

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

November 6, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0619-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JAMES AND SHIRLEY BUCKMASTER,

PLAINTIFFS-RESPONDENTS,

v.

ROBERT WAYNE HEIMERL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
ROBERT R. PEKOWSKY, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Robert Heimerl appeals from a judgment declaring that his daughter's correct legal name is Shana Buckmaster, and that he must use that name for all purposes.¹ The trial court granted judgment on a complaint for

¹ This is an expedited appeal under RULE 809.17, STATS.

declaratory judgment filed by Shana's maternal grandparents, James and Shirley Buckmaster. Although guided by the standards set forth below, the trial court's decision to grant declaratory relief is a matter of discretion. *Loy v. Bunderson*, 107 Wis.2d 400, 409, 320 N.W.2d 175, 181 (1982). A trial court's exercise of discretion is a question of law, reviewed *de novo*. *Luciani v. Montemurro-Luciani*, 199 Wis.2d 280, 294, 544 N.W.2d 561, 566 (1996). Because we conclude that the trial court failed to properly exercise its discretion, we reverse.

Shana was born in 1989 to Julie Buckmaster, who gave her the last name Buckmaster on her birth certificate. Julie died in 1991 having never married Heimerl, who is Shana's father. Heimerl took custody of Shana, and in 1992 petitioned to change her name to Shana Julien Heimerl. The trial court denied the petition, concluding that retaining the Buckmaster name served Shana's best interests.

Since Julie's death, James and Shirley have exercised physical placement rights with Shana. They commenced this action after learning that Heimerl had enrolled Shana in the Madison public schools under the name Shana Heimerl, although he continued to use her legal name for other purposes.

The matter came before the court on Heimerl's motion to dismiss the complaint. During arguments on the motion, the parties referred to ongoing litigation concerning Shana's custody and placement before another circuit court judge. Without receiving evidence from either side, the court denied the motion to dismiss and made the following ruling:

I remember the case very well, I remember the parties very well, and I of course don't know very much at all about what has gone on ... and what will go on before Judge Nowakowski in the matters there except what counsel have asserted various times in arguments.... I did

decline to grant the motion for a name change, and I had forgotten what I had said ... at the end of that proceeding, but I certainly intended that the name change should not occur. I thought then and I think now that it was advisable and in the child's best interest to continue to have the realization that there was a mother and there is a whole family out there on the other side. I think that's very important to a child not to lose identity with both parts of the family.... I do believe this is a legally protectable interest, I mean to them it's not a tiny interest. As some others look at this proceeding this might look like a small thing, but I think it is a legally protectable interest.... I think it's also ripe for determination I'm going to grant [the Buckmasters'] request for declaratory judgment, and I intend to enforce the order I entered earlier which is to deny the name change. The child's proper name should be used, and that's the name on the birth certificate, for all purposes.

The judgment, and this appeal, followed accordingly.

Section 806.04(1), STATS., grants courts the power in declaratory judgment actions "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Trial courts must apply the following standards in deciding whether to grant declaratory relief: (1) there must be a justiciable controversy; (2) "[t]he controversy must be between persons whose interests are adverse"; (3) "[t]he party seeking declaratory relief must have a legal interest in the controversy"; and (4) "[t]he issue involved in the controversy must be ripe for judicial determination." *Loy*, 107 Wis.2d at 409, 320 N.W.2d at 181. A trial court's decision under these standards is, as noted, discretionary. The trial court properly exercises its discretion if it articulates its reasoning, relies on facts of record and the correct legal standards, and reaches a reasonable result. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

The trial court failed to demonstrate on the record a sufficient basis for its decision. We are unable to determine how or why the court concluded that the grandparents had a legally protectable interest in the name their granddaughter

used for school registration. We are also unable to determine how the trial court concluded that the issue was ripe for judicial determination, given the fact that the parties were simultaneously engaged in other litigation concerning the child. In its decision, the trial court primarily relied on its recollection of the 1992 proceeding on Heimerl's name change petition. Not only did the previous decision not resolve the issues of standing and ripeness, but the trial court's reliance on it disregards the fact that the issue here included both the child's legal name and her father's use of a different name for a limited purpose.

Because the trial court did not provide a sufficient explanation for its decision, we vacate the judgment and remand for further proceedings. Our decision makes it unnecessary to determine whether the trial court erred by proceeding despite the fact that Shana was not added as a party to the action.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

