

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: CHANGE OF NAME OF : DOCKET NO. 12-03,079
W.E.K., : CIVIL ACTION – LAW

OPINION AND ORDER

AND NOW, this 11th day of December, 2012, following an evidentiary hearing on the Petition for Name Change filed by Petitioner/Father S.R.V., it is hereby ORDERED and DIRECTED that Father's petition is GRANTED.

I. Procedural and Factual Background

The matter comes before the Court on biological Father S.R.V.'s September 27, 2012 petition to change the name of his minor child W.E.L.K., born August 25, 2011, to W.E.L.V. Mother E.E.K. (formerly E.E.E.) opposes Father's petition.

A brief background of Mother and Father's relationship is as follows. Father is a Sergeant First Class in the Army. Father lives in College Park, Maryland. Mother is a veteran and now functions as a homemaker. Mother lives in Montoursville, Lycoming County, Pennsylvania. While growing up, Mother lived in Arizona, Minnesota, and Washington. Mother and Father were never married. In January 2011, Mother told Father that she was pregnant with Child. On August 25, 2011, Mother gave birth to Child. On that date, Father's counsel informed Father that Mother was in labor, Father presented at the hospital, and Mother had Father removed from the hospital. Father was unable to meet Child until May 2012.

A point of conflict in this case is Mother's marriage to Stepfather D.A.K. Mother has known Stepfather since January 2008; Mother and Stepfather served in Afghanistan together. Stepfather has since been discharged from the Army; Stepfather now resides in Montoursville with Mother. Stepfather is a native of Lycoming County. Stepfather has an eighteen-year-old son, who resides in Mother and Stepfather's Montoursville home. Mother and Stepfather

married on August 6, 2011, a mere nineteen (19) days before Child's birth. Stepfather and his mother were in the delivery room when Child was born. Mother listed Stepfather as Child's father on Child's birth certificate; when asked why she did so, Mother responded that she thought that the Child was "most likely" Stepfather's child. However, Mother also testified that, at the time of the signing of the birth certificate, Mother was aware that Father could be Child's biological father.

At the time of Child's birth, Mother named Child W.E.L.K. E. is Mother's maiden name. Mother testified that giving Child this name was important to her. When asked for clarification, Mother testified that she liked the name E., that she believed it sounds nice, and that it is her brother's surname. Mother testified that L. is another one of her family names that has historical significance; therefore, she believed it was important for Child to have that name as well. Mother gave Child Stepfather's surname because it was Mother's surname at the time of Child's birth. The Court does not find Mother's testimony regarding the choosing of Child's names to be credible.

On September 7, 2011, Father filed a custody complaint. At the time scheduled for a custody conference, the issue of paternity was brought into question due to the fact that Mother was having sexual relations with both Father and Stepfather at the time of conception. After a paternity hearing, the paternity Court found that "it is clear to this Court that both [Stepfather] and [Mother] were well aware prior to their marriage that Mother's unborn child was most likely the child of [Father]." Exhibit F-3, pg. 3. The paternity Court found that Father, Mother and Child should undergo genetic testing. *Id.* at 5. The testing determined that Father was Child's biological father.

The parties entered into their first custody order on May 10, 2012. That order provided that Mother shall have primary physical custody of Child and that Father shall have partial physical custody of Child on a graduated basis. Exhibit F-4. At the time that the Court entered into the Order, Child had yet to be introduced to Father and Father had plans to be deployed to Afghanistan on July 25, 2012. As a result of these factors, Father's custody time was to be exercised when Father was able to make arrangements to come to Williamsport to see Child. *Id.* Father testified that under the May 10 Order, Father tried to come up to see Child every weekend. Father testified that he would spend approximately four to five hours with Child. The Court notes that Father's roundtrip commute for each visit is approximately eight (8) hours.

On September 27, 2012, Father petitioned to modify the May 10, 2012 Order because Father was no longer being deployed and because Mother was making it hard for Father to see Child. Exhibit F-5. Both of the parties testified that they had a custody conference the week prior to the name change hearing; both stated that Father will now have weekend overnights with Child in Maryland.

At the name change hearing, Mother testified that she does not refer to Father as "Dad" or "Daddy" or "Father" to Child. Mother testified that she refers to Father as "he" or "him" when talking to Child about Father. When asked why she uses pronouns to refer to Father, Mother responded that she did not want to confuse Child. The Court also notes that Mother referred to Father being a "stranger" to Child during her testimony.

When Mother was questioned as to whether Father was listed as Child's father at Child's doctor, Mother responded that Father was only listed as a contact. When Mother was questioned as to whether Stepfather was listed as Child's father on these records, Mother replied that she did not think that he was, but she could not be sure because Stepfather filled out the paperwork for

her. Mother testified that Stepfather is also a contact on the Child's doctor records and that Child receives insurance through Stepfather.

II. Discussion

Father brings this petition pursuant to 54 Pa. C.S. § 702. That statute grants the Court the power to change individuals' names; it also provides the procedure that must be followed by the Court when changing a name. *Id.* In *Falcucci Name Case*, 50 A.2d 200 (Pa. 1947), our Supreme Court held that the Court should exercise discretion when acting on a name change petition and use its "good sense, common decency and [consider the] fairness to all concerned and to the public." *Id.* at 202.

While courts are known to liberally grant name change petitions for adults, they are more stringent when the name change involves a minor child. *See In re: Grimes*, 609 A.2d 158 (Pa. 1992). In *Grimes*, our Supreme Court outlined the criteria that courts should consider when faced with a petition for name change of a minor child. Initially, the Court held that when a petition is filed regarding the name change of a minor child, the petitioning party bears the burden of establishing that the name change is in the child's best interest. 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 trial courts should consider the following factors:

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 Child's surname from K. to V. Father believes that it is in the Child's best interest to have the V. surname because Father is legally responsible for Child. Additionally, Father believes that the use of the V. surname will clear up Child's confusion as the identity of his father. Father believes that the bond between Father and Child will be strengthened if Child used Father's surname. Father argues that Child is approximately sixteen (16) months old, and, based upon his age, Child has no connections with Stepfather's surname. Additionally, Father is concerned about Mother's alienation of Father. The Court shares Father's concern.

Mother opposes Father's name change petition. Mother argues that Child should have Stepfather's surname because it is now her surname. Mother testified that it is important to her that she shares a surname with Child. Also, Mother argues that her interference with Father and Child's relationship has no bearing on whether Child's surname should be changed; Mother cites to *In re: C.R.C.*, 819 A.2d 558 (Pa. Super. Ct. 2003), to support her argument.

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

Initially, the Court must consider the natural bonds between Father and Child. In this instance, Father and Child have bonded. Father has spent hours of custodial time with Child since the May 10, 2012 Order. Father was recently given overnight visits with Child to be exercised in Father's Maryland home. Father has used all appropriate venues to ensure that he be afforded custodial time with Child, including filing a custody complaint thirteen (13) days after Child's birth. It is evident to the Court that Father will be an active participant in Child's life. Therefore, the Court finds that Father and the child have a natural bond.

Turning to the social stigma associated with the K. and V. surnames, the Court finds that neither surname is afforded any social stigma or respect within the community. Therefore, the Court finds this factor to be non-instructive.

Lastly, Child is not of sufficient age to understand the effect of this name change. The child at issue is approximately sixteen (16) months old. The Court finds that Child cannot rationally and intelligently understand the significance of this name change petition.

After considering the *Grimes* factors, the Court believes that the only applicable factor is the natural bond between Father and Child. This Court finds that the Father and Child have bonded and will continue to bond during Father's increased custodial periods; Father has satisfied his burden as to that factor. Yet, due to the inapplicability of the other two *Grimes* factors in this scenario, the Court will more fully consider the best interest of the child standard as it applies to this case.

In *Grimes*, our Supreme Court provided that the best interests of the child is the standard that should be used in minor name change petitions. 609 A.2d 161. That Court set forth three factors that should specifically be considered on each petition and cited generally to the best interest of the child standard. *Id.* Our Superior Court has interpreted *Grimes* by looking both at the general best interest of the child standard and the three *Grimes* factors. *See C.R.C.*, 819 at 561. Specifically, in *C.R.C.*, our Superior Court provided:

[t]he "best interests [of the child]" standard, decided on a case-by-case basis, considers all factors which legitimately have an effect on the child's physical, intellectual, moral and spiritual well-being.

Id. (citing *Sawko v. Sawko*, 625 A.2d 692, 693 (Pa. Super. Ct. 1993)). When considering the best interest of Child, the Court concludes that the name change is in Child's best interest.

This Court cannot find that it is in Child's best interest to bear his Stepfather's surname based upon Child's moral well-being. The Court finds the potential for alienation to be too great in this case to allow Child to maintain Stepfather's surname. The Court received evidence that Mother married Stepfather a mere two weeks prior to Child's birth. This fact alone causes the Court to find Mother's actions disingenuous. Because of this last minute marriage, Mother and Stepfather invoked the paternity presumption found in *Brinkley v. King*, 701 A.2d 176, 177 (Pa. 1997). Due to this presumption, the parties spent the first nine months of Child's life in a paternity dispute, even though Mother, Stepfather and Stepfather's family testified before the paternity Court that Father was known throughout Stepfather's family to be Child's biological father. Exhibit F-3. The Court notes the paternity Court's statement that:

[b]oth Mother and [Stepfather] told his family that [Stepfather] was not the father of the child. [Stepfather's] mother testified that Mother told her that there was no possibility that the child was [Stepfather's] and that Mother has never told her that [Stepfather] is the biological father of the child. [Stepfather's] sister testified that Mother told her sometime in the beginning of 2011 that [Stepfather] was not the father of the child and then [Stepfather] told her that he was not the father of the child. [Stepfather's] sister further testified that it is known throughout the family that [Father] is the father.

Exhibit F-3. This Court cannot believe the parties' last-minute marriage was conducted for any other reason than to invoke this paternity presumption.

The Court finds that Father has met his burden that the name change will be in Child's best interest based on Child's moral well-being. The Court believes that Mother has and is using her best efforts to alienate Child from Father and portray to the public that Stepfather is Child's natural father. The Court specifically finds that Mother has made a continuing effort to interfere with Father and Child's relationship. If the name change petition is denied, it would give Mother another weapon in her ongoing campaign to interfere with the Father-Child relationship.

Mother's main argument against the name change is that Child's surname is her surname, and, therefore, it should not be changed. Mother also argued that that Child's surname is now the same as the Child's stepbrother. The Court notes that Mother referred to her stepson throughout the hearing as "her son." Ultimately, although Mother failed to testify as much, Child's surname is Stepfather's surname. The Court heard testimony from Father that Child refers to Stepfather as "Daddy" and, from Mother, that Mother uses pronouns to describe Father to Child. Mother testified that she uses pronouns to describe Father to Child because she does not want to confuse Child. This Court believes it is Mother who is confusing Child. The Court appreciates the changing dynamic of families; however, it cannot condone Mother's blatant efforts to alienate Child from Father. Again, the Court finds it is in Child's moral best interest to have his name changed to his biological father's surname.

Mother argues that her interference with Father and Child's relationship should not be considered when deciding this petition, citing to the *C.R.C.* case. This Court finds *C.R.C.* factually different than the case at bar. In *C.R.C.*, husband and wife were separated when their child was born and wife chose to give their child wife's maiden surname. 819 A.2d at 559. Husband filed a petition to change the child's name to his surname because wife still used his surname and because no divorce action was pending between the parties. *Id.* at 559-560. At the name change hearing, wife provided that there was a divorce action pending between the parties, that husband approved of wife's surname being used prior to C.R.C.'s birth, that husband was not involved with C.R.C., that husband did not come to the hospital to see C.R.C., and that husband did not contact wife regarding visitation. *Id.* at 560-562. Husband provided that he did not contact wife regarding C.R.C. because wife had birthing complications and he wanted to give her and the child time to settle in. Husband also testified that he did not want to contact wife at

her work phone number concerning visitation; also, he testified that he did not want to have an attorney contact wife regarding visitation because he thought they could work it out themselves. *Id.* at 562. The Court granted husband's name change petition. *Id.* at 559. On appeal, our Superior Court reversed. *Id.* at 559, 562. The Superior Court determined that husband did not meet his burden under *Grimes* because he could not prove that he had a bond with C.R.C., due to wife's interference. *Id.* at 562. The Superior Court advised husband to "seek legal redress for visitation and custodial rights" if he wanted to "forge a strong and nurturing relationship with C.R.C." *Id.* at 563.

Clearly, *C.R.C.* is factually different from the case at bar. In this matter, Father sought legal redress approximately two weeks after Child's birth by filing a custody petition. Mother testified that Father's attorney told Father when Mother was in labor at the hospital; Mother's statement leads the Court to believe that Father obtained local counsel prior to Child's birth. Father fought in Court for nine months before he could even *see* Child. Since he obtained custodial rights, Father has been driving eight hours round trip to spend mini-Sundays with Child. The Family Court Master recently awarded Father overnight visits with Child at Father's Maryland home. This Court finds that Father does not compare to the husband in *C.R.C.*

The Court finds the case of *Sanders v. Funk*, 47 Pa. D. & C.4th 199 (Apr. 28, 2000) (VanHorn, J.), instructive. In *Sanders*, mother became pregnant, left father, and began resuming a relationship with her former boyfriend; mother had a relationship with this boyfriend for seven years prior to her relationship with father. *Id.* at 201. Then, mother and boyfriend began living together as a couple, and, when the child was born, the boyfriend signed the acknowledgment of paternity and the mother gave the child the boyfriend's surname. *Id.* Father immediately obtained legal counsel prior to the child's birth and pursued custody rights; 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. Additionally, the Court recognized father's efforts to assert his legal right; in particular, that Court provided:

[w]hile [mother] may have doubted [father's] commitment to the child early in her pregnancy, it is uncontroverted that [father] took all necessary steps to assert parental rights even prior to the birth of the child by hiring an attorney to pursue custody rights. When met with resistance by [mother] who contested his paternity, he proceeded with blood tests to establish that he is the biological father of [child]. He also has promptly proceeded through the courts to attain custodial rights with his daughter. [Father] made his wishes known prior to the birth of his daughter that she be given his surname and just four months after her birth pursued the matter through the court by filing of the petition which brings this matter to court for decision.

Id.

This Court acknowledges the differences between the instant matter and the *Sanders* case, specifically that here Mother has married Stepfather and Father petitioned the Court for the name change eleven (11) months after Child's birth. However, the Court finds that the same rationale that the Court used in *Sanders* is applicable in the case. In this instance, Child bears the surname of his Stepfather. Stepfather has no legal relationship to Child, only to Mother. Mother and Stepfather are misleading the public (admittedly not their family) by holding Child out as their biological son. In this instance, Child has the right to feel connected to his biological father, a father who has properly used the Court to access his son, a son who Father could not meet until *nine* months after his birth due to Mother and Stepfather's actions. Therefore, the

Court finds that it is in the best interest of Child to bear Father's surname; Father's petition is GRANTED.

The Court enters the following Order.

ORDER

AND NOW, based upon the foregoing reasons, it is hereby ORDERED and DIRECTED that Father's Petition for Change of Name is GRANTED. W.E.L.K.'S name shall be changed to, and he shall be hereafter known as, W.E.L.V. 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.

cc: William Miele, Esquire
Christina Dinges, Esquire
Gary L. Weber, Esquire