No. 32703 – *In Re: The Adoption of Jon L.*

FILED
December 16, 2005
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

In the instant case, the majority opinion crafted a "bright-line" rule: in an adoption proceeding, the adoptive parent has exclusive authority to change the adopted child's name. In the case of a step-parent adoption, where the adoptive step-parent is married to the child's parent, nobody except the child's parent has any right to interpose a legal objection to changing the child's name. The majority opinion concluded that discretion accorded to circuit courts under the name change statutes, *W.Va. Code*, 48-25-101 to -107, has no place in the context of an adoption proceeding under *W.Va. Code*, 48-22-101 to -903.

But bright lines are not always the best solution in grey areas. I am troubled by the majority opinion's interpretation of our adoption statutes, because I can easily conceive of grey areas where a name change might be patently unfair – particularly to the child. I believe the Legislature should modify the adoption statutes to allow for some flexibility and some consideration of what is in the best interests of the child. Perhaps the adoption proceeding statutes should be modified to accord courts some discretion to also consider the objections of the child or of third parties who allege they will be affected by a change in the adopted child's name.

The majority's interpretation of the adoption statutes works fine in clear, tidy situations like that in the instant case: the father died while the child was an infant (the day

before the child's second birthday), and the mother remarried and changed her surname. The stepfather wants to adopt the child as his own, and the mother and stepfather want to change the infant's surname. The adoption case has dragged on, but child is still young and in pre-school, and the parents probably want to protect the child from being peppered with embarrassing questions by his classmates about why his last name is different from his parents'. There is no clear reason why the child's last name cannot be changed.

But what if the facts were different? What if this child were originally named "Jon D. Smith, IV," in honor of his great-grandfather who was a well-known oil magnate, billionaire and philanthropist? Would it be fair to deprive the child of his historical lineage?

What if the child had routinely gone fishing or camping with the great-grandfather and grandfather who shared the child's name? Would it be fair to the child to change the child's name, to artificially try and distance the child from his memories?

What if the child was a teenager at the time of the adoption? Under our divorce and infant guardian statutes, we let a child who is fourteen years of age or older choose who they want to live with (save circumstances where the choice would be manifestly harmful to the child).[1] If the child in this case was fourteen, and his parents had simply divorced, the

---

[1]*W.Va. Code*, 48-9-206(a)(2) [2001] states:

> Unless otherwise resolved by agreement of the parents . . . or unless manifestly harmful to the child, the court shall allocate custodial responsibility . . . necessary achieve any of the following objectives: . . .
> (2) To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a

(continued...)

child could normally pick with which parent he wanted to live. But applying the majority's interpretation of the adoption statutes, if the fourteen-year-old child's father died, his mother remarried, and the new stepfather wanted to adopt the fourteen-year-old child, the child could not object to his mother and stepfather changing his name, and would have no say in what that name might be.

Taking this reasoning a step further, what if the mother in this case was a "serial bride" who jumped from marriage to marriage? Applying the majority's reasoning, the mother could divorce and remarry every few years, and each time get her new husband to adopt the child and change the child's name. A child could conceivably grow to adulthood and have had a dozen or more name changes.

My point is this: in some instances, it simply may not be in the child's best interests to change the child's name. Simply saying that the child can change his or her name upon reaching majority is not an acceptable alternative. The statutory scheme created by the Legislature is, as the majority opinion found, clear and painfully oblivious to the wants and needs of the child, and the wants and needs of other individuals like the child's grandparents.

---

[1](...continued)

> child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant[.]

Similarly, the infant guardian statutes, specifically *W.Va. Code*, 44-10-4(a) [1923], state:

> If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian[.]

I therefore suggest the Legislature examine the adoption statutes, and consider some flexible, ameliorating language such that the best interests of the child are considered and protected.

I respectfully concur in the majority's opinion, but add my thoughts hoping that the Legislature might look at this issue.

I am authorized to state that Chief Justice Albright joins in this opinion.