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2012 IL App (3d) 110434-U

Order filed May 15, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

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<i>In re</i> the PARENTAGE of: J. Ciolkosz,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Minor,	)	Will County, Illinois,
	)	
(D. Trunnell,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0434
	)	Circuit No. 10 F 273
and	)	
	)	
C. Ciolkosz,	)	
	)	
Respondent-Appellant.)	)	Honorable Bobbi Petrunaro, Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justice Lytton and Justice McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's finding that father presented clear and convincing evidence that a name change was necessary to serve the minor's best interests was against the manifest weight of the evidence.

¶ 2 On October 8, 2004, C. Ciolkosz (mother) gave birth to a child fathered by D. Trunnell.

The couple agreed that the child's last name would be mother's last name until such time as the couple married. The birth certificate listed the child's name to be J. Ciolkosz and identified the child's father as D. Trunnel (father). The couple did not marry and, five years after the child's birth, the non-custodial father filed a complaint to determine parentage and, as part of the prayer for relief, requested the minor's last name be changed to reflect his last name. Mother opposed the name change. A contested hearing took place before the court regarding the sole issue of whether the minor's surname should be changed from mother's last name to father's last name. The trial court found father met his burden of proof and granted the name change. We hold the court's decision was against the manifest weight of the evidence and reverse the trial court's order granting the name change.

¶ 3

#### BACKGROUND

¶ 4 Respondent-appellant C. Ciolkosz is the mother of J. Ciolkosz, born October 8, 2004. At the time of his birth, petitioner-appellee D. Trunnell, the father of the minor child, signed an acknowledgment of paternity and was listed as the child's father on the birth certificate.

Although the child's biological parents were not married, the couple agreed the child's last name would be Ciolkosz, mother's surname.

¶ 5 On March 18, 2010, father completed a pre-printed form labeled "Complaint to Determine Parentage" and filed the completed form as his *pro se* complaint to establish paternity. Father's complaint stated that mother should "be awarded sole care, custody, control, and education of the child." Father's complaint requested the court to enter an order declaring father a parent of the minor child, determine custody and visitation of the child, and "[c]hange the minor child's last name to Trunnell."

¶ 6 The parties entered into an “Agreed Order Establishing Parentage,” on December 12, 2010, and filed a “Joint Parenting Agreement” on that same date. The parents agreed mother would be the daily residential parent of the minor, and father would have regular visitation with the minor. The parties also agreed mother would continue to maintain major medical insurance for the child through her employment, and the parties would equally split the medical, educational, extracurricular activities, and other expenses for the minor.<sup>1</sup>

¶ 7 The only issue, not resolved by agreement, was father’s request for the minor’s name to be changed. The court scheduled the case for a contested hearing on the name change issue for January 11, 2011.

¶ 8 At the hearing, father testified he agreed, at the time of the minor’s birth, to list the minor’s surname as Ciolkosz for health insurance purposes. Father stated that he and mother decided that when they got married at a later date, they would change the minor’s last name at that time. According to father, the minor’s mother was living with her parents at that time and father was finishing his last two months in college. After father graduated, he said he lived with the minor and mother at mother’s parents’ house. Father stated he and mother separated when the minor was approximately 11 months old and did not marry.

¶ 9 Father testified that, at the time of this hearing, the minor was six years old and attended kindergarten. Father stated he felt it was important for the minor’s surname to be changed because “it’s a bond that him and I will share.” He said it “will help us feel a connection because he won’t get to see me as much.” Father stated he felt it was in the best interests of the minor to

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<sup>1</sup> The record does not show that child support was ordered or agreed upon in the instant case.

have the minor's last name changed to reflect father's last name.

¶ 10 Father referred to the minor's birth certificate and explained that the child's middle name, Loren, was the same as his middle name as well as his father's. Upon questioning, father stated he waited more than four years before filing a paternity action in court, but finally filed a petition because he wanted more parenting time with the child. Father acknowledged the minor was registered for kindergarten under the name Ciolkosz; the minor's school records were also under that name; the child had a passport under the same name to travel with mother's side of the family; and all medical and dental records for the minor were under the name Ciolkosz. When asked whether father tried to discuss the name change with mother in the past, father testified, "There was no discussion. My original plan was just to talk to [the minor] when he got older, but I figured that would create a rift between him and his mom so that's why I am here today."

¶ 11 After father's case, mother asked for a directed verdict arguing father failed to meet his burden of proof to show by clear and convincing evidence the name change is necessary to serve the best interests of the minor. The court denied the motion for a directed finding.

¶ 12 Following the denial of her request for a directed finding, mother testified before the court. She explained that she and father agreed on the minor's entire name which was placed on the birth certificate. She testified the minor's middle name linked the minor to father's side of the family and her surname was placed on the birth certificate because she was going to be the primary residential custodian of the minor.

¶ 13 Mother advised the court the minor was now six years old, attended kindergarten and had always gone by the name "Ciolkosz." She testified the minor referred to himself with that last name of Ciolkosz for years, could spell and write his last name, and all of his friends knew him

by that last name. Mother stated she had opened savings accounts and had purchased savings bonds for the minor under the name of Ciolkosz. Mother said she objected to changing the minor's last name because the minor had already established himself in school and it would be confusing for the minor to change his name now.

¶ 14 Mother said the minor loved his father, in spite of having a different last name, and she did not believe the name change was necessary to improve the bond between the minor and father. Mother testified that, after the birth certificate was signed, father did not discuss wanting the minor's last name changed until several years later when she received a copy of the parentage complaint. Mother agreed that, before the child was born, they had discussed listing the surname on the birth certificate as Ciolkosz and changing it when mother and father got married, but their plans for marriage did not become a reality. Mother stated that several years prior to father filing his complaint, it became apparent that she and the child's father were not going to marry.

¶ 15 Following mother's testimony, the court stated for the record that it met with the minor a few weeks before the contested hearing.<sup>2</sup> The court then took the matter under advisement. On February 15, 2011, the court filed a written "Order" indicating father met his burden of proof and granted father's request to change the minor's surname to Trunnell.

¶ 16 The court's written order indicated the court considered all of the relevant factors under section 21-101 of the Code of Civil Procedure (735 ILCS 5/21-101 (West 2010)) and also detailed certain findings. The court found the parties agreed, at the time of the minor's birth, to list the last name as Ciolkosz and both anticipated the child's last name would be changed after

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<sup>2</sup> The record does not contain a transcript of the in-chambers meeting with the minor nor did the trial court include details of that meeting in the record.

the parents married. The court further found parties separated in September 2005 and did not marry each other. The court said, in reaching its decision, it relied on the cases of *In re the Marriage of Presson*, 102 Ill. 2d 303 (1984) and *In re Howard*, 343 Ill. App. 3d 1201 (2003).

¶ 17 After the court denied mother’s motion to reconsider its decision, mother filed a timely appeal.

¶ 18 ANALYSIS

¶ 19 The only issue on appeal is whether father met his burden of proof to change the minor’s surname. Mother contends that father did not present clear and convincing evidence the name change was necessary to serve the minor’s best interests. Consequently, mother contends the trial court’s ruling was against the manifest weight of the evidence. Father argues the proper standard of review is whether the trial court abused its discretion and the court’s ruling was supported by the evidence and did not constitute an abuse of discretion.

¶ 20 Father filed a “Complaint to Determine Parentage,” pursuant to the Illinois Parentage Act of 1984 (Parentage Act). 750 ILCS 45/14 (West 2010). The Parentage Act provides, “On request of the mother and the father, the court shall order a change in the child’s name. 750 ILCS 45/14(e) (West 2010). We do not have a joint request by mother and father in this case.

¶ 21 However, the court and the parties relied on section 21-101 of the Code of Civil Procedure (Code) as governing father’s burden of proof with respect to father’s unilateral request to change the surname of the minor. 735 ILCS 5/21-101 (West 2010). Section 21-101 of the Code states, in relevant part:

“An order shall be entered as to a minor only if the court finds by clear and convincing evidence that the change is necessary to serve the best interest of the child.

In determining the best interest of a minor child under this Section, the court shall consider all relevant factors, including:

- (1) The wishes of the child's parents and any person acting as a parent who has physical custody of the child.
- (2) The wishes of the child and the reasons for those wishes. The court may interview the child in chambers to ascertain the child's wishes with respect to the change of name. Counsel shall be present at the interview unless otherwise agreed upon by the parties. The court shall cause a court reporter to be present who shall make a complete record of the interview instantaneously to be part of the record in the case.
- (3) The interaction and interrelationship of the child with his or her parents or persons acting as parents who have physical custody of the child, step-parents, siblings, step-siblings, or any other person who may significantly affect the child's best interest.
- (4) The child's adjustment to his or her home, school, and community.” 735 ILCS 5/21-101 (West 2010).

¶ 22 Here, the parties initially dispute the applicable burden of proof and standard of review in the instant case. Since the parties and the court applied section 21-101 of the Code to resolve this name change issue, the plain language of that statute controls and provides that a name change order shall be entered as to a minor *only if the court finds by clear and convincing evidence* that the change is *necessary* to serve the best interest of the child. (Emphasis added.) 735 ILCS 5/21-101 (West 2010). When considering the best interest of a child, in the context of a name change, the limited available case law provides a court of review will not reverse a trial court's findings as to the child's best interests unless they are against the manifest weight of the

evidence. *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 899 (1999).

¶ 23 In *Stockton*, the father of a child, born out of wedlock, petitioned the court to change the child's name to include his surname, along with a change of custody. *Stockton*, 305 Ill. App. 3d at 899. There, a psychologist testified, "I think it could be nice for [the minor] in the future to have both Oldenburg and Stockton in her name" claiming "it's less confusing, and it makes it very clear that they're both her parents equally. In our culture, most children have their father's name." *Id.* In *Stockton*, the father argued *Presson* (102 Ill. 2d 303 (1984)) for the premise that it is "recognized that a noncustodial parent is at a disadvantage in maintaining a strong relationship with the child and the child carrying that parent's name may demonstrate a noncustodial parent's continuing interest in and identity with the child." *Id.* However, the *Stockton* court concluded those factors do not rise to the level of presenting clear and convincing evidence the name change is *necessary* to serve the best interest of the minor and denied the change of the minor's name. *Id.*

¶ 24 In the instant case, the birth certificate reflected mother's surname based on an agreement between father and mother that mother's surname would suffice until the couple married. The couple did not foresee that their marriage would not take place as planned. Here, the couple separated when the minor was 11 months old, but father did not take any action to request a name change until many years passed, after the child was enrolled in school, and the child was old enough to be aware of his designated last name. In this case, the minor and father shared a healthy relationship and bond even though the minor was known by his mother's last name.

¶ 25 When reviewing whether father satisfied his burden to show it was in this minor's best interest to bear father's surname, we note father did not present any expert testimony to assist the



court. The only evidence father offered to the court was that the parents discussed marriage prior to the child's birth, and agreed, in the event of a marriage, the minor's last name would be changed to that of his married parents, sharing his father's last name. However, a marriage did not occur and father did not offer any evidence to suggest that the minor was experiencing any difficulty related to the fact the minor had his mother's last name. Father testified that a name change would provide "a bond that him and I will share," and "will help us feel a connection because he won't get to see me as much."

¶ 26 In this case, the record reveals that father and the minor already shared a close bond. Absent some evidence that the minor's best interest would be served, father did not establish the minor's well being or the father-child relationship was negatively affected because the minor and his father did not share a common last name. Nor did the court disclose the outcome of its discussion with the minor regarding the child's wishes. The court did not find the minor was poorly adjusted, had an identity issue, or declared the minor wished for the name change his father proposed nearly six years after his birth.

¶ 27 The facts in the cases cited by the trial court are inapposite to the facts in the instant case. In *Presson*, the parties were divorced, the minor already had father's last name, and father petitioned the court for an injunction under the Illinois Marriage and Dissolution Act (750 ILCS 5/101 *et seq.*) to bar mother from using or changing the minor's last name to that of the minor's stepfather. *Presson*, 102 Ill. 2d 303. There, the court held that it was not in the minor's best interest to allow a name change. *Id.* In *Howard*, the child originally had father's surname and the custodial mother petitioned the trial court to change the child's last name from father's to hers, and the trial court found that mother presented clear and convincing evidence that, applying

the factors in section 21-101 (735 ILCS 5/21-101 (West 2010)), it was in the best interest of the minor to change his surname. *Howard*, 343 Ill. App. 3d 1201 (2003).

¶ 28 After our careful review of the record in this case, and applying the facts to the factors in section 21-101 of the Code (735 ILCS 5/21-101 (West 2010)), we conclude that father did not present clear and convincing evidence that a name change for the minor was necessary to serve the minor's best interests at this time. Therefore, the court's order granting the name change was against the manifest weight of the evidence.

¶ 29 **CONCLUSION**

¶ 30 For the foregoing reasons, we reverse the trial court's ruling granting the name change, entered on February 15, 2011, and remand with directions to vacate the order granting the name change and to allow the minor to continue using the name as listed on his birth certificate.

¶ 31 Reversed and remanded.