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Petit v. Adrianzen, 133 Nev. Adv. Op. 15 (Apr. 13, 2017)

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FAMILY LAW—OTHER

Summary

The Court considers, as a matter of first impression, the standard of proof to be applied by district courts in resolving initial naming disputes of a child of married parents. The focus should be on the best interest of the child and neither parent should have the burden of proof. The Court held the district court determined the child's name should be hyphenated to include both parent's surnames and, in doing so, considered the best interests of the child and, thus, the order is affirmed.

Background

Ms. Petit and Mr. Adrianzen were married and had a child together. The parties were estranged before the child was born and disagreed about what the child's surname should be. Petit named the child with her surname. Adrianzen filed for divorce two months after the birth of the child and filed a petition to change the child's surname. An evidentiary hearing was held and, after determining that it was in the best interest of the child to have a surname that identified with both parents, the district court ordered the child's surname be changed to Petit-Adrianzen. This appeal followed.

Discussion

The Court has previously addressed the general change-of-name dispute where the parties originally agree on a surname for the child and one party later petitions to change the surname in *Magiera v. Luera*.[2] In *Magiera,* an unmarried couple had previously agreed that their child would bear the mother's surname, however, four years later during child support proceedings the father asked the court to change the child's surname to his surname.[3] The district court determined that the father was entitled to have the child bear his surname because he was making child support payments.[4] This decision was reversed and this court held that the only relevant factor in deciding the child's surname is the child's best interest and "the burden is on the party seeking the name change to prove, by clear and compelling evidence, that the substantial welfare of the child necessitates a name change."[5]

Where parties have never agreed on a surname is an issue of first impression in Nevada, as this court has not previously established the standard of proof in initial naming dispute cases. In *Keegan v. Gudahl*, the child's parents were married when the child was born and the mother named the child with her surname.[6] During divorce proceedings, the father argued the child's surname should be changed to his surname.[7] The court changed the child's surname to match the father's because a child traditionally takes the father's surname when the couple is married.[8] The Supreme Court of South Dakota reversed, determining that a best interest of the child standard

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[1] By Skyler Sullivan.
[2] Magiera v. Luera, 106 Nev. 775 (1990).
[3] *Id.* at 776.
[4] *Id.* at 777.
[5] *Id.*
[6] 525 N.W.2d 695, 695 (S.D. 1994).
[7] *Id.* at 696.
[8] *Id.*

should be used and that a party should not gain advantage "from her unilateral act in naming the child" and that custom should not give a similar advantage to the father.[9] This court finds the reasoning of the *Keegan* court persuasive.

Unlike the change-of-name case in *Magiera*, the parties in an initial naming dispute appear before the court on equal footing. The district court must determine the child's surname based only on the best interest of the child. Several jurisdictions have established a nonexhaustive list of factors for courts to consider:

> 1) the length of time the child has used his or her current name; 2) the name by which the child has been customarily called; 3) whether a name change will cause insecurity or identity confusion; 4) the potential impact of the requested name change on the child's relationship with each parent; 5) the motivations of the parties in seeking a name change; 6) the identification of the child with a particular family unit, giving proper weight to stepparents, stepsiblings, and half-siblings who comprise that unit; and 7) any embarrassment, discomfort, or inconvenience that may result if the child's surname differs from that of the custodial parent.[10]

This court now adopts this list of factors and further determines cultural considerations should be added to the list of factors. Although the district court did not have the benefit of the newly adopted list of factors, it did make its determination based on several of these factors as well as the best interest of the child. Therefore, the district court did not abuse its discretion and the order is affirmed.

Conclusion

The order of the district court is affirmed because: 1) the district court did not abuse its discretion in determining the hyphenated surname was in the best interest of the child; and 2) the district court considered several of the factors enumerated in 57 Am. Jur. 2d *Name* § 14 (2012) and now adopted by the Court.

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[9] *Id.* at 700.

[10] 57 Am. Jur. 2d *Name* § 14 (2012).