20110022

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APRIL 11, 2011
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the Matter of the Application of:	)	
	)	
Niccole Anne Bjerke,	)	Cass Co. No. 09-2010-CV-1815
	)	
On behalf of C.R.J.O.	)	Supreme Court No. 20110022
	)	
For a Change of Name to:	)	
	)	
C.R.J.B.	)	
----------	)	
Blair Radomski, Appellant	)	
	)	
v.	)	
	)	
Niccole Anne Bjerke, Appellee	)	

BRIEF OF APPELLANT

APPEAL FROM FINDINGS OF FACT AND ORDER GRANTING NAME CHANGE

DATED NOVEMBER 15, 2010

THE DISTRICT COURT, EAST CENTRAL JUDICIAL DISTRICT,

COUNTY OF CASS, STATE OF NORTH DAKOTA

THE HONORABLE DOUGLAS R. HERMAN, PRESIDING

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STATEMENT OF THE ISSUE

The order of the trial judge granting the petition to change the name of a minor constitutes an abuse of discretion.

STATEMENT OF THE CASE

¶ 1 Niccole Bjerke filed an Application for Name Change of a Minor on May 21, 2010. Blair Radomski, the natural father of the child, filed a response to the application on June 22, 2010. The parties submitted affidavits, and the matter was heard by Honorable Douglas R. Herman, Judge of the District Court, Cass County, on November 10, 2010. The court entered its Findings of Fact and Order Granting Name Change on November 15, 2010. This appeal was filed on January 14, 2011, from the Findings of Fact and Order Granting Name Change.

STATEMENT OF THE FACTS

¶ 2 Blair Radomski and Niccole Bjerke, formerly Niccole Olson, are the father and mother of C.R.J.O., their five year old son. Radomski and Bjerke were not married at the time of the birth of C.R.J.O. The child was given his mother's surname of Olson and has been so known for his entire life.

¶ 3 Bjerke subsequently married and sought to change C.R.J.O.'s name to Bjerke. Radomski objected on the basis it would be confusing to his son to change his name to a name that is not his father's name, was not his mother's name for the first five years of his life, and has never been his name. No guardian ad litem was appointed to represent the interests of C.R.J.O.

¶ 4 Some time after the birth of his son, Radomski was compelled to relocate to Mandan, where he had been raised and where his parents live. Radomski has continued to maintain a strong relationship with his son, paying child support and observing the maximum visitation rights granted to him.

LAW & ARGUMENT

¶ 5 A District Court's decision in a name change case is subject to an abuse of discretion standard. Hartlieb v. Simes, 2009 ND 205, ¶ 40, 776 ND 217. Grad v. Jepson, 2002 ND 153, ¶ 5, 652 N.W.2d 324. When a minor is involved, the determination of whether there is proper and reasonable cause for the proposed change must include consideration of the best interests of the child. Edwardson v. Lauer, 2004 ND 218, ¶ 5, 689 N.W.2d 407, and Grad v. Jepson, *supra*.

¶ 6 The facts in this case mirror the background in Grad v. Jepson, *supra*. The parents in that case had never been married. Their daughter was given her mother's maiden name at birth, and the father was given liberal visitation. The mother subsequently remarried and changed her surname from Janda to Grad. She then petitioned under N.D.C.C. § 32.28-02 to change her daughter's surname to Grad.

¶ 7 The Court denied the petition based on the conclusion it would be more confusing to change the name than to leave it as it was. The trial court stated:

> "it will be more confusing for her to explain that her stepfather is not her father though she has his last name than to explain that she has her mother's maiden name. If the petitioner and her husband divorce, the petitioner said S.J.'s surname would remain the stepfather's name. Not only would that be confusing, but then S.J.'s surname would be that of a man to whom she has no legal or biological connections. And finally, the court believes allowing the name change could lead to alienation of the child from the respondent, even if there is no intent to do so."

¶ 8 The North Dakota Supreme Court found the trial court did not abuse its discretion in concluding, based on this reasoning, that the reasons presented by Grad were insufficient to establish proper and reasonable cause for changing the minor child's surname. The Court affirmed the dismissal of the name change.

¶ 9 The conclusions of the Grad case apply equally in the present case. However, in Hartlieb v. Simes, *supra*, the trial court, on the same facts, reached the opposite conclusion, finding there was reasonable cause for the name change and granting it. This Court found the trial court did not err in so ruling.

¶ 10 In the present case, the trial court preferred the reasoning of the Hartlieb trial court to that of the Grad trial court. The court made the requisite findings in support of his decision to barricade the decision against an abuse of discretion challenge. The direction given to parents, children and lawyers from the Grad and Hartlieb decisions is that the outcome of a name change application does not depend on the factual circumstances, but on the selection of the trial judge. The personal biases and prejudices of the judge can be masked by simply reciting the facts and making a determination that those facts support a finding of proper and reasonable cause to change a child's name. There is no effective appeal from such a determination.

¶ 11 This court should now define what is in the best interests of a child in this situation. Should a child lose his or her birthright and be subject to relabeling every time the custodial parent changes his or her living arrangements? A name should be more than just an address. It provides a source of identity to a child who, in the current social milieu, can statistically be expected to some point live in a different household than that into which he or she was born.

¶ 12 However, at present the determination of the issue appears, from the trial court decisions, to depend on what name the judge sitting that day believed would result in the least embarrassment to a child on the first day of school. Inherent in that determination are the prejudices of the adults involved in the decision; the mother, in this instance, for

whom it would be simpler, and less embarrassing, to standardize the household names; and the trial judge, who must attempt to weigh whether being Jones or Smith in a particular situation would be "more embarrassing" to a five year old child. The present rule asks the court to divine the future and guess what future embarrassments might be ahead if the child's living situation changes yet again.

¶ 13 This court should end that guesswork and adopt a nearly unassailable standard for "proper and reasonable cause" to permit a parent to require a child to change his or her name. The best interests of the child require that the child be given an identity at birth – a family name – which a child can say is his name and which will not be taken away from him because a parent finds it temporarily more convenient to do so. A name change for a minor should be allowed only in the most compelling situations where actual harm is threatened to the child without a change in name.

¶ 14 That component is not present in this case. To fit her present situation, Bjerke simply believes it would be better for everyone to change her son's name. Blair Radomski disagrees. Radomski recognizes the value to his son of being who he is. He has not requested that C.J.R.O.'s name be changed to Radomski, which is probably a better alternative than changing to the name of someone who is not a biological parent and may be only temporarily in his life. A birth name must be given a status by the courts that elevates it to more than a temporary number; it should be untouchable except in the most extreme circumstances.

CONCLUSION

¶ 15 Those circumstances do not exist in this case. C.R.J.O. should be allowed to keep the name which was given to him at his birth until he attains majority and can determine for himself whether his name is an embarrassment.

Dated this 13th day of April, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2011, the following document:

1. **Brief of Appellant**

2. **Appendix of Appellant**

was electronically filed with the Clerk of Court and served upon the following parties electronically and sent to:

John Arechigo
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Dated this 11th day of April, 2011.

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