No. 33064 In Re: The Petition of Blake A. Carter, a minor, by Christina M. Karawan for Change of Name to Blake A. Karawan

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OF WEST VIRGINIA

Benjamin, Justice, dissenting:

The circuit court focused squarely on the bests interests of the child. It followed the law. It did not abuse its discretion. It did not commit clear error in its findings of fact. Accordingly, I dissent from the majority opinion.

This case is fact-driven. Judge Zakaib, below, saw the facts very clearly. Young Blake wished to be legally recognized as Blake Karawan after he was essentially abandoned by his biological father, who had made no real attempt to be a part of Blake's life for more than thirteen-and-a-half years. Only when he faced the prospect, and I presume the personal embarrassment, of his own son seeking to change his name to that of his step-father did Mr. Carter rediscover his desire to have a fatherly relationship with Blake. Judge Zakaib did not believe that Mr. Carter's lately-formed sincerity was genuine and I do not believe Judge Zakaib was clearly wrong in that determination.

The majority concludes that a name change is not in Blake's best interests "[b]ecause Mr. Carter has regularly paid child support *and has expressed his sincere desire*

to forge a relationship with his biological son . . . ." Majority opinion at 9. (Emphasis added.) The record simply does not support Mr. Carter's claimed sincerity. All of the facts were taken by the circuit court and appropriate findings of fact were made. The circuit court found the facts to favor Blake's name change as being in his best interests. In ruling against Blake, the majority supplants the circuit court's findings with factual conclusions more to its liking and simply ignores the clearly erroneous standard which should control our review of this appeal. Syl. Pt. 2, *Walker v. West Virginia Ethics Commission*, 201 W. Va. 108, 492 S.E.2d 167 (1997).

A review of the type of father Mr. Carter has actually been, rather than what he now claims he wants to be, is illuminating. In the now sixteen years since his son was born, Mr. Carter has never made any real attempt to get to know his son, to nurture his son, to care for his son, or to otherwise be a parent to his son. He has done nothing for Blake other than that which he had to do to avoid criminal sanction: he paid court-ordered child support in a minimal amount.

Mr. Carter took no steps to exercise his rights as a parent. He never petitioned to modify the custody order or to exercise his visitation rights. While he was absent from Blake's life, Blake's mother and step-father put a roof over Blake's head, fed Blake, clothed Blake, provided medical care for Blake, nurtured Blake, saw to Blake's education, and raised Blake to be the intelligent and articulate young man that he is today.

Mr. Carter apparently hopes that by forcing his son to retain the name "Carter", it will somehow now allow Mr. Carter to foster a relationship with Blake. He apparently expects that Blake will be curious about his natural father and will seek out a relationship with him as a teenager. Unfortunately, Blake has made it clear to the circuit court what his wishes were. With the confidence and self-assurance of any adult, he articulated to the court that, while he understood and acknowledged that Mr. Carter is his biological father, Mr. Carter has never been a parent to him. Blake explained that he has always looked upon Mr. Karawan as his father and that he longed to be known by the same legal name as his mother, sister, and step-father.

To my mind, the record amply demonstrates that the factual findings of the circuit court were not clearly wrong nor were the conclusions the court drew from those facts wrong. While I acknowledge the standard expressed in *Harris*, I cannot agree that Mr. Carter has ever exercised his "parental rights and responsibilities" in the spirit of *Harris*. He chose to abandon any right he had to visit with and develop a parental bond with his son over the course of thirteen-and-one-half years. The only parental responsibility he exercised was that which he was legally required to do to avoid criminal sanctions. Being a father requires more. Blake's best interests deserve more.

As the circuit court amply found, Blake's best interests deserve more than the empty promises of his biological father. The circuit court correctly based its focus on the

child's best interests – as should we. Unfortunately, the majority opinion, with its emphasis on Mr. Carter's "sincerity" and Mr. Carter's wishes, instead looks to Mr. Carter's best interests in deciding this case. In all other aspects, this Court has held the best interests of the child to be paramount. Syl. Pt. 1, *Petition of Nearhoof*, 178 W. Va. 359, 359 S.E.2d 587 (1987) ("A trial court, in considering a petition of a grandparent for visitation rights with a grandchild or grandchildren pursuant to W. Va. Code, § 48-2-15(b)(1) [1986] or W. Va. Code § 48-2B-1 [1980], shall give paramount consideration to the best interests of the grandchild or grandchildren involved."); Syl. Pt. 5, *Carter v. Carter*, 196 W. Va. 239, 470 S.E.2d 193 (1996) ("In visitation as well as custody matters, we have traditionally held paramount the best interests of the child."); Syl. Pt. 3, *In re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996) ("Although parents have substantial rights that must be protected, the primary goal in cases involving abuse and neglect, as in all family law matters, must be the health and welfare of the children."); *In re Elizabeth A.*, 217 W. Va. 197, 203, 617 S.E.2d 547, 553 (2005)("Any evaluation pertaining to the rights of children must be guided by this Court's consistent recognition that a child's rights are paramount."). Accordingly, I respectfully dissent from the majority opinion.