State of West Virginia
Supreme Court of Appeals

In Re: The Child of:

Jason Ashworth,
Petitioner

FILED
February 11, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101218 (Kanawha County 08-D-1425)

Laura Southworth,
Respondent

Memorandum Decision

Petitioner Jason Ashworth appeals the Circuit Court of Kanawha County's March 30, 2010, order denying his petition for appeal from the Family Court's February 8, 2010, "Order on Child's Surname."

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, this Court does not disagree with the decision of the lower court as to the question of law and finds no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Mr. Ashworth and Ms. Southworth, who never married, have a child who was born in July of 2008. When completing the application for the birth certificate, Ms. Southworth gave the child her surname. Mr. Ashworth argues that the lower courts erred by not ordering that the child's surname be changed to the paternal surname. He argues that he has exercised his visitation rights and paid child support, that he has diligently sought to change the name, that children are customarily known by the paternal surname, and that having the paternal surname will enhance the child's identification with the paternal side of the family.

A father has a protectable interest in his child retaining the paternal surname absent clear, cogent, and convincing evidence that a change would advance the best interests of the child. Syl. Pt. 3, *In re Harris*, 160 W.Va. 422, 236 S.E.2d 426 (1977); Syl. Pt. 3, *In re Petition of Carter*, 220 W.Va. 33, 640 S.E.2d 96 (2006) (*per curiam*).

However, any name **change** involving a minor child may be made only upon clear, cogent, and convincing evidence that the change would significantly advance the best interests of the child. Syl. Pt. 3, *Lufft v. Lufft*, 188 W.Va. 339, 424 S.E.2d 266 (1992). The family court found that Mr. Ashworth failed to present clear, cogent and convincing evidence that a name change would significantly advance the child's best interests. The family court found that the child is known to others by the maternal surname, and he has siblings bearing the maternal surname. The circuit court refused Mr. Ashworth's petition for appeal.

This Court applies the following standard of review:

> In reviewing a final order entered by a circuit judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Syl., *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Whether the name change would significantly advance this child's best interests was within the discretion of the family court, and we do not find that the family court abused its discretion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 11, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh