IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 14, 2015 Session

IN RE JOSEPH H.

Appeal from the Juvenile Court for Davidson County
No. 2012-001428 Sophia Brown Crawford, Judge

No. M2014-01765-COA-R3-JV – Filed August 25, 2015

Two months after the child was born, Father filed a petition to establish paternity and change the child's surname by deleting Mother's surname and replacing it with Father's surname. Mother opposed changing the child's surname. Following an evidentiary hearing, the juvenile court denied the petition to change the child's surname upon the finding that Father failed to prove that it was in the child's best interests. Father appeals. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Thomas H. Miller, Nashville, Tennessee, for the appellant, Larry G.[1]

Brenda Rhoton Clark, Nashville, Tennessee, for the appellee, Jennifer H.

OPINION

Jennifer H. ("Mother") and Larry G. ("Father") are the unmarried parents of Joseph, born December 2011. Mother and Father met at work and, after having known each other for approximately two years, became intimate, and Mother became pregnant. Although Father was not initially supportive of the pregnancy, he testified that, shortly before her first prenatal appointment, he had "come to his senses" and realized that he wanted to be a father. Father accompanied Mother to three prenatal appointments, but he was not involved during the second-half of the pregnancy.

[1] This court has a policy of protecting the identity of children in juvenile cases by initializing the last names of the parties.

Mother testified that Father's involvement during the pregnancy was sporadic. She testified that Father called her the night before her first prenatal appointment and told her that he would take her to the appointment, but stated that he did not want his name or medical history listed anywhere in the medical records. Mother further testified that she told Father that he did not have to accompany her, and that, although she did not agree with Father's request regarding the medical records, she was not going to force him to do anything. Nevertheless, Father attended Mother's first appointment.

Father accompanied Mother to two additional prenatal appointments during her pregnancy, including the appointment at which the parents learned they were having a boy. Father testified that he went to lunch with Mother and the maternal grandmother after this appointment, during which he asked Mother if she had thought about a name for the child. Father testified that Mother said she wanted the child's first name to be "Joseph," the same first name of her father and brother, and that the child's middle name would be "Ellis," the name of her maternal great-grandfather. With respect to the child's last name, Father testified that Mother told him that if the child was going to have Father's surname, then she thought she should have more input or more of a say on the child's first and middle name. Father agreed and, although Mother never committed to giving the child his surname, Father assumed the child's first and middle names would be Joseph Ellis and the child would have Father's surname. Mother confirmed the conversation as stated by Father but testified that she did not definitively say she would give the child Father's surname. She also stated that she was equivocal because she was intimidated by and fearful of Father, and that she did not want to argue with him in a public place.

Father admitted that he was not involved during the second-half of the pregnancy; however, he was present for the child's birth in December 2011.[2] Before being discharged from the hospital, when it was time to sign the child's birth certificate, Mother informed Father that she had decided the child would have her surname. Mother testified that she did not make this decision lightly and felt it was in the child's best interest because of Father's "erratic behavior," and that she did not know "how it was going to play out." Mother signed the child's birth certificate identifying the child's name as Joseph Ellis "H." Father did not sign the birth certificate.

Two months after the child's birth, Father filed a petition to establish paternity, to obtain specific parenting time, and to change the child's surname to his surname. Mother filed a response opposing the name change but agreed to establish paternity and to set a parenting schedule.

[2] Father was notified by Mother via email of the time and place of her scheduled C-section.

Following a hearing before the juvenile court magistrate, the magistrate entered an order on June 11, 2013, granting Father's petition to change the child's surname to his surname. Two days later, Mother filed a notice of appeal and requested a rehearing before the juvenile court judge. While Mother's appeal to the juvenile court judge was pending, and without notifying Mother, Father changed the child's surname on his birth certificate and Social Security card.

A de novo hearing was held on June 30, 2014, at which the juvenile court judge heard testimony from Father and Mother.[3] Father testified that changing the child's name to his surname would not affect the child's relationship with Mother because she selected the child's first and middle names as a tribute to her family; however, he also testified that if the child had Mother's surname, it would affect the child's relationship with him. Father stated that he feared "it would create perceptions that would imply that [the child] has a weakened relationship" with him, and that "the imbalance in how his name would display his heritage . . . might create a bad perception of [their] relationship that [the child] may not like in the future." When asked why having Father's surname is in the child's best interest, Father testified that it would reflect the child's heritage on both sides.

Mother testified that she believed it was in the child's best interest to have her surname because the child lives with her and her mother, who share the same surname. Mother also testified that her brother, sister-in-law, niece and nephew live close by and have the same surname. Mother stated that the child is on her insurance and his medical records list his surname as that of Mother, and that he will attend school in Mother's school district, and that she plans to be actively involved in his school. Mother further testified that if she marries, she plans to keep her maiden name so the child would not have a different surname than both of his parents.

Following the hearing, the juvenile court judge found that Father, as the parent seeking to change the child's surname, failed to prove that changing the child's surname will further the child's best interests. Father appeals contending the court erred in denying his request to change the child's surname.

ANALYSIS

We turn first to the proper standard of review for the issues presented in this appeal. Because this is an appeal from a decision made by the juvenile court itself following a bench trial, the now familiar standard in Tenn. R. App. P. 13(d) governs our review. This rule contains different standards for reviewing a trial court's decisions

[3] At the time of trial, the child was two-and-a-half years old.

regarding factual questions and legal questions. *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 424 (Tenn. Ct. App. 2005).

In cases such as this where the action is "tried upon the facts without a jury." Tenn. R. App. P. 52.01 provides that the trial court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.[4] The underlying rationale for the Rule 52.01 mandate is that it facilitates appellate review by "affording a reviewing court a clear understanding of the basis of a trial court's decision," and in the absence of findings of fact and conclusions of law, "this court is left to wonder on what basis the court reached its ultimate decision." *In re Estate of Oakley*, No. M2014-00341-COA-R3-CV, 2015 WL 572747, at *10 (Tenn. Ct. App. Feb. 10, 2015) (citing *Lovlace v. Copley*, 418 S.W.3d 1, 35 (Tenn. 2013)). Further, compliance with the mandate of Rule 52.01 enhances the authority of the trial court's decision because it affords the reviewing court a clear understanding of the basis of the trial court's reasoning. *MLG Enterprises, LLC, v. Richard Johnson*, No. M2014-01205-COA-R3-CV, 2015 WL 4162722, at *4 (Tenn. Ct. App. July 9, 2015); *Gooding v. Gooding*, No. M2014-01595-COA-R3-CV, 2015 WL 1947239, at *6 (Tenn. Ct. App. Apr. 29, 2015); *In re Zaylen R.*, No. M2003-00367-COA-R3-JV, 2005 WL 2384703, at *2 (Tenn. Ct. App. Sept. 27, 2005) ("Findings of fact facilitate appellate review, *Kendrick v. Shoemake*, 90 S.W.3d 566, 571 (Tenn. 2002), and enhance the authority of the court's decision by providing an explanation of the trial court's reasoning.").

Our Supreme Court has explained the reasoning for the Rule 52.01 mandate as follows:

> Requiring trial courts to make findings of fact and conclusions of law is generally viewed by courts as serving three purposes. First, findings and conclusions facilitate appellate review by affording a reviewing court a clear understanding of the basis of a trial court's decision. Second, findings and conclusions also serve "to make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making." A third function served by the requirement is "to evoke

[4] The last sentence of the rule reads: "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rules 41.02 and 65.04(6)." Tenn. R. Civ. P. 52.01. It should be additionally noted that whenever a trial court grants a Tenn. R. Civ. P. 41.02 motion for involuntary dismissal, it is required to "find the facts specially and . . . state separately its conclusions of law." Tenn. R. Civ. P. 41.02(2). This requirement parallels the mandate in Tenn. R. Civ. P. 52.01, which applies to all actions tried upon the facts without a jury. *See* Tenn. R. Civ. P. 41.02, 2010 Advisory Comm'n cmt.; *see also* Tenn. R. Civ. P. 52.01 ("In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law . . . .").

> care on the part of the trial judge in ascertaining and applying the facts." Indeed, by clearly expressing the reasons for its decision, the trial court may well decrease the likelihood of an appeal.

Lovlace, 418 S.W.3d at 34-35 (internal citations and footnotes omitted).

There is no bright-line test by which to assess the sufficiency of the trial court's factual findings; nevertheless, the general rule is that "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *In re Estate of Oakley*, 2015 WL 572747, at *10 (quoting *Lovlace*, 418 S.W.3d at 35).

In this case, we have the benefit of comprehensive and detailed findings of fact by the juvenile court, which fully comply with the Rule 52.01 mandate, and we review a trial court's factual findings de novo, accompanied by a presumption of the correctness of the finding of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *see Boarman v. Jaynes*, 109 S.W.3d 286, 289-90 (Tenn. 2003). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *See Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). We will also give great weight to a trial court's factual findings that rest on determinations of credibility and weight of oral testimony. *See Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *Woodward v. Woodward*, 240 S.W.3d 825, 828 (Tenn. Ct. App. 2007); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000).

The presumption of correctness in Tenn. R. App. P. 13(d) applies only to findings of fact, not to conclusions of law. *Id.* Accordingly, no presumption of correctness attaches to the juvenile court's conclusions of law and our review is de novo. *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006) (citing *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000)).

CHANGING A NONMARITAL CHILD'S SURNAME

Tennessee Code Annotated § 68-3-305(b)(1) establishes that the birth certificate of a child born to an unmarried mother shall reflect the mother's surname or the mother's maiden surname unless both parents have requested otherwise. *See Sullivan v. Brooks*, No. M2009-02510-COA-R3-JV, 2011 WL 2015516, at *1 (Tenn. Ct. App. May 23, 2011). Moreover, the child's surname is not changed following a legitimation or paternity proceeding unless so ordered by the court. *In re Jacob H.C.*, No. M2012-02421-COA-R3CV, 2013 WL 6155608, at *3 (Tenn. Ct. App. Nov. 20, 2013) (citing Tenn. Code Ann. § 68-3-305(c); *Sullivan*, 2011 WL 2015516, at *1).

The standard for changing a nonmarital child's surname was set forth in *Barabas v. Rogers*:

> The courts should not change a child's surname unless the change promotes the child's best interests. Among the criteria for determining whether changing a child's surname will be in the child's best interests are: (1) the child's preference, (2) the change's potential effect on the child's relationship with each parent (3) the length of time the child has had its present surname, (4) the degree of community respect associated with the present and proposed surname, and (5) the difficulty, harassment, or embarrassment that the child may experience from bearing either its present or its proposed surname.

Barabas v. Rogers, 868 S.W.2d 283, 287 (Tenn. Ct. App. 1993) (internal citations omitted).

The *Barabas* court further established that the parent seeking to change the child's surname has the burden of proving that the change will further the child's best interests. *Id.* Accordingly, Father, as the party seeking to change his son's surname, had the burden of proving that the change would be in the child's best interest.

Father testified that changing the surname was in the child's best interests for the following reasons:

> Because it reflects his heritage on both sides. His whole name would have been essentially reflecting his heritage on both sides. A first and middle name that came from his mother, the last name that -- that comes from his father. It's not so much about tradition, as I'm afraid a lot of people want to push in these cases. It's about balance. And I firmly believe that in any instance where it's possible, there should be reasonable balance for a child, in a child's life, and I think that this would create that. I think this would cement that in a lot of ways.

Mother testified that it was in the child's best interest to have her surname because, *inter alia*, the child lives with her and her mother, who share the same surname, and Mother's brother and his family live close by and also share the same surname.

In denying Father's request to change the child's surname, the juvenile court stated:

> [Father] believed giving the child his name would create more of a balance and reflect heritage on both sides of the child's family. While this Court certainly understands [Father's] reasoning, this Court cannot find that

> evidence alone is sufficient to warrant the name change . . . . "The parent's wish that a child's surname be changed is not sufficient to justify such relief" and a parent's preference that the child share his or her surname "is not evidence that a name change is in the child's best interest." *Sullivan v. Brooks*, No. M2009-02510-COA-R3-JV, 2011 WL 2015516, at *3 (Tenn. Ct. App. May 23, 2011). Father's proffered reasons to change the child's surname do not amount to his carrying the burden of proof by a preponderance of the evidence.

The juvenile court further found that the parents gave conflicting testimony concerning whether Mother agreed to give the child Father's surname. The court found that this contradictory evidence only established that Mother advised Father that "she may" give the child his surname. The court also found it relevant that Mother offered DNA testing while she and the child remained in the hospital, yet Father refused to sign a Voluntary Acknowledgment of paternity and refused to sign the birth certificate to confirm his parentage.

On appeal, Father acknowledges that the *Barabas* factors have been construed strictly by the court in similar cases; however, Father contends that the court has expanded upon the five-prong analysis and insists that the evidence of a strong bond between a father and child can be the determinative factor. In support of this assertion, Father directs our attention to *Conner v. King*, No W2009-00511-COA-R3-JV, 2009 WL 3925164 (Tenn. Ct. App. Nov. 18, 2009)[5] and *In re A.M.K.*, No. E2011-00292-COA-R3-JV, 2011 WL 3557083 (Tenn. Ct. App. Aug. 11, 2011). We find this argument unpersuasive because the facts of this case are distinguishable from those of *Conner* and *In re A.M.K.*

[5] In *Conner v. King*, we stated:

> Although these criteria "may offer a court guidance" in determining whether a name change would be in the child's best interest, they "are not exclusive and obviously may not be relevant given the facts of a particular case." *Keith v. Surratt*, No. M2004-01835-COA-R3-CV, 2006 WL 236941, at *8 (Tenn. Ct. App. Jan. 31, 2006). Where a father requests that his child be given his surname, courts have also considered the nature of the father's relationship with the child. *See, e.g., State of Tenn., Dep't of Human Servs. v. Sanders*, No. 03A01-9705-JV-00184, 1998 WL 8516, at *2 (Tenn. Ct. App. Jan. 13, 1998) (noting that the child "knows his father, who provides for him; a bond has developed between them, [and] he has been legitimated"); *Halloran v. Kostka*, 778 S.W.2d at 456 (noting that the father had "maintained contact with and supported [the child] throughout her life").

Conner, 2009 WL 3925164, at *2.

Unlike this case, in *Conner* and in *In re A.M.K.*, the child's name at issue was a hyphenated surname. In *Conner*, the evidence established that hyphenating the child's surname to include his father's surname would "affirm his bond with [his] Father." *Conner*, 2009 WL 3925164, at *3. Similarly, in *In re A.M.K.*, the evidence revealed a strong bond between the father and the child and that hyphenating the child's surname would affirm the child's bond with the father. *In re A.M.K.*, 2011 WL 3557083, at *5. In the present case, Father did not seek a hyphenated surname that includes both parents' surnames; instead, Father sought to remove Mother's surname and replace it with his surname.

Another disparate fact between *Conner* and this case is that the mother expressly agreed to give the child his last name early in her pregnancy, but changed her mind and did not let the father know when the child was born despite his requests that she do so. *Conner*, 2009 WL 3925164, at *2. Furthermore, in this case, Father ceased being involved during the second-half of Mother's pregnancy while, in *Conner*, the father filed his petition to establish paternity and seek visitation before the child was born. *Id*.

Having distinguished *Conner* and in *In re A.M.K.*, we are obliged to follow precedent which states that "courts should not change a child's surname unless the change promotes the child's best interests." *Barabas*, 868 S.W.2d at 287. We are also mindful that "[t]he amount of proof required to justify changing a child's surname is not insubstantial," and that "[m]inor inconvenience or embarrassment are not enough." *Baird v. Baird*, No. 01A01-9704-JV-00148, 1997 WL 638278, at *1 (Tenn. Ct. App. Oct. 17, 1997) (citing *Layman v. Replogle*, No. 01A01-9312-CV-00516, 1994 WL 228227, at *2 (Tenn. Ct. App. May 27, 1994); *In re Lackey*, No. 01A01-9010-PB-00358, 1991 WL 45394, at *2 (Tenn. Ct. App. Apr. 5, 1991)).

As the juvenile court correctly found, Father did not offer sufficient evidence to show that changing the child's surname was in the child's best interest. There is no proof that changing the child's surname will affect the child's relationship with either parent. There is also no evidence that either the surname of Mother or of Father maintains a higher degree of respect than the other or that using Father's surname will be more beneficial to the child than using Mother's surname. Further, Father did not demonstrate that the child will encounter difficulties or be subject to harassment or embarrassment if he uses Mother's surname. He merely asserted his belief that the child's name should reflect "his heritage on both sides," and that the name change would create a "reasonable balance" in the child's life; however, as the juvenile court noted, a parent's wish or preference that the child share his or her surname is not sufficient to "justify such relief" and "is not evidence that a name change is in the child's best interest." *See Sullivan*, 2011 WL 2015516, at *3; *see also Baird*, 1997 WL 638278, at *2 (holding that the father's reasons for changing the child's surname because "he believed that the child's surname should 'reflect his parentage' and that 'the hyphenated last name would not adversely

impact the child' were insufficient to prove the proposed name change was in the child's best interests) (citations omitted).

Based on the foregoing, we agree with the juvenile court's determination that "Father's proffered reasons to change the child's surname do not amount to his carrying the burden of proof by a preponderance of the evidence" that changing the child's surname to his surname is in the child's best interests. Accordingly, we affirm the juvenile court's decision on this issue.

IN CONCLUSION

The judgment of the juvenile court is affirmed, and this matter is remanded with costs of appeal assessed against Larry G.

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FRANK G. CLEMENT, JR., JUDGE