

July 9, 2008

Mr. Kevin T. Bradley
HYCI – SBI No.: 171158
1301 E. 12th Street
Wilmington, DE 19802
Petitioner – Pro-Se

Ms. Kelli Chirille Gibbs
105 Loren Court, Apt. G.
Newport, DE 19804
Respondent – Pro-Se

Re: *In Re: Kelli Chirille Gibbs*
Name Change Petition to Kelli LaShaye Bradley
D.O.B.: 05/25/1994
C.A. No.: 2008-04-091

MEMORANDUM OPINION

Dear Mr. Bradley and Ms. Gibbs,

A hearing in the above captioned matter took place on Monday, June 30, 2008 in the Court of Common Pleas, New Castle County, State of Delaware.

(i) Procedural Posture.

The subject matter of the hearing was a Petition for Name Change referenced above for Kelli Chirille Gibbs (“Kelli”) borne May 25, 1994 filed by the father.¹ According to the Civil Petition and docket with the Civil Clerk, Kelly Chirille Gibbs was born on May 25, 1994 in Newark, Delaware and wishes to change her name to Kelli LaShaye Bradley. The Civil Petition alleges it is based upon the request of the

¹ Ms. Muriel Bradley also co-signed the Petition. In accordance with CCP Civ. R. 81 and 10 *Del. C. §5901 et seq.* was allowed to testify as a fact witness for the petitioner but as the legal guardian had no standing to file this Petition.

minor child. In accordance with CCP Civ. R. 81 and 10 *Del. C. §5901 et seq.* the Petition certified no creditors or other person would be defrauded or adversely affected; was published correctly three weeks prior to the filing of the Petition once a week and the Petitioner has no criminal charges, is subject to supervision by the Department of Corrections or is required to register with any law enforcement authority.

Mr. Kevin T. Bradley, petitioner has moved on behalf of his minor daughter to change her name as referenced above.

(ii) The Facts.

The Court has a very limited factual record before it to decide the instant petition. At trial petitioner Kevin T. Bradley (“Bradley”) presented testimony. Bradley indicated to the Court that his daughter asked him to have a Name Change Petition filed for two (2) years. The proposed or purported reasons were that the minor child had a problem at school with her computer and her mother’s records were produced when she entered her name into the computer. According to Bradley, Kelli’s mother has a criminal record and is “on parole” and the minor child wants to distance herself from her mother’s criminal record.

Muriel Bradley presented testimony at the hearing. She is the mother of Kevin T. Bradley and the paternal grandmother of Kelli. She testified that Kelli’s mother’s name “came up” during a computer search by Kelli and she is embarrassed because of

her mother's criminal record. She therefore wishes to change her name to her paternal grandmother and father's last name.

Kelli Chirille Gibbs presented testimony. She testified she "felt embarrassed about the school incident" and wants to have her name change to her father's name. Kelli believes having her mother's name in the future when she seeks employment "will hurt her chances" for future employment because her mother "has a record" and that "bothers me".

The defendant presented its case-in-chief. Ms. Kelli Gibbs ("Gibbs"), the Petitioner's mother feels her daughter feels her daughter should wait until she is eighteen (18) years of age, at which time she will reach the age of majority and can move this Court to have her name changed. Gibbs testified that she is adamantly opposed to her daughter changing her name. She also informed the Court that she is now gainfully employed, and will be filing a Petition in the Family Court in the near future to regain custody of her daughter. Ms. Gibbs indicated that she has been so employed for one and a half years and pays child support in the amount of \$49.53 by attachment of her wages to Kelli's child support.

(iii) The Law.

Sec. 5901. Petition for change of name.

(a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person's name and the name he or she desires to assume.

Sec. 5902. Requirements for minor's petitions.

If the name sought to be changed under this chapter is that of a minor, the petition shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of 14, the petition shall also be signed by the minor.

Sec. 5903. Publication of petition prior to filing.

No petition for change of name under this chapter shall be granted unless it affirmatively appears that the petition has been published in a newspaper published in the county in which the proceedings is had, at least once a week for 3 weeks before the petition is filed.

Sec. 5904. Determination by Court.

Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the petition may be granted.

Sec. 5905. Costs.

The costs of any proceeding under this chapter shall be paid by the petitioner.

* * *

Rule 81. Petitions for change of name.

(a) A petition which seeks a change of name for a minor shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of fourteen, the petition shall also be signed by the minor.

(b) . . .

(c) If the petition is signed by only one parent, it shall be served, before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs.

As set forth in *Degerberg v. McCormick, et al.*, Del. Ch. 187 A .2d 436 (1963), the

following law applies:

The right of one parent, against the objection of the other, to change the surname of a child has been the subject of frequent judicial consideration. The great majority of cases presenting the problem have arisen under change of name statutes, or as incidental to divorce proceedings. In a few cases the natural respondent has sought relief where the divorced mother has registered children in school under the surname of a step respondent. The decisions are annotated in *53 A.L.R.2d 914*. As the annotator there observes, the courts have generally considered the welfare of the child as the controlling consideration regardless of the manner in which the problem may arise. So, in the present case, the question to be considered is the best of the child.

* * *

In determining whether or not it is in the child's best interest to permit a change in his surname certain factors have been regarded by the courts as of prime importance. *First of all, recognition is accorded to the usual custom of succession to the paternal surname, and, it is said, this succession is a matter in which the respondent, as well as the child, has an interest which is entitled to protection. Re Epstein, 121 Misc. 151, 200 N.Y.S. 897; Re Larson, 81 Cal.App.2d 258, 183 P.2d 688; Kay v. Kay, Ohio Com ., Pl., 51 Ohio Op. 434, 112 N.E.2d 562. Secondly, the interest manifested by the respondent in the welfare of the child as evidenced by support, visitation and promptness of complaint as to the attempted change of name. Kay v. Kay, supra. Thirdly, the effect of a change of surname on the relationship between the respondent and his child. Mark v. Kahn, 333 Mass. 517, 131 N.E.2d 758, 53 A.L.R.2d 908; Rounick's Petition, 47 Pa. Dist. & Co. 71; Kay v. Kay, supra.*

* * *

Authority, both judicial and psychiatric, recognizes that a change of surname of a child of divorced parents may

contribute to estrangement of the child from his respondent. So, in *Mark v. Kahn, supra*, the court said: “The bond between a respondent and his children in circumstances like the present is tenuous at best and if their name is changed that bond may be weakened if not destroyed.” And, in *Re Epstein, supra*, it is said that the court should not “foster any unnatural barrier between the respondent and son.” To the same effect, see *Application of Wittlin, City Ct., 61 N.Y.S.2d 726*; *Rounick's Petition, supra*; *Kay v. Kay, supra*. The views expressed in these cases find support in the testimony of psychiatrists adduced in this case.

In a recent decision by this Court, the following factors were considered relevant as to a determination of whether the best interests of a petitioner was served by the granting of the proposed name change. See, *In re Change of Name of Evans to Brown*, Del. CCP, C.A. No.1998-10-147, Welch, J. (March 11, 1999). The factors the Court considered in determining as to whether “the best interests of the child” would be served by granting the proposed name change were as follows:

1. A parent's failure to financially support the child;
2. A parent's failure to maintain contact with the child;
3. The length of time that a surname has been used for or by the child;
4. Misconduct by one of the child's parents;
5. Whether the surname is different from the surname of the child's custodial parent;
6. The child's reasonable preference for a surname;
7. The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
8. The degree of community respect associated with the child's present surname and proposed surname;

9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;
10. The identification of the child as a part of the family unit.

The law as it applies in the instant case is set forth in Chapter 59, Title 10 of the Delaware Code as well as CCP Civ. R. 81. The legal standard is the “best interest of the child” standard in contested change of name petitions involving minors.² *See, In re Change of Name of Walter to Coffin*, Del. CCP C.A. No.1998-06-222, Fraczkowski, J. (September 30, 1998), *In re Change of Name of Evans to Brown*, Del. CCP C.A. No.1998-10-147, Welch, J. (March 11, 1999). Clearly what constitutes the “best interests of the child” involves a factual analysis involving the relationship and family structure of a minor. *See, In re Change of Name of James Roy Runyon, Jr., to James Roy McGarrity*, Del. CCP C.A. No.1999-06-185, Smalls, C.J. (August 13, 1999).³

(iv) Opinion and Order.

The Court must find it is not in the best interest of the Kelli to have her Petition granted by this Court. As outlined in the Law Section, there are multiple factors to be considered by the Court. The Court finds by a preponderance of evidence that the Petitioner has only set forth one reason to have her Name Change Petition granted and that is because her mother has a criminal record.

² Even when petitions were or are heard in the Family Court, as set forth in *In the interest of Michael Cardinal and Catherine Cardinal v. Tanya E. Perch*, Family Court, 611 A.2d 515 (1991) “the great weight of judicial authority today supports the proposition that a child's last name should be determined on “best interest” standard.

³ Other jurisdictions have addressed the factual analysis applied involving relationship of the minor in determining what is the best interests of the child. In *Schiffman v. Schiffman*, Cal.Supr., 620 P.2d 579 (1989), the Court outlined a similar analysis to that used by this Court in determining what is in the best interest of the child.

The Court of Common Pleas is a court of record with constitutional status. It is not an equity court and it therefore cannot fashion a remedy based upon equity principles. Simply put, this Court's decision must be based upon the record before it. The sole decision reason proffered by petitioner, on behalf of his minor daughter to change her name is that her mother has a criminal record. Likewise, petitioner is an incarcerated inmate at the Department of Correction serving a Level V sentence. No other factors listed alone were presented to the Court at trial.

Scrutinizing the ten (10) factors set forth in the Law Section of this Opinion the Court finds by a preponderance of evidence in the record that the Petitioner has not proven it is in her best interest to have her Name Change granted.

IT IS SO ORDERED this 9th day of July, 2008.

John K. Welch
Judge

/jb

cc: Ms. Karen Gallagher, Clerk of the Court
CCP, Civil Division