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No. 3--09--0960

Order filed February 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

IN THE MATTER OF THE PETITION OF)	Appeal from the Circuit Court
WILLIAM K. SKALON, a minor, by parent)	of the 21st Judicial Circuit
KATHLEEN A. BLOOMQUIST, for a change)	Kankakee County, Illinois.
of name,)	
)	
Petitioner-Appellant,)	
)	
v.)	No. 09-MR-244
)	
HERBERT SKALON, JR.,)	Honorable
)	William O. Schmidt,
Respondent-Appellee.)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and O'Brien concur in the judgment.

ORDER

Held: The circuit court's ruling that the petitioner failed to show by clear and convincing evidence that a change of name was necessary to serve her six-year-old son's best interests was not against the manifest weight of the evidence.

The petitioner, Kathleen Bloomquist, filed a petition for a change of name on behalf of her six-year-old son, William Skalon. The petition sought to change William's surname from "Skalon" to "Bloomquist," his mother's surname. William's father, Herbert Skalon, Jr., opposed

the petition. After conducting a hearing during which both parents and several other relatives testified, the circuit court denied the petition. In this appeal, the petitioner argues that the circuit court abused its discretion in denying the petition. We affirm.

FACTS

On July 6, 2009, the petitioner filed a petition for change of name in the circuit court of Kankakee County asking that her minor son's name be changed from William K. Skalon to William K. Bloomquist. On October 26, 2009, the circuit court held a hearing on the petition. During the hearing, the petitioner testified that her son William currently lived with and her mother in Momence, Illinois. She has never been married. At the time William was born, the petitioner had been living with William's father at his parent's home. She and William moved out of the Skalon home in 2004, when William was seven or eight months old.

The petitioner testified that she tried to facilitate visitation between William and his father after she left the Skalon home, but Mr. Skalon canceled repeatedly and turned down a subsequent offer of visitation. She testified that neither Mr. Skalon nor his parents had visited William at any point since that time. Moreover, the petitioner stated that when she brought William back to the Skalon home for a visit in April 2004, Mr. Skalon swore and yelled at her and gave her the impression that he either was not interested in spending time with William or did not know how to interact with him. She claimed that she and William were not at the Skalon home for more than an hour when Mr. Skalon asked that they leave.

The petitioner acknowledged that, for a short time after she left the Skalon home, members of the Skalon family had called her and expressed an interest in continuing visitation with William and asked her to drop William off at the Skalon home. The petitioner testified that

she declined these requests because she was worried that an unsupervised visit would be “dangerous” since there was no formal documentation designating her as William’s custodial parent.

The petitioner testified that Mr. Skalon sent her \$40-\$50 per month for two to three years after she left the Skalon home, but that he stopped sending money approximately two or three years before the hearing. On cross-examination, the petitioner admitted that Mr. Skalon offered to pay child support if the petitioner would agree to bring William to visit him every other weekend. However, the petitioner did not feel comfortable dropping William off for unsupervised visits at the Skalon home.

The petitioner testified that William was registered at school as “William Skalon,” the name that appeared on his birth certificate. However, she stated that William has insisted that his coaches, friends, and teachers call him “Liam Bloomquist.” She testified that William had asked her if he could change his surname to Bloomquist because he wanted to have the same last name as his mother. According to the petitioner, William most closely identifies with the Bloomquist family, and he seemed to show “a preference to be cohesive, a unit with me and my family.”

Although the petitioner did not present any expert testimony, she tried to support her petition by summarizing the contents of a textbook on educational psychology and an article on child development which she claimed to have read while pursuing her BA in education.¹

According to the petitioner, the textbook discussed how the presence of “hostile or uninvolved” parents in a child’s life can foster “misbehaviors” (such as “disobedience” and “rebellion”), low

¹ The petitioner did not introduce these materials into evidence and the circuit court did not review them.

self-esteem, and poor self-image in children. She claimed that the article showed that having two parents involved in a child's life is not always a positive thing if one of the parents shows "high antisocial" behavior, such as "hostility" and "uninvolvement." The petitioner asserted that Mr. Skalon had engaged in conduct that she characterized as "antisocial." Specifically, she claimed that Mr. Skalon had thrown things at her during her pregnancy, subjected her to verbal abuse throughout their relationship, told William to "shut up" when he was only a few months old, and smoked cigarettes while holding William even after William was diagnosed with bronchial pneumonia.

Petitioner's mother, Hilda Bloomquist, also testified in support of the petition. Mrs. Bloomquist testified that she currently lived with the petitioner and William and that she helped take care of William. She testified that William cried when his preschool teacher told him his name was Skalon and that he would have to learn it. She also stated that, although she told William that he "would always be a Bloomquist" no matter what his name was, William was "still upset." She testified that she had invited Mr. Skalon and his family over for a visit but the invitation was never accepted. In addition, she stated that Mr. Skalon was consistently "argumentative and hurtful" when she spoke with him over the phone.

Mr. Skalon represented himself at the hearing. He testified that he had not seen William in more than five years. When the circuit court asked Mr. Skalon the reason for this, he claimed that the petitioner would not let him see William. He stated that the petitioner would hang up on him whenever he called her about William. He testified that he did not try to contact his son after 2005 because the petitioner had accused him of harassing her and he feared that she would

have him arrested. He claimed that he had hoped to save up enough money to hire a lawyer so that the matter could be settled in court.

Mr. Skalon testified that he paid child support immediately after the petitioner left him and that he offered to pay additional child support, but the petitioner never came over to collect the payments. Mr. Skalon also stated that, from the time of William's birth until 2007, William had received a portion of a disability benefit that was paid to Mr. Skalon on a monthly basis after he sustained brain injuries in a car accident.

When the circuit court asked Mr. Skalon why he had not filed a petition in court to obtain visitation, Mr. Skalon testified that he didn't have much money at the time because he was "going through the child support" with another son from a previous relationship. When asked why he was in court opposing the petition, Mr. Skalon stated that he wanted to see his son, adding that he thought he "deserve[d] an opportunity to see him if [he] was paying for him" and that he wanted to see his son grow, play sports, and do well in school. He said that he loved his son and that William was the heir to his family.

On cross-examination, Mr. Skalon testified that he was currently unemployed and that he had not had a job in more than a year. His social security disability payment was cut off sometime in 2007. Shortly thereafter, Mr. Skalon worked as a subcontractor in Joliet but quit because the work required him to bend over repeatedly, which caused his head to pound. He stated that he currently lived with his parents.

Mr. Skalon testified that his son from a previous relationship, Jonathon, was now seven years old and living with his mother in Chicago. He testified that he saw Jonathan every other

weekend and that Jonathan's mother had worked out an arrangement for the driving. He stated that he made these regular visits because he wanted to see his son and participate in his life.

He also testified that he did not want William's name to change, stating that "I don't think I deserve to have that done to ruin my name because I haven't even had a chance to get to know him yet." He stated that he wanted his son to "be a Skalon" and that he wanted William to have an opportunity to get to know his father so that he could be a Skalon.

Sharon Skalon, Mr. Skalon's mother and William's grandmother, also testified in opposition to the petition. She stated that she had not seen William since he was approximately five to seven months old. At that time, Mrs. Skalon claimed, the petitioner drove with William to the Skalon house to collect child support, but she would not allow Mrs. Skalon to see William. She testified that the Skalons did not know where the petitioner and William were living at that time. Mrs. Skalon also testified that she and her daughter went to the bank where the petitioner worked on William's first birthday and gave the petitioner some presents for William. Mrs. Skalon stated that she did not want her son to go with her because the petitioner had "called up and *** told him she'd throw him in jail." She testified that she had asked the petitioner to "keep in touch with us, send us pictures and let us know where our grandchild is." She stated that she wanted to bring presents to William the following Christmas, but the petitioner told her not to and said that she did not want the Skalons to have anything to do with William.

Mrs. Skalon testified that she loved her grandson and did not think it was right that she did not get to see him. She acknowledged, however, that she had not filed any paperwork in court or anywhere else to obtain visitation. Mrs. Skalon testified that she did not want William's name to be changed and that she wanted William to know who his grandparents were.

Herbert Skalon, Sr., Mr. Skalon's father and William's grandfather, also testified that he had not seen William since William was four to six months old. He claimed that the petitioner would never let him hold William when she and William were living with the Skalons. He stated that he loved his grandson and would "give his life for him." He testified that he felt that he was "missing a big piece of [his] life" because he had not seen his grandson in so long. He testified that he "would have loved to watch [William] go to school, get good grades, ride a bicycle, go camping, go fishing" and "teach him all of these things along with my son." He stated that he "wanted to play Santa Claus for [William]," "to be at his birthdays," and to see him in school plays, but that he had "missed" all of these things. He also testified that he wanted William to keep his name and that he was "sad that [the petitioner] wants to try to change my good name and take it away from William."

In his closing argument, the petitioner's counsel argued that it was in William's best interest to share the same last name as his mother and his maternal grandmother because William has had a close relationship with the Bloomquist family for years and has not seen his father or any member of the Skalon family for years. Counsel also argued that Mr. Skalon had made no attempt to establish a relationship with William or to support him financially or otherwise and suggested that the Skalons were only interested in thwarting the petitioner's attempt to change William's name, not in seeing William or in establishing a relationship with him.

Mr. Skalon argued during closing that he should be "given a chance to let [William] know that his last name is Skalon" and that, as his father, he "would recommend that his last name stay the same so that he can know that he's also a Skalon and a Bloomquist."

After the close of evidence and argument, the circuit court stated that it “[could] see that everyone is very concerned for the child.” The court noted that a surname is a “significant thing in our society” and that there has been a tradition of wives taking their husbands’ names and “passing names down generation from generation.” However, the court made clear that it “also will be guided by the statute itself” and that it would consider all of the evidence presented in the case. The court noted that, under section 21-101 of the Code of Civil Procedure (the Code), 735 ILCS 5/21-101, the petitioner had the burden to prove by clear and convincing evidence that granting her petition to change William’s name would be in William’s best interest. The court noted that, although there “ha[d] been some evidence of that,” the court would “really have to think about whether it’s been clear and convincing ***.”

On October 26, 2009, the circuit court denied the petition. In a brief docket entry, the court stated that it had “considered all of the evidence presented and each of the factors enumerated in 735 ILCS 5/21-101” and found that “the Petitioner has failed to establish by clear and convincing evidence that at this time a name change is necessary to serve the best interest of her minor child.” The court did not provide any specific findings or further explain its ruling. This appeal followed.

ANALYSIS

Respondent argues that the circuit court abused its discretion in denying the petition because she presented uncontroverted evidence that Mr. Skalon has not seen William in more than five years and has paid only “negligible” child support and that William has expressed a preference to change his surname from Skalon to Bloomquist. Mr. Skalon has not filed a brief. However, because the record is short and the issues are straightforward, we may decide the

merits without the aid of an appellee's brief. See *In re Howard ex rel. Bailey*, 343 Ill. App. 3d 1201, 1204 (2003). For the reasons set forth below, we hold that the circuit court's decision was not against the manifest weight of the evidence, and we uphold the court's decision.

Section 21-101 of the Code provides that an order to change a minor's name may be entered "*only if the circuit court finds by clear and convincing evidence that a change is necessary to serve the child's best interest.*" (Emphasis added.) 735 ILCS 5/21-101 (West 2008); see also *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 899 (1999). In determining the best interests of the child, the court may consider, among other factors, (1) the wishes of the child's parents and custodian; (2) the child's wishes and the reasons therefor; (3) the child's interaction and interrelationship with the parents, custodian, other persons in the familial relationship such as stepparents, siblings, step siblings, or any other person who may significantly affect the child's best interests; and (4) the child's adjustment to home, school, and community. 735 ILCS 5/21-101 (West 2008).

A circuit court's findings as to the child's best interests will not be overturned on appeal unless they are against the manifest weight of the evidence. *Howard*, 343 Ill. App. 3d at 1205; *Stockton*, 305 Ill. App. 3d at 899; *In re Petition of Craig*, 164 Ill. App. 3d 1090, 1094 (1987). Our deference to the circuit court rests on the recognition that the trial judge is able to observe the witnesses as they testify and is better suited than this court to judge their credibility and to determine what weight to give their testimony. *Howard*, 343 Ill. App. 3d at 1205.

After seeing the witnesses testify and after weighing all of the evidence, the circuit court concluded that the petitioner had failed to prove by clear and convincing evidence that the proposed name change was necessary to serve William's best interest. We cannot say that this

conclusion was against the manifest weight of the evidence. Mr. Skalon testified that he did not want William's name to be changed because he wanted William to have an opportunity to get to know his father. Although Mr. Skalon has not tried to see his son for five years, he testified that the petitioner has refused to allow him access to William, that he feared that she would have him arrested if he tried to contact William, and that he hoped to save up enough money to retain a lawyer so that the matter could be settled in court. Mr. Skalon's mother testified that the petitioner had threatened to "throw [Mr. Skalon] in jail" and that she did not want Mr. Skalon to accompany her when she delivered birthday presents for William for fear that he would be arrested. Moreover, the petitioner admitted that Mr. Skalon had paid some child support for two to three years after she left him and that he had offered to pay continuing child support if the petitioner would agree to bring William to visit him every other weekend. The circuit court could reasonably have found that this evidence suggested that Mr. Skalon wanted to maintain a relationship with his son. A noncustodial parent like Mr. Skalon is "necessarily *** at a disadvantage in maintaining a strong relationship with the child," and maintenance of the noncustodial parent's name "goes far toward demonstrating his continuing interest in and identity with the child." *In re Marriage of Presson*, 102 Ill. 2d 303, 312 (1984); see also *In re Mattson*, 240 Ill. App. 3d 993, 997 (1993) (holding that, since the father did not have physical custody of his child, "the common name [was] one of the few bonds he [was] able to maintain with her"). Thus, the circuit court was entitled to give substantial weight to Mr. Skalon's wishes.

Although the conflicting desires of William's parents tend to "cancel each other out to some extent," *Mattson*, 240 Ill. App. 3d at 997, the circuit court reasonably could have found that the remaining evidence did not clearly and convincingly establish that a name change was

necessary to serve William's best interests. The petitioner relies heavily on her and her mother's testimony that William wanted to change his name to Bloomquist.² However, even assuming that the circuit court found this testimony credible, the court was not required to find it dispositive. The court might have been concerned that William, who was only six years old at the time of the hearing, was too young to fully appreciate his best interests and the consequence of changing his name. See, e.g., *Dattilo v. Groth*, 222 Ill. App. 3d 467, 469-70 (1991) (affirming circuit court's decision to disregard six-year-old boy's testimony and ruling that "the trial court may have determined that [the child] was too immature to know what he wanted his name to be"); *Presson*, 102 Ill. 2d at 310 (seven-year-old boy's testimony that he wanted to use names of both parents was not controlling because of child's questionable judgment).

Further, although Mrs. Bloomquist testified in support of the petition, William's paternal grandparents testified in opposition to the petition. The elder Skalons testified that they did not want William's name changed, that they had attempted to establish a relationship with William but that their efforts were thwarted by the petitioner, and that they would like to see William and to play a more substantial role in his life going forward. The circuit court apparently found the Skalons' testimony credible, stating on the record that it "[could] see that everyone is very concerned for the child." The trial judge is in the best position to judge the credibility of witnesses and to determine what weight to give their testimony. *Howard*, 343 Ill. App. 3d at

² William did not testify at the hearing, and it does not appear that the circuit court had an opportunity to interview William in chambers. Thus, the only evidence presented regarding William's alleged desire was the petitioner's and her mother's hearsay testimony, which was not objected to during the hearing.

1205. The circuit court could reasonably have found that the conflicting desires of the Bloomquists and the Skalons canceled each other out. Thus, the circuit court's conclusion that the petitioner had failed to show by clear and convincing evidence that the proposed name change was required to serve William's best interests is not against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

Affirmed.