ORIGINAL

IN THE SUPREME COURT OF OHIO

DAVID WHITE,	:	CASE NO: 11-1979
PLAINTIFF/APPELLEE,	:	
V.	:	ON APPEAL FROM THE CLINTON COUNTY COURT OF APPEALS, TWELFTH APPELLATE DISTRICT
TRICIA LAUG,	:	
DEFENDANT/APPELLANT.	:	COURT OF APPEALS CASE NO. CA2011-03-004

APPELLANT TRICIA LAUG'S MOTION TO STAY TWELFTH DISTRICT'S OPINION PENDING APPEAL

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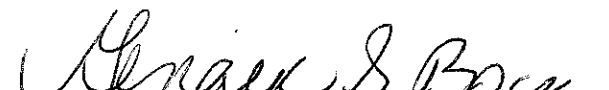
FILED
NOV 28 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Appellant Tricia Laug's Motion To Stay Twelfth District's Opinion Pending Appeal

Appellant Tricia Laug moves this honorable Court for a stay of the judgment of the Clinton County Court of Appeals, Twelfth Appellate District, entered on October 12, 2011, in *D.W. v. T.L.*, Court of Appeals case No. CA2011-03-004.[1] The Court of Appeals affirmed a judgment ordering that Appellant's minor child's surname be changed and that the minor child's birth certificate be changed to reflect the order. As this case does not involve any issues that would make bond appropriate, Appellant requests that no bond be required.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of Appellant Tricia Laug's Motion To Stay Twelfth District's Opinion Pending Appeal was sent by ordinary U.S. mail to John C. Kaspar, counsel for Appellee David White, at 120 East Mulberry Street, Lebanon, OH 45036, on November 28, 2011.

Ginger S. Bock (0082253)
Counsel of Record for Appellant, Tricia Laug

[1] The date listed on the opinion is October 11, 2011. The court-stamped date on both the Opinion and Judgment Entry is October 12, 2011.

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLINTON COUNTY

FILED-CT. OF APPEALS
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CLINTON COUNTY
CYNTHIA R. BAILEY, CLERK

D.W.,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-03-004
	:	OPINION
- vs -		10/11/2011
	:	
T.L.,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 20094105

John C. Kaspar, 130 East Mulberry Street, Lebanon, Ohio 45036, for plaintiff-appellee

Jeffrey R. Griffith, 114 West Main Street, P.O. Box 466, McArthur, Ohio 45651, for defendant-appellant

POWELL, P.J.

{¶1} A mother argues in her appeal that a juvenile court decision changing her five-year-old son's last name to the biological father's surname was not in the child's best interests. We affirm the decision as we do not find the juvenile court abused its discretion.

{¶2} In September 2009, father asked the Clinton County Juvenile Court to determine paternity and establish parental rights and responsibilities for L.D.W.L., born June

24, 2005.

{¶3} According to the record, the parties told the juvenile court magistrate at the beginning of the 2010 trial that they had already stipulated to paternity and had now resolved by agreement most issues related to parental rights and responsibilities, except the child's surname. Mother argues that father orally requested the name change at that hearing; no written motion on the name change is contained in the record.

{¶4} After conducting a hearing on the matter, the juvenile court magistrate found it was in the child's best interest for the child to be given father's surname. Mother filed objections. The juvenile court issued a separate decision overruling the objections and finding the name change in the child's best interest. Mother appealed, raising three assignments of error for our review.

{¶5} Assignment of Error No. 1:

{¶6} "THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION IN CHANGING THE CHILD'S NAME FROM [L.D.W.L.] TO [L.D.L.W.]."

{¶7} Under "R.C. 3111.13(C), a court of common pleas may determine the surname by which the child shall be known after establishment of the existence of the parent and child relationship, and a showing that the name determination is in the best interest of the child." *Bobo v. Jewell* (1988), 38 Ohio St.3d 330, paragraph one of the syllabus.

{¶8} In determining the best interest of the child in the circumstance where unmarried parents contest a surname, the court should consider: (1) the length of time that the child has used a surname, (2) the effect of a name change on the father-child relationship and on the mother-child relationship, (3) the identification of the child as part of a family unit, (4) the embarrassment, discomfort or inconvenience that may result when a child bears a surname different from the custodial parent's name, (5) the preference of the child if the child is of an age and maturity to express a meaningful preference and (6) any other factor

relevant to the child's best interest. Id. paragraph two of the syllabus; see, also, *In re Willhite*, 85 Ohio St.3d 28, 1999-Ohio-201.

{¶9} An appellate court is not free to substitute its judgment for that of the trial court when reviewing a decision that a child's surname should be changed. *Jarrells v. Epperson* (1996), 115 Ohio App.3d 69, 71. A reviewing court should also presume the trial court's findings are accurate, since the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections and use these observations in weighing the credibility of the witnesses. *In re Dayton*, 155 Ohio App.3d 407, 2003-Ohio-6397, ¶9.

{¶10} The determination of what is in the best interest of the child is within the sound discretion of the trial court, and its judgment is subject to reversal only upon a showing of an abuse of discretion. Id. An abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's action was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} In its written decision on mother's objections, the juvenile court applied the factors listed in *Bobo* to the evidence presented by both parties in the hearing before the magistrate.

{¶12} The child's birth certificate, signed by both parties, indicated the child was given his first name, father's first and last name as his middle name, and mother's last name as his surname. Mother said the parties agreed on the name on the birth certificate; father indicates there was not an agreement.

{¶13} The juvenile court noted the child was five years old at the time of the 2010 hearing. According to the record, the child has always lived with mother and that residence includes the child's half-sibling, who also shares mother's surname. Father indicated he lived with mother and the child from 2006 to 2009.

{¶14} Mother testified that it would be difficult for the child to start over and learn a

different last name, particularly when he has recognized that he shares the same last name as his half-sibling in the home. Mother also indicated the child was very sensitive to change and she believed this change would be detrimental.

{¶15} Father testified that he is the only one in his family with his last name and his son carrying the name is "huge to me" and would be meaningful to the child in the future.

{¶16} The juvenile court acknowledged the child has had mother's surname since birth, but that is "still a brief amount of time." The juvenile court found that the child had just barely learned to write his first and last name and any change would not be detrimental to the child. The juvenile court noted that both parents have a good relationship with the child and the name change would not affect that relationship. According to the court, the surname change would "reinforce" the father-son family unit. While the juvenile court did not appear to specifically mention it considered whether the child would suffer embarrassment, discomfort, or inconvenience when he had a surname different than his residential parent, the court found the child would not suffer embarrassment, discomfort, or inconvenience with the surname change.

{¶17} Mindful that we are not free to substitute our judgment for that of the lower court, the record does not support a determination that the juvenile court's decision was arbitrary, capricious or so unreasonable as to establish an abuse of discretion. See *Jarrells* at 72-73 (while the mother-child relationship would be unaffected by the surname change, the father-child relationship would benefit; since father is not the residential parent, child's best interests are served by establishing an identity with the father); see, also, *Boysel v. Perrill* (Sept. 10, 2001), Fayette App. No. CA2000-11-032001, 2001 WL 1024029 at *2 (record is usually thin in these kinds of cases and absent a showing that the trial court's decision has no basis in the evidence before it or was otherwise an abuse of discretion, an appellate court will not reverse the decision on appeal).

{¶18} Mother's first assignment of error is overruled.

{¶19} Assignment of Error No. 2:

{¶20} "THE TRIAL COURT COMMITTED ERROR IN SHIFTING THE BURDEN AND APPLYING THE INCORRECT STANDARD IN CHANGING THE SURNAME OF THE MINOR CHILD."

{¶21} Mother argues the juvenile court failed to place the burden on father to prove the name change he sought for the child was in the child's best interest. Mother acknowledges this assignment of error essentially challenges again the best interest determination.

{¶22} A review of the record does not indicate the juvenile court applied the incorrect standard in its review. *Bobo*, 38 Ohio St.3d at paragraphs one and two of the syllabus; see *Boysel*, 2001 WL 1024029 at *2 (test sets out matter that must be considered by the court on the basis of the record before it). We have previously found the juvenile court did not abuse its discretion in its best interest determination. Accordingly, mother's second assignment of error is overruled.

{¶23} Assignment of Error No. 3:

{¶24} "THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO DECIDE THE CHANGE OF NAME ISSUE."

{¶25} Mother argues that the juvenile court had already established paternity before father asked for the name change, and thus, the juvenile court did not have jurisdiction to consider the issue. Further, mother argues that father never included the surname request in the application or motions he filed and only orally requested the name change at the final hearing, and thus, mother was unable to present additional witnesses.

{¶26} As we previously noted under the first assignment of error, a court of common pleas may determine under R.C. 3111.13(C) the surname by which the child shall be known

after establishment of the existence of the parent and child relationship, and a showing that the name determination is in the best interest of the child. *Bobo*, paragraph one of the syllabus.

{¶27} In the instant case, father requested the surname change during and within the R.C. 3111.13 proceedings, and therefore, the juvenile court had jurisdiction to make this determination. See, also, *Eagleson v. Hall*, Guernsey App. No. 2007-CA-28, 2008-Ohio-3647, ¶14 (because case deals with the original orders in a paternity determination, juvenile court had authority to make whatever orders it deemed appropriate in best interest of child); see, *Bobo v. Jewell* (May 13, 1987), Athens App. No. CA 1316, 1987 WL 12245 (after parent-child relationship is established, it has an impact upon interrelation of the child with both parents and necessarily focuses upon what surname should be used in the future in child's best interest).

{¶28} Mother also contests father's oral request to change the surname at the final hearing in this case. We see no indication in the record that mother objected on the record to an oral motion, that mother told the court she objected to going forward at that time on the surname issue, or that mother requested a continuance to secure additional witnesses. Mother participated in the hearing and contested the surname request. Accordingly, mother's third assignment of error is not well taken and is overruled.

{¶29} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/ROD/documents/. Final versions of decisions are also available on the Twelfth District's web site at: http://www.twelfth.courts.state.oh.us/search.asp

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLINTON COUNTY

FILED-CT. OF APPEALS
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CLINTON COUNTY
CYNTHIA R. BAILEY, CLERK

D.W.,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-03-004
	:	
- vs -		JUDGMENT ENTRY
	:	
T.L.,	:	
Defendant-Appellant.	:	

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clinton County Court of Common Pleas, Juvenile Division, for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Stephen W. Powell, Presiding Judge

Robert P. Ringland, Judge

Robin N. Piper, Judge