

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: CHANGE OF NAME OF : DOCKET NO. 12-01,076  
K.L.F. : CIVIL ACTION – LAW

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**OPINION AND ORDER**

AND NOW, this 5<sup>th</sup> day of September, 2012, following an evidentiary hearing pertaining to the Petition for Name Change filed by Petitioner/Father S.M.K., it is hereby ORDERED and DIRECTED that Father’s petition is GRANTED.

**I. Procedural and Factual Background**

The matter comes before this Court on biological Father S.M.K.’s June 5, 2012 petition to change the name of his minor child K.L.F., born January 25, 2012, to K.L.K.<sup>1</sup> Mother A.L.K. opposes Father’s petition.

A brief background of Mother and Father’s relationship is as follows. On March 21, 2011, Mother and Father were married in North Carolina. Approximately one month later, Mother and Father relocated, briefly, to the Montoursville area, and resided with Father’s step-mother B.K.K.; in August 2011, the couple anticipated moving to Florida because the Army planned on stationing Father in Florida in his capacity as a staff sergeant.

In early May 2011, Mother discovered that she was pregnant with the child at issue. Mother told Father of the pregnancy. Both Mother and Father testified that the child was a planned pregnancy.

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<sup>1</sup> During the course of the proceedings, both parents confirmed that the child’s first name was incorrectly spelled in the caption. Therefore, the caption is hereby amended to reflect the proper spelling of the child’s name: K.L.F.

In the middle of May 2011, Mother left Father; after leaving Father, Mother resided with her former and now current boyfriend S.F. Mother has had a relationship with S.F. for approximately nine years. Mother and S.F. had a child together prior to Mother's marriage to Father. Mother resumed having sexual relations with S.F. after she left Father.

In August 2011, Father left Montoursville for Florida. Father testified that he left for Florida on the last possible day because he wanted Mother to come with him. In October 2011, Mother lied to Father and told him that she had an abortion. In late October 2011, Mother sent a text message to Father's step-mother confirming that she did not have an abortion.

In December 2011, Mother commenced a divorce action against Father.<sup>2</sup>

Father knew that Mother was due sometime between the end of January 2012 and the beginning of February 2012. On or about January 20, 2012, Father came to Montoursville so that he could be present when the child was born. Father planned to be in Montoursville for approximately two weeks. Once he arrived in Pennsylvania, Father tried to contact Mother regarding the birth. Father also contacted local hospitals. However, Father was not notified of the child's birth until after it took place.

On January 25, 2012, Mother delivered the child during a planned caesarian section procedure; S.F. was in the delivery room. When the child was born, Mother named the child using S.F.'s surname. Mother testified that she has not received the child's birth certificate and has had difficulty retrieving it.

In early February 2012, Mother and Father amicably arranged a paternity test between Father and the child; Father was determined to be the biological father of the child.

Pursuant to Mother and Father's current custody arrangement, Father exercises periods of partial custody with the child on the third week of each month. Father's custody time is

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<sup>2</sup> On June 22, 2012, Mother and Father's divorce was finalized.

exercised in Florida. To date, Father has had three visits with the child in Florida. This Court heard brief testimony as to why Father was denied his custodial time for August 2012. Mother and Father have a pending custody pre-trial conference scheduled before this Court.

Additionally, Father pays child support to Mother.

## **II. Discussion**

Father brings this petition pursuant to 54 Pa. C.S. § 702. That statute grants the common pleas courts the right to change individuals' names, and it provides the procedure that must be followed by the court when doing so. *Id.* However, the criteria that the courts should consider when faced with a petition for name change has been outlined by the Commonwealth's Supreme Court. *See In Re: Grimes*, 609 A.2d 158 (Pa. 1992). *See also Falcucci Name Case*, 50 A.2d 200, 202 (Pa. 1947) (holding that a court should exercise discretion by comporting with "good sense, common decency and fairness to all concerned and to the public"). In *Grimes*, our Supreme Court held that when a petition is filed regarding the name change of a minor child, the petitioning party must establish that the name change is in the child's best interest. *Grimes*, 609 A.2d at 161. The Court acknowledged that the best interest of the child is an ambiguous standard that would change with each factual scenario; however, the Court outlined general guidelines that should be considered when deciding whether a name change is in the best interest of the minor child. *Id.* In particular, the Court held that the three main considerations 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.* With these factors in mind, the Court turns to the instant action.

In his petition, Father requests that the Court change the child's surname from F. to K. Father believes that it is in the best interest of the child for the child to maintain his surname

because the child has no legal relationship with S.F. Additionally, Father believes that the child should carry his surname because the child was born while Father and Mother were married. Father believes that the bond between Father and child will be strengthened if the child was able to maintain his surname. Additionally, Father argues that the child was approximately four (4) months old when Father filed the name change petition, and, due to the child's age, the child was unable to form any connection with the surname F.

Mother opposes Father's name change petition. Initially, Mother argues that, pursuant to the Pennsylvania Code, she could name the child any surname that she wished. 28 Pa. Code § 1.7(b) (1975). The Court will address this argument first.

The Court agrees with Mother that she had the right give the child S.F.'s surname. Section 1.7 provides for the registration of children born in wedlock; specifically, the section provides:

- (a) The designation of a child's name, including surname, is the right of the child's parents. Thus, a child's surname as recorded on its birth certificate may be the surname of either or both of the child's parents, a surname formed by combining the surname of the parents in hyphenated or other form, or a name which bears no relationship to the surname of either parent.
- (b) If the parents are divorced or separated at the time of the child's birth, the choice of surname rests with the parent who has custody of the newborn child.

28 Pa. Code § 1.7 (1975). In this instance, Mother and Father were separated at the time of birth, and Mother had legal custody of the child at the time of birth. *See In Re: Schildmeier*, 496 A.2d 1249 (Pa. Super. Ct. 1985) (holding that "custody" as provided for in 28 Pa. Code § 1.7(b) contemplates legal custody). Therefore, Mother could choose the child's surname. However, Mother's right to initially choose the child's surname does not infringe on this Court's right to change the child's surname if it is in the child's best interest.

Additionally, Mother argues that she wants the child at issue to have the same last name as her older child, whose biological father is S.F. and whose last name is F. Mother stresses that it is important to her for her children to have the same last name. Additionally, Mother argues that she intended to marry S.F. someday, and that once that day comes, Mother will have the surname F. as well. Mother also provides that she intends to have more children with S.F. and that their children will have the surname F.

After considering the best interest of the child and the considerations outlined by our Supreme Court in *Grimes*, the Court finds that it is in the best interest of the child for her last name to be changed from F. to K. The Court will address each of the *Grimes* factors in turn.

Initially, the Court must consider the natural bonds between the parent and the child. Clearly, in this instance, Father and the child have bonded. Father has spent three weeks of custodial time with the child. Additionally, Father has used all appropriate venues to ensure that he will be afforded custodial time with the child. Therefore, the Court finds that Father and the child have a natural bond and it is evident to the Court that Father will be an active participant in the child's life.

Turning to the social stigma associated with the F. and K. surnames, the Court finds that neither surname is afforded any social stigma or respect within the community. Therefore, this factor is not instructive.

Lastly, the child is not of sufficient age to understand the effect of this name change. The child at issue is approximately seven (7) months old. The Court finds that the child cannot rationally and intelligently understand the significance of this name change.

This Court finds the case of *Sanders v. Funk*, 47 Pa. D. & C.4th 199 (Apr. 28, 2000) (VanHorn, J.), instructive in the above-captioned matter. The *Sanders* case mirrors the instant

matter; in that case, the mother became pregnant, left the father, and began resuming a relationship with a former boyfriend, who she had a relationship with for seven years prior to her relationship with father. *Id.* at 201. In that case, the mother and former boyfriend began living together as a couple, and, when the child was born, the former boyfriend signed the acknowledgment of paternity and the mother gave the child the boyfriend's surname. *Id.* The biological father obtained legal counsel prior to the child's birth and pursued custody rights immediately; additionally, the father contested the use of the boyfriend's surname and promptly filed a name change petition. *Id.* at 201-02. When granting father's name change petition, that Court held:

[i]t is this court's judgment that [child] should not have the surname of a person who is unrelated to her in any manner and that to continue her surname of [boyfriend] is misleading to her as well as the public since [boyfriend] has absolutely no legal relationship to the child. The court must also consider the natural bond that exists between [father] and [child], and the child's right to feel connected to her biological parent by the sharing of a surname as being in her best interest.

*Id.* at 204.

The Court finds that the same rationale that the Court used in *Sanders* is applicable in the case. In this instance, the child bears the surname of an individual who the child is not related to in any way. Mother's main argument is that she does not the child's surname to be changed to Father's surname because Mother wants all of her children to bear the same surname. This Court cannot find that it is in the child's best interest to bear a surname of neither of her biological parents. Mother does not use the surname F. Mother claimed that someday she will bear the surname of F. and that she will have other children who bear that surname. However, Mother's argument is hypothetical because she provided no evidence that she was engaged to S.F., only an assertion that it would occur in the future. Additionally, the Court received no evidence that Mother has resumed using her maiden name, so, to the best of the Court's knowledge, Mother is

still using Father's surname. The Court finds that it is in the best interest of the child to bear Father's surname, as opposed to a surname to which the child has no legal ties. Therefore, this Court grants Father's name change petition.

**ORDER**

AND NOW, based upon the foregoing reasons, it is hereby ORDERED and DIRECTED that Father's Petition for Change of Name is GRANTED. K.L.F.'s name shall be changed to, and she shall be hereafter known as, K.L.K. The parties are directed to take all necessary steps to effectuate this name change on the child's legal records and birth certificate.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

cc: Heather R. Willis, Esquire  
W. Jeffrey Yates, Esquire  
Gary L. Weber, Esquire