October 11, 2011, Father filed the instant "Petition for Name Change of Minor," once again seeking to change Child's last name from Mother's maiden name to his name. The case was assigned to be heard by Honorable Anthony A. Sarcione ("the trial court"). The trial court held a hearing on November 14, 2011. The gravamen of Father's case once again emanated from his assertion that since Child bears Mother's maiden name and Mother no longer uses her maiden name, Child's surname should be

changed to his.[2] He further argued and that Child sharing his surname would somehow strengthen their bond; that Child should have his last name because his other daughter, born in May of 2009, has his last name; that Mother interfered with his position as Child's father and attempted to alienate Child from him; and that it is custom in the United States for a child to have her father's surname. Both Father and Mother were present and proceeded *pro se*. The trial court permitted Father to question Mother, during which Mother denied Father's allegations that she no longer uses her maiden name, instead testifying that she uses both her maiden name and her married name. Father confronted her with two letters authored by two prior attorneys who represented her in their domestic relations matter – one in 2005 and one in 2007 – wherein Mother is identified as A.S., not A.M.S.[3] Father also confronted her with Child's preschool directory, which had previously been deemed inadmissible by Judge Griffith, as evidence that Mother goes solely by A.S., not A.M.S. Mother testified: "Sometimes people break it down, instead of having [all three of] the names, to two. I don't know. I'm not lying about my last name. It was never changed." N.T.,

[2] As we discuss in greater length later in this decision, the touchstone for a grant or denial of a change of name of a minor is in the best interest of the child. ***See, e.g., In re E.M.L.***, 19 A.3d 1068, 1069 (Pa. Super. 2011). Father's assertions regarding Mother's declining use of her maiden name bear no discernible relation to what is in Child's best interest.

[3] Father did not submit any documents into evidence at the hearing. He appended the two letters to the petition he filed with the trial court.

11/14/11, at 37. Mother testified that the name that appears on her birth certificate, her social security card, and her driver's license is A.M.S. ***Id.*** at 29.

Father presented no additional witnesses or evidence. On December 7, 2011, the trial court issued an order and opinion denying Father's request. Father filed a motion for reconsideration on December 12, 2011, asserting that the trial court erred by failing to ask Father specific questions upon which it can base its decision "rather than assuming the worst," and by finding Mother's testimony about her name to be credible. Motion for Reconsideration, 12/12/11. Appended to his motion for reconsideration was a 42-count argument in support of his request, which included additional facts that had not been presented at the hearing; two documents from 2005 wherein Mother signed her name "A.L.S.";[4] and testimony by Mother from a July 22, 2008 domestic relations hearing at which Mother identified herself as "A.L.S." ***Id.*** The trial court denied reconsideration on December 14, 2011.

Father filed a timely notice of appeal and a court-ordered concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The trial court authored a responsive opinion pursuant to Pa.R.A.P. 1925(a). On appeal, Father raises the following issues for our review:

[4] Prior to marrying J.S., Mother was known as A.L.M.

1. In denying and dismissing the Petition for Reconsideration of the Petition for Name Change of Minor – [A.M.M.] the court abused it's [*sic*] discretion in it's [*sic*] finding that [Father] failed to demonstrate a change in circumstances since the Name Change Petition heard on February 9, 2009 as the changes /new evidence were referenced in the Petition for Name Change of Minor-[A.M.M.] in paragraphs 18-20 and 35.

2. The court abused it's [*sic*] discretion by ignoring Pa Rule of Civil Procedure which provides: 206.2 Answer … 'requires the Answer to set forth the material facts constituting the defenses to the Petition' as [Mother] did not file an Answer to said Petition for Name Change of Minor-[A.M.M.][5]

3. The court abused it's [*sic*] discretion in claiming that the facts of the case contradicted allegations that [Mother] did not defend herself from.

4. The court abused it's [*sic*] discretion in claiming that [Mother] was 'quite credible' as she did not offer any defense to #10 of the Petition for Name Change

---

[5] Father raised this issue for the first time in his petition for reconsideration. ***See*** Petition for Reconsideration, 12/12/11, at ¶¶ 9-11. Because Father failed to raise this issue at the first available opportunity, it is waived. ***See Mason-Dixon Resorts, L.P. v. Pennsylvania Gaming Control Bd.***, __ Pa. __, 52 A.3d 1087, 1112 (2012); ***see also Cagnoli v. Bonnell***, 531 Pa. 199, 202, 611 A.2d 1194, 1195-96 (1992). Although we recognize that Father is proceeding *pro se*, this does not protect him from a finding of waiver, because, as he stated in his brief:

> A *pro se* litigant is not entitled to any particular advantage because he/she lacks legal training. Any layperson choosing to represent themselves in a legal proceeding must, to some reasonable extent, assume the risk that their lack of expertise and legal training will prove their undoing. ***Rich v. Acrivous***, 815 A.2d 1106, 1108 (Pa.Super. 2003).

Father's Brief at 17.

which documents her history of providing the court false information and [Mother's] defense to [Father's] allegation that she presented fabricated evidence (#16-#17 of the Name Change Petition filed October 11, 2011) at the February 9, 2009 hearing was found to be false when she read the record of said hearing under cross[-]examination.

5. In denying and dismissing the Petition for Reconsideration [...] the court abused it's [*sic*] discretion in it's [*sic*] claim that [F]ather testified 'in a voice tinged with resentment' that he had been paying child support since receiving visitation as his Petition for Reconsideration [...] clearly explained in paragraphs 23-25 that [Father] was providing assistance without being asked or ordered prior to [Mother] providing the Domestic Relations Section false information regarding payments she received and signing her sworn statement **[A.L.S.]**

6. The court abused it's [*sic*] discretion in it's [*sic*] attempts to discredit [Father's] allegations of [Mother's] [] criminal involvement and notoriety associated with [Mother's] maiden name by describing his allegations as '[Father] attempted to impugn Mother's character with unsupported allegations of criminal wrongdoing' because [Mother] failed to offer any defense to #29-#31 of the Petition for Name Change, cross[-]examine [Father] or testify in her defense to these allegations.

7. [The] court abused it's [*sic*] discretion in claiming that [Mother] dropping her own use of her maiden surname and assuming as her sole surname her spouse's last name upon their marriage is not supported by the record as she did not defend herself against allegations that she made sworn statements prior to the Petition for Name change filed December 26, 2008 in which she claimed her name was [A.L.S.] (#14 of Petition for Name Change[]).

> 8. The court abused it's [*sic*] discretion in claiming that the amount of time [Father] waited to file a Petition for Name Change weighs heavily against [Father] as he had to take [Mother] to child custody proceedings (5) five times and the amount of time that has elapsed since birth is irrelevant to what is in the child's best interest at this time.
>
> 9. The court abused it's [*sic*] discretion in crediting [Mother's] testimony that her child does not wish to have a new name because the Chester County Family Court provides classes and counseling which both [Father] and [Mother] have attended which instruct everyone attending not to involve children in all legal matters as they are provided a handbook titled 'Children in the Middle II' (making her claim just another example of the alienation from Father [A.M.M.] is subjected to).

Father's Brief at 4-5 (emphasis in the original).

Our scope and standard of review are well settled:

> On appeal, our scope of review is broad in that we are not bound by deductions and inferences drawn by the trial court from the facts found, nor are we required to accept findings which are wholly without support in the record. On the other hand, our broad scope of review does not authorize us to nullify the fact-finding function of the trial court in order to substitute our judgment for that of the trial court. Rather, we are bound by findings supported in the record, and may reject conclusions drawn by the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

In re C.R.C., 819 A.2d 558, 561 (Pa. Super. 2003) (internal citation omitted).

> The appellate standard of review involving a petition for change of name, regardless of the age of the

> petitioner, is whether or not there was an abuse of discretion. When considering a petition to change the name of a minor child, the best interest of the child should be the standard by which a trial court exercises its discretion. This Court has further held [that] the party petitioning for the minor child's change of name has the burden of coming forward with evidence that the name change requested would be in the child's best interest, and that where a petition to change a child's name is contested, the court must carefully evaluate all of the relevant factual circumstances to determine if the petitioning parent has established that the change is in the child's best interest.

In re E.M.L., 19 A.3d 1068, 1069 (Pa. Super. 2011) (internal citations and formatting omitted).

> Specific guidelines [for a child's best interests] are difficult to establish, for the circumstances in each case will be unique, as each child has individual physical, intellectual, moral, social and spiritual needs. However, general considerations should include the natural bonds between parent and child, the social stigma or respect afforded a particular name within the community, and, where the child is of sufficient age, whether the child intellectually and rationally understands the significance of changing his or her name.

Id. at 1071. (internal citation omitted).

As his first issue on appeal, Father argues that the trial court erred by finding that he failed to present a change in circumstances warranting the granting of his third petition to change Child's name. Father's Brief at 16. In support of his argument, he asserts that he now has a two-year-old daughter, Child's half-sister, who bears his last name, and references Child's

preschool directory, which has Mother listed as "[A.S.],"[6] and documents he appended to his petition revealing that two of Mother's prior attorneys referred to Mother using only her married name, not her maiden name, in letters authored on September 14, 2005 and March 5, 2007. ***Id.*** The trial court found this argument to be without merit. Trial Court Opinion, 3/1/12, at 2-7. We agree.

The coordinate jurisdiction rule provides that "[j]udges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions." ***Ryan v. Berman***, 572 Pa. 156, 161, 813 A.2d 792, 795 (2002) (citation omitted). "[A] later motion should not be entertained or granted when a motion of the same kind has previously been denied, unless **intervening changes in the facts or the law clearly warrant a new look at the question**." ***Goldey v. Trustees of Univ. of Pennsylvania***, 544 Pa. 150, 156, 675 A.2d 264, 267 (1996) (emphasis added). The rule is designed not only to promote the goal of judicial economy, but also "(1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end." ***Ryan***, 572 Pa. at 161, 813 A.2d at 795.

We have reviewed the record in its entirety, including the "evidence" identified by Father that he asserts demonstrates a change in circumstances.

[6] The school directory was not offered or admitted into evidence.

None of the "facts" arguably indicating that Mother does not use her maiden name are "intervening," as all of the documents presented predate Father's first or second petition to change Child's name.[7] Moreover, these documents present nothing new – in each of the preceding petitions to change Child's name, Father alleged that Mother no longer uses her maiden name as proof that it would be in Child's best interest to use Father's last name instead.

The birth of Father's other daughter, which he states occurred in May of 2009, also was not "intervening," as she was born two months prior to Father filing his second petition to change Child's name. Furthermore, he presented no information at the hearing from which the trial court could determine that this would "clearly warrant a new look at the question." ***Goldey***, 544 Pa. at 156, 675 A.2d at 267. As the trial court observed, Father presented no evidence or testimony at the name change hearing to indicate why it would be in Child's best interest to have the same last name as her half-sister. ***See*** Trial Court Opinion, 3/1/12, at 6. He did not indicate whether he had custody or visitation with this other child, or whether Child saw her half-sister or had any relationship with her. In his petition he simply states the date his other daughter was born and that "[A.M.M.] should share her sister['s] [] last name," Petition for Name Change, 10/11/11, at ¶¶ 35-36, and at the hearing baldly argued: "It's important for

[7] Child was seven and a half at the time Father filed his third petition to change her name, and thus would have been completed preschool approximately three years prior.

my daughter to share the same last name as my other daughter." N.T., 11/14/11, at 16.[8]

Our review of the record compels us to conclude that we must once again affirm the trial court's decision based upon the coordinate jurisdiction rule.[9] Therefore, the trial court's decision is not subject to reversal.[10]

Although our resolution of the first issue is dispositive of the appeal, we note that the remaining issues raised by Father reflect a

---

[8] In his motion for reconsideration, Father indicates that his other daughter resides with him, and thus A.M.M. spends 30 percent of her time with her little sister during his periods of custody of Child. Petition for Reconsideration, 12/11/11, at ¶ 41. As the trial court stated, "this information was not presented to the [c]ourt at the original Name Change Hearing on November 14, 2011, although it was certainly available to him at that time." Trial Court Opinion, 3/1/12, at 6. Because Father failed to raise this issue at the first available opportunity, it is waived. ***See Mason-Dixon Resorts, L.P.***, __ Pa. at __, 52 A.3d at 1112.

[9] In addition to the evidence already discussed hereinabove, Father presented the following at the hearing in support of his third petition to change Child's name: (1) allegations (with no evidentiary support) that Mother participated in criminal activity and resided with a drug dealer approximately nine or ten years prior to the hearing (N.T., 11/14/11, at 16-17); (2) that he had to fight Mother for partial custody of Child, which he has had since before Child turned one (***id.*** at 13, 18); the verification from a September 30, 2005 motion for child support wherein Mother signed her name "[A.L.S.]" (Motion to Reconsider, 12/12/11, at Exhibit A); A September 10, 2005 child support check that Mother endorsed by signing her name "[A.L.S.]" (***id.*** at Exhibit B); and a transcript from a July 22, 2008 Domestic Relations Proceeding involving Father wherein Mother identified herself on the record as "[A.L.S.]" (***id.*** at Exhibit C). Again, none of these "facts" are "intervening" such that they would permit the trial court to grant Father's third petition. ***See Goldey***, 544 Pa. at 156, 675 A.2d at 267.

[10] Although this is not the basis for the trial court's decision, the law is clear that if the trial court's conclusion is correct, we may affirm on any ground. ***See Cassel-Hess v. Hoffer***, 44 A.3d 80, 85 (Pa. Super. 2012).

misunderstanding of his burden of proof. Thus, even if the coordinate jurisdiction rule did not mandate affirmance of the trial court, we would reach the same result based on a substantive review of the evidence of record. An allegation alone will not satisfy a petitioner's burden of proving that the requested name change is in a child's best interest. ***Petition of Schidlmeier by Koslof***, 496 A.2d 1249, 1253 (Pa. Super. 1985). Rather, Father, as petitioner, is required to produce evidence to support his claim that changing Child's name would be in her best interest. ***E.M.L.***, 19 A.3d at 1069. This is Father's burden and his burden alone. Even if Mother failed to appear for the hearing or testify in opposition to the petition to change Child's name, Father would still be tasked with presenting evidence that changing Child's name would be in her best interest.[11]

Furthermore, the mere fact that Father testified at the hearing and Mother did not contradict him does not mean that the trial court is required to believe him. The trial court, as fact-finder, weighs the evidence

[11] We note that Father's argument that changing Child's last name would be in her best interest because it would somehow improve their bond is an argument that has already been rejected by this Court. ***See In re C.R.C.***, 819 A.2d at 562-63. In ***C.R.C.*** we also found that a father's contention that the mother's interference in his relationship with his child does not warrant changing the child's last name to that of the father. ***Id.*** at 562. Furthermore, we have long held that an allegation that it is in a child's best interest to have her father's last name because of custom or tradition is not sufficient to sustain a father's burden of proof that changing a child's last name from her mother's maiden name to the father's surname was in the child's best interest. ***Petition of Schidlmeier by Koslof***, 496 A.2d 1249, 1253-54 (Pa. Super. 1985).

presented and assesses its credibility. ***Vargo v. Schwartz***, 940 A.2d 459, 462 (Pa. Super. 2007). In so doing, the trial court may believe all, part, or none of the evidence presented. ***Id.*** Moreover, as we have often stated, "We do not reverse credibility determinations on appeal." ***Busse v. Busse***, 921 A.2d 1248, 1256 (Pa. Super. 2007); ***see also In re C.R.C.***, 819 A.2d at 562 (citing ***S.M. v. J.M.***, 811 A.2d 621, 623 (Pa. Super. 2002) (on issues of credibility and weight of the evidence, appellate courts defer to the trial court)).

In its written opinion, the trial court concludes that Father failed to satisfy his burden of proof that changing Child's name would be in her best interest. In addition to finding that the "new evidence" presented by Father in an attempt to demonstrate a change in circumstances was anything but "new," and was available to him at the time he filed his prior petitions, the trial court found that Mother testified credibly regarding her retention of her maiden name in addition to using her married name, and did not find Father's evidence attempting to contradict her testimony to be compelling. It also found Father presented only unsubstantiated "evidence" of Mother's alleged criminal history, and thus did not find there was anything negative associated with Child's use of Mother's maiden name. Lastly, the trial court found that A.M.M.'s age – seven and a half at the time Father filed the instant petition – warranted against changing her name, as it is the name she has used since her birth, the name under which she is registered for

school, and the name by which she undoubtedly identifies herself. We find no abuse of discretion in this decision.

Order affirmed.