2019 IL App (1st) 182681-U

FIFTH DIVISION
Order filed: June 28, 2019

No. 1-18-2681

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re PARENTAGE OF E.S., a minor,	)	Appeal from the
	)	Circuit Court of
(Annetta Stella,	)	Cook County
	)	
Petitioner-Appellant,	)	
	)	
	)	
v.	)	No. 15 D 550130
	)	
	)	
	)	
Christopher Ridgeway,	)	Honorable
	)	Peter J. Vilkelis,
Respondent-Appellee.)	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the orders of the circuit court granting the respondent's petition for name change and denying the petitioner's motion to reconsider the grant of the petition as the respondent failed to present clear and convincing evidence that the name change was necessary to serve the child's best interest.

¶ 2 The petitioner and biological mother, Annetta Stella, appeals from an order of the circuit court of Cook County granting the petition of the respondent and biological father, Christopher

Ridgeway, for a name change of their minor child, E.S., and the order denying her motion to reconsider the order granting the name change. On appeal, the petitioner seeks reversal of the order granting the change of the last name of her son from "Stella" to "Ridgeway" because the respondent failed to present clear and convincing evidence that the name change was necessary to serve the child's best interest. For the reasons that follow, we reverse.

¶ 3 On September 13, 2016, the respondent filed a "Petition for Allocation of Parenting Responsibilities, Parenting Time, and Name Change," requesting, *inter alia*, that E.S.'s last name be changed from "Stella" to his own last name, "Ridgeway." On February 26, 2018, a hearing was conducted on the respondent's petition. The record contains no transcript of the hearing; however, the parties provided an Agreed Statement of Facts from which we take the following testimony.

¶ 4 According to the petitioner, she and the respondent began a romantic relationship in 2009, but were never married. Prior to the petitioner's relationship with the respondent, she was married to Patrick Stella, the father of her two other children, both of whom live with her and share the last name, "Stella." "Stella" has been the petitioner's legal last name since 2001, a name she kept even after she and her ex-husband divorced and he passed away. She has no desire to ever change her last name or the last names of her children, even if she were to remarry.

¶ 5 The petitioner stated that E.S. was born on February 4, 2015, and that prior to his birth, she and the respondent agreed that E.S. would take her last name, "Stella," and that he would take the respondent's first name, "Christopher," as his middle name. The respondent signed a "Voluntary Acknowledgement of Paternity" on February 6, 2015, specifying that E.S.'s middle name is "Christopher" and his last name is "Stella." Moreover, both the respondent and the petitioner signed E.S.'s birth certificate in the hospital with E.S.'s middle name listed as

"Christopher," and his last name as "Stella." The petitioner views "Stella" as her family name and would like E.S. to keep it as his last name so that all of her children have the same last name.

¶ 6 E.S. was born prematurely and has severe cognitive impairments and severe autism. Four times a week, he receives developmental, occupational, and speech therapies in the petitioner's home, where he has always lived because the petitioner is both his residential and legal custodian. The petitioner routinely takes E.S. to numerous appointments with general practitioners and specialists.

¶ 7 E.S. is non-verbal and cannot express which last name he prefers. However, through sign language and other communicative methods, E.S. is learning his name at school and in therapy. E.S. is known at home, school, and in his community to have the last name, "Stella."

¶ 8 According to the respondent, prior to E.S.'s birth, he did not have an agreement with the petitioner that E.S.'s last name would be "Stella." He stated that he signed the birth certificate with E.S.'s last name as "Stella" to avoid arguing with the petitioner after she had just given birth to their premature son.

¶ 9 The respondent desires to change E.S.'s last name to "Ridgeway" because E.S. is his only child, "Ridgeway" is his family name, and he wants his son to share his last name. The respondent believes that "Stella" is the petitioner's ex-husband's last name, an ex-husband who is now deceased and has had no relationship with E.S. The respondent asserted that his objection to E.S. keeping "Stella" as his last name would not be so strong if "Stella" was the petitioner's maiden name.

¶ 10 The respondent testified that he has had parenting time with E.S. since his birth, frequently visited him in the hospital during his prolonged hospital stay after his birth, and was involved in his care. According to the respondent, E.S. is a beneficiary under his medical insurance, which covered E.S.'s hospital bills after his birth. The respondent also paid all of the uncovered medical expenses for E.S. and continued to financially support E.S. after his release from the hospital.

¶ 11 On April 2, 2018, the circuit court entered an order changing E.S.'s last name from "Stella" to "Ridgeway," without discussing the statutory factors listed in section 21-101 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/21-101 (West 2014)), to determine whether the name change was necessary to serve E.S.'s best interest. On April 12, 2018, the petitioner filed a motion to reconsider the order, arguing that the circuit court misapplied the standard for a minor child's name change pursuant to section 21-101 of the Code (735 ILCS 5/21-101 (West 2014)). Specifically, the petitioner argued that the circuit court: (1) failed to apply the clear and convincing standard mandated by section 21-101 of the Code to determine if a name change would serve the child's best interest; (2) did not make any findings regarding how the name change was in the child's best interest; and (3) did not consider the statutory factors set forth in section 21-101 of the Code.

¶ 12 On October 1, 2018, the circuit court heard argument from counsel and testimony from both the petitioner and the respondent. On November 19, 2018, the circuit court denied the petitioner's motion to reconsider, explaining that "there is nothing new alleged *** that would cause me to change my mind and *** nothing that *** would indicate that I incorrectly applied the law." The circuit court distinguished the facts in *In re Tate Oliver B.*, 2016 IL App (2d) 151136 (2016), a case relied upon by the petitioner to argue that the name change was improper, from the facts in the case at bar, stating that in *In re Tate*, the mother's last name was her maiden name and not her married name like the petitioner in this case. The circuit court next considered the fact that the respondent was involved in the child's life after his birth, stayed at the hospital after he was born, and paid his medical bills. It also considered the fact that: the respondent considers “Stella” to be the petitioner’s deceased husband’s name and not his son’s name; the petitioner could remarry and change her name in the future; the son has no biological connection to the name “Stella;” and that “Ridgeway” is the respondent’s family name. The circuit court questioned the child’s potential inheritance if he were to keep the name “Stella” and considered the impact that the name change would have on him receiving continued medical coverage from the respondent.

¶ 13 The circuit court also recited each statutory factor of section 21-101 of the Code and the facts of the case. As to the first factor, the circuit court stated that it considered the wishes of both parents. With respect to the second factor, the circuit court noted that “there was no testimony as to the wishes of the child.” The circuit court noted that it considered the third factor, the interaction and interrelationship of E.S. with his parents, specifically stating that the respondent visited E.S. on alternating weekends and that it considered the testimony regarding E.S.’s relationship with the petitioner as well as his relationship with his brother and sister. As to the fourth factor, the court stated that it considered the child’s adjustment to his home, school, and community, and that “[i]t appears that even based upon the medical condition of the child, the child appears to be adjusting well.” The circuit court found that both parents are “involved in assisting the child in his adjustment as best as available under the circumstances.” Lastly, the court stated, “One other factor that I did consider is the fact that Mr. Ridgeway did not have any objection to the child’s name being changed to [the petitioner’s] maiden name which was another reason why I felt [*In re Tate*] was not applicable.” The court, therefore, concluded that “there was clear and convincing evidence to justify this particular name change.” This appeal followed.

¶ 14 On appeal, the petitioner argues that the circuit court's ruling was against the manifest weight of the evidence when the respondent failed to present clear and convincing evidence that the name change was necessary to serve the minor child's best interest.

¶ 15 Section 21–101 of the Code provides that an order to change a minor's name shall be entered only if the circuit court "finds by clear and convincing evidence that the change is necessary to serve the best interest of the child." 735 ILCS 5/21–101 (West 2014); see also *In re Tate Oliver B.*, 2016 IL App (2d) 151136, ¶ 30. In determining the minor child's best interest, the court may consider, among other factors: (1) the wishes of the child's parents or acting parent who has physical custody of the child; (2) the child's wishes; (3) the child's interactions and interrelationship with the parents, acting parents who have physical custody, step-parents, siblings, step-siblings, or any other person who may significantly affect the child's best interest; and (4) the child's adjustment to home, school, and community. 735 ILCS 5/21–101 (West 2014). While the circuit court must consider these four factors, it is not required to explicitly address each of them or the evidence that it found compelling. *In re Tate Oliver B.*, 2016 IL App (2d) 151136, ¶ 33. Rather, the record need only reflect that the circuit court considered evidence of the statutory factors in making its decision. *Id.*

¶ 16 The statutory requirement of "clear and convincing evidence" indicates that a minor child's name may only be changed when the evidence leaves "no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question." *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995). The child's name may not be changed unless the evidence "unmistakably supports such a change" to serve the minor child's best interest. *In re Tate Oliver B.*, 2016 IL App (2d) 151136, ¶ 35. A circuit court's findings as to the child's best interest will not be overturned on appeal unless they are against the manifest weight of the evidence. *In re Howard ex rel. Bailey*, 343 Ill. App. 3d 1201, 1205 (2003); *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 899 (1999).

¶ 17 Based on the record before us, we conclude that the evidence submitted by the respondent is simply insufficient to meet the statutory standard of clear and convincing evidence demonstrating that a name change is necessary to serve the child's best interest. We recognize that at the hearing on the motion to reconsider, the circuit court listed all of the statutory factors that it considered and it determined that after considering those factors, the respondent had presented clear and convincing evidence to justify the name change. However, the only evidence the respondent presented was evidence of financial support of his son and his own testimony, consisting of multiple reasons, for his desire that his son's last name be changed to "Ridgeway." A parent's desire to change the minor child's name is the first of multiple factors to consider and one parent's desire alone is not enough to warrant a name change of the minor child. See *In re Tate Oliver B.*, 2016 IL App (2d) 151136 , ¶ 32 (the evidence was not clear and convincing to demonstrate that a name change was necessary to serve the best interest of the child where the only evidence the father presented to support the name change was his own opinion that the name should be changed). In fact, the vast weight of the evidence in the present case indicates that changing the minor child's name to "Ridgeway" is not necessary to serve his best interest.

¶ 18 First, the child is four years old, is already learning his name in sign language, and has cognitive disabilities, which could create a challenge to relearn a new last name. The child lives with the petitioner, who is present for all of his appointments, surgeries, therapies, and procedures, and meets all of his medical needs. The child lives with his two other siblings who take care of him, play with him, have the last name "Stella," and want him to share their last name. Lastly, the child is known by the last name "Stella" in his home, his school, his community and by medical providers, and changing his name would require changing all documentation and informing everyone who knows him of the change.

¶ 19 We fail to see how the respondent's financial support, visits when he is not working, and desire to change the child's last name to "Ridgeway" rise to the level of clear and convincing evidence that a name change is *necessary* to the serve the best interest of the child in the face of the sheer weight of all of the evidence in support of his last name remaining "Stella."

¶ 20 We note that the circuit court placed considerable weight on the fact that "Stella" is the petitioner's married name and not her maiden name, distinguishing the facts in this case from the facts in *In re Tate*. We are unpersuaded by the argument that the petitioner's last name is somehow not "Stella" because it is her married name. The record reflects that after she married Patrick Stella, her last name became "Stella" and has been since 2001. Even after divorcing Patrick and after his passing, the petitioner kept the name "Stella." *In re Tate* makes no distinction between maiden names and married names in determining whether a name change is in the minor child's best interest. The case focused on two unmarried parents who, as in our case, were no longer in a romantic relationship at the time of the child's birth and who both signed a birth certificate giving the child the mother's last name. *In re Tate Oliver B.*, 2016 IL App (2d) 151136, ¶ 4. It is possible that the respondent's argument might have more weight if "Stella" was not also the petitioner's last name, but here, "Stella" is the petitioner's last name and has been for years.

¶ 21 In determining that the name change was necessary, the circuit court also considered the possibility of the minor child not being able to inherit from the respondent if his last name is "Stella," the petitioner possibly remarrying and changing her last name, and how not sharing the respondent's last name could possibly impact the minor child's medical coverage from the respondent's insurance. We find none of these considerations persuasive that the name change is necessary to serve the minor child's best interest. In fact, none of these inferences are supported by the record. There was no testimony or evidence that the minor child's last name would affect his inheritance, the petitioner specifically testified that her last name has been "Stella" since 2001 and that she will not change it even if she were to remarry, and there is no evidence that the minor child's last name has impacted his medical coverage up until now or that it would impact his coverage in the future.

¶ 22 After our review of the case and applying the facts to the section 21-101 statutory factors, we conclude that the respondent did not present clear and convincing evidence that a name change was necessary to serve the minor child's best interest. Therefore, we hold that the circuit court's order granting the name change was against the manifest weight of the evidence. *In re Tate Oliver B.*, 2016 IL App (2d) 151136 , ¶ 30. Accordingly, the circuit court's grant of the petition for a name change is reversed.

¶ 23 Reversed.