TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00649-CV

Michelle Hazelett Simmons, Appellant

v.

Daryl David Erickson, Appellee

FROM THE 421ST DISTRICT COURT OF CALDWELL COUNTY
NO. 19-FL-289, THE HONORABLE CHRIS SCHNEIDER, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Michelle Hazelett Simmons appeals from an order denying her petition to change her children's last name from her ex-husband's surname of Erickson to her maiden name of Hazelett. We will affirm.

BACKGROUND

Simmons and Daryl David Erickson divorced in 2011 through mediated settlement agreement. Simmons has had sole possession of their two minor children, Son and Daughter, since 2015 following Simmons's allegations that Erickson had abused Son. In June of 2019, Simmons petitioned the Caldwell County district court to change her children's last name from Erickson's surname to her maiden name of Hazelett. The children, 11 and 17 years old at the hearing on the name change, consented to the proposed change. Erickson opposed the change, observing that the children had carried his surname since birth and noting that they can

change their names if they wish to do so when they reach the age of majority. After taking judicial notice of the court's records in the divorce and conservatorship proceedings, and after a three-hour hearing on the merits, the district court denied the petition. Simmons timely perfected this appeal.

DISCUSSION

Simmons presents what she describes as four issues on appeal. Our review of the briefing and the record reveals that this appeal presents a single issue: whether the district court abused its discretion in denying the petition for name change. What Simmons describes as four discrete issues are her arguments that the court did, in fact, abuse its discretion. We will address her arguments in the discussion below. *See Gunnarson v. State*, No. 03-18-00738-CV, 2020 WL 913050, at *4 (Tex. App.—Austin Feb. 26, 2020, no pet.) (mem. op.) ("To facilitate this discussion, we will consolidate and summarize these arguments into three broad issues on appeal." (citations omitted)).

The Family Code provides, "The court may order the name of a child changed if the change is in the best interest of the child." Tex. Fam. Code § 45.004(a). The "general rule" is that courts should do so "only when the substantial welfare of the child requires it." *In re Guthrie*, 45 S.W.3d 719, 724 (Tex. App.—Dallas 2001, pet. denied). Whether the petitioner has satisfied this burden is a fact-bound inquiry that requires examination of "all relevant circumstances." *See In re H.S.B.*, 401 S.W.3d 77, 86 (Tex. App.—Houston [14th Dist.] 2011, no pet.). We review the trial court's decision for an abuse of discretion. *Guthrie*, 45 S.W.3d at 727. A court abuses its discretion if it acts without regard for governing legal principles. *See id.*

In this case, Simmons took the stand first and testified that she wants to change the children's surnames because she "grew up as a Hazelett" and her late father "meant a lot to [the] family." She testified that her children have spent a lot of time with the Hazeletts and that "they want to feel the closeness of [the Hazelett] family" by identifying themselves with the Hazelett name. She testified that the name is well known and well respected in Caldwell County and that her family had "a long tradition of contribution" to the community.[1] She observed that the children have been informally using the Hazelett surname for years and said that they asked for the name change to eliminate the confusion associated with the difference between their legal and preferred surnames. She testified that the name would become important as the children begin "stepping into family businesses and opportunities." Finally, she testified that she—unlike, in her estimation, Erickson—has always "been there for [the] children" and that the children are "scared of" Erickson because of the alleged history of abuse. On cross-examination, Simmons conceded that she does not use the Hazelett surname herself and that Erickson provides child support to the children.

Counsel called Simmons's mother to the stand. Much like Simmons did, Mrs. Hazelett testified that the children were close to her late husband, their grandfather:

> They were very close to him. He was there ever since the day they were born. He was with them through a lots [sic]—all their activities at school. He never missed anything until he wasn't able to go. And [even] at that time he would call them.

She recalled that "he taught [Son] how to fish" and would "take him fishing." She explained that Mr. Hazelett had been a "hero" to the family and to the community and that others were "more likely to" "honor" and "respect" the children if they bear the Hazelett name "because of the way

[1] At this point the presiding judge interrupted and pointed out that he is "intimately familiar" with the Hazelett family and its contributions to the community.

that their grandfather built his business and treated people." She believed the name change to be "important" to the children "because they just don't feel a relationship with their father" and because she would "like for them to be able to have the [Hazelett] last name and to, you know, take—go on with [the family-owned] company if that's what they choose." With respect to the Erickson name, Mrs. Hazelett testified, "They really weren't raised around [the Erickson] family." She recalled that the family "never really interacted with" the children. On cross-examination, she conceded that Erickson, as their father, is "very important" to the children and that the children are welcome to join the Hazelett family's business enterprises regardless of the surname they carry.

An older sibling of the children took the stand. She testified that she is the adopted daughter of Erickson but that she and her husband live with Mrs. Hazelett. The court sustained objections to nearly all her testimony on relevance grounds but allowed her to testify as to best interest. When asked which surname would better serve the children's interest, she explained:

> I think Hazelett, because I am very involved in their life and I very well know that this is what they wish. And I have been there to see with my own eyes them ask my mom [for the name change and] my brother write [Hazelett] on his school papers. I've helped him with his homework. I've watched him write his name at the top.

She concluded by emphasizing that she had "seen [the desire for change] with [her] own eyes."

Daughter testified that she wants to change her name to Hazelett and that, in the event the court denies the petition, she would change her name in a few months when she turns 18. She explained that she had "thought this over in all dimensions" and that she believes having the Hazelett name, particularly as she begins applying to college, will "help her" with

family, school, and friends. She believes the change will help her feel "closer to [her] family" and that she "would really like to . . . honor [her] grandpa," Mr. Hazelett, by using his name. With respect to the Erickson name, she testified that she has not seen her father in years and does not want to use his name.

Due to his relatively young age at the time of trial, counsel asked Son just a few questions:

Q. Do you know why we're here today?

A. To change my last name.

Q. Do you think that's a good idea?

A. Yes, sir.

Q. What do you want that name to be?

A. Hazelett.

Petitioner's counsel then passed the witness, and opposing counsel asked no questions.

In response to petitioner's case, Erickson testified that from 2011 to 2015, he had the children for at least two days "every week." He testified that he would help them with homework, attend their ball games and other activities, and take them to movies on the weekends. He denied he had ever been abusive with the children and lamented that because of Simmons's allegations of abuse he has not attended any of the children's activities in "several years" and that he now has little "exposure" to the children. He reported that he loves and misses his children and hopes to get involved with them again soon. He testified that he wants the children to keep his surname because they are "[his] kids" and that "although [his] interaction is limited" right now, he does not "think that's going to be the case forever." He summarized his

position by saying he does not see "any reason" to change the children's name now because "when they turn 18 and [if] they want to change their name," then "it's their choice."

On this record, we cannot say the district court abused its discretion by denying the petition for the name change. The court explained its decision from the bench:

> Case law under [the statute] has established how th[e]se things are determined. I'm very familiar with the Hazelett name and what that family has done for this community, and it is honorable and admirable. While I understand the reasons for the name[-]change request, the law states or courts have decided that a name change should only be granted reluctantly and where substantial welfare requires it. While I understand [Simmons's] reasons and I understand the children's desires, Mr. Erickson is their father. And that is not to be taken lightly. For that reason, I am denying the name change request. The children when they're adults . . . can get those names changed to whatever they want.

This explanation reflects that the district court acted out of regard for relevant legal principles. *See, e.g.*, *Anderson v. Dainard*, 478 S.W.3d 147, 151 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (holding that court should consider, inter alia, the child's desires, "whether a change in name would affect the bond between the child and either parent," how long the existing name has been used, and whether the parent with proposed surname will keep that name); *H.S.B.*, 401 S.W.3d at 84 (same and holding that custodial parent's convenience should "have no bearing" on outcome); *In re S.M.V.*, 287 S.W.3d 435, 449 (Tex. App.—Dallas 2009, no pet.) (holding that court should consider, inter alia, "any delay" in requesting name change); *Scoggins v. Trevino*, 200 S.W.3d 832, 839 (Tex. App.—Corpus Christi 2006, no pet.) (holding that court should consider, inter alia, "degree of community respect" associated with existing and proposed names); *Guthrie*, 45 S.W.3d at 723 (explaining "substantial welfare" standard). As a consequence, there was no abuse of discretion.

Simmons disagrees, arguing that the district court erred by taking the public's best interest into account before denying the requested name change. But nothing in the order or the explanation quoted above indicates that the public's interest factored into the court's decision. And, regardless, nothing precludes a trial court from considering public interest if it is germane to the case. *See H.S.B.*, 401 S.W.3d at 86 (explaining that trial court must consider all relevant circumstances).

Simmons further argues that an existing order from an earlier suit affecting the parent-child relationship required the district court to comply with her wishes. *See* Tex. Fam. Code § 151.001(d) (indicating that scope of parent's rights and duties is "subject to" any "court order affecting [those] rights and duties"). That order affords Simmons "the exclusive right . . . to represent the children in legal actions and to make other decisions of substantial legal significance concerning the children." Simmons has identified no authority for the proposition that a court's discretion to review a petition for a name change is somehow abridged by such an order. To the contrary, and as the district court correctly recognized, a trial court is bound by the provisions of Chapter 45 of the Family Code and by derivative case law. That authority allows the court to change a minor's name only if the petitioner can demonstrate that a "substantial" aspect of "the child's welfare" requires the change. *Guthrie*, 45 S.W.3d at 723; s*ee also* Tex. Fam. Code § 45.004(a); *H.S.B.*, 401 S.W.3d at 84. In this case, the district court looked to the governing principles set forth in that authority and determined that the petitioner had not satisfied her burden. Accordingly, we will not disturb its decision on appeal. *Guthrie*, 45 S.W.3d at 723.

CONCLUSION

For the reasons stated herein, we affirm the district court's order.

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Edward Smith, Justice

Before Chief Justice Rose, Justices Triana and Smith

Affirmed

Filed: August 13, 2020