

[Cite as *In re Millhoff-Pochubay*, 2009-Ohio-6620.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

NAME CHANGE OF MINOR
WILLIAM MICHAEL MAJOR
MILLHOFF-POCHUBAY
TO
WILLIAM VICTOR POCHUBAY

JUDGES:

Hon. Sheila G. Farmer, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2009 CA 00098

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Probate Division, Case No. 203630

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 14, 2009

APPEARANCES:

For Appellee

JOHN VARIOLA
306 Market Avenue North
#1024
Canton, Ohio 44702

For Appellant

GREGORY J. RUFO
THE RUFO LAW FIRM
101 Central Plaza South, #900
Canton, Ohio 44702

Wise, J.

{¶1} Appellant Michael R. Millhoff appeals the decision of the Stark County Court of Common Pleas, Probate Division, which granted a change of name of the minor child William Michael Major Millhoff-Pochubay to William Victor Pochubay. Appellant is the father of William. Appellee Jill Pochubay is the child's mother. The relevant facts leading to this appeal are as follows.

{¶2} William was born in May 2007. At that time, appellant signed the child's birth certificate as the father. Appellant and appellee have never been married or lived together, although appellant lived a few blocks from appellee's residence in Louisville, Ohio, from April 2007 until November 2007. Appellant then moved to Pennsylvania.

{¶3} On February 3, 2008, the Stark County CSEA administratively established a child support order, to be paid by appellant, of \$195.53 per month.¹

{¶4} On October 21, 2008, appellant, apparently dissatisfied with his level of non-court visitation with William, filed a motion for visitation in the Stark County Court of Common Pleas, Juvenile Division. The matter was set for hearing on December 1, 2008. At that time, appellant failed to appear, and the motion was ultimately dismissed for want of prosecution.²

{¶5} In the meantime, on July 10, 2008, appellee filed an application in the Stark County Court of Common Pleas, Probate Division, to change the name of the child from William Michael Major Millhoff-Pochubay to William Victor Pochubay. The matter proceeded to a hearing before a probate magistrate on December 11, 2008, at

¹ This amount was modified to \$243.34 per month effective March 13, 2009.

² Appellant later re-filed for visitation in the Juvenile Division, but that motion had not been resolved as of the time of the filing of the briefs in this appeal.

which time appellant appeared pro se. However, on December 16, 2008, the magistrate issued a decision denying appellee's request for the name change.

{¶6} Appellee thereupon filed an objection to magistrate's decision, which proceeded to an evidentiary hearing before the probate court judge on March 23, 2009. Appellant again appeared pro se. In a written decision filed March 27, 2009, the court overruled the decision of the magistrate, and granted the name change regarding William.

{¶7} On April 27, 2009, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶8} "I. THE TRIAL COURT ERRED IN FINDING THAT THE GRANTING OF A CHANGE OF NAME WAS IN THE BEST INTERESTS OF THE MINOR CHILD."

I.

{¶9} In his sole Assignment of Error, appellant contends the probate court's grant of appellee's application to change William's name constituted reversible error. We disagree.

{¶10} R.C. 2717.01 grants the authority for a probate court to make name changes on behalf of a minor child. In deciding whether to grant such an application, the court, in determining whether reasonable and proper cause has been established, must consider if such a change is in the child's best interests. *In Re: Willhite* (1999) 85 Ohio St.3d 28.

{¶11} In assessing whether the change of a minor surname is in the child's best interests, a court should consider:

{¶12} The effect of the change on the preservation and development of the child's relationship with each parent;

{¶13} The identification of the child as part of a family unit;

{¶14} The length of time a child has used a surname;

{¶15} The preference of the child if the child is of sufficient mature age expressing meaningful preference;

{¶16} Whether the child's surname is different from the surname of the child's residential parent;

{¶17} The embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's;

{¶18} Parental failure to maintain contact with and support of the child; and

{¶19} Any other factor relevant to the child's best interests.

{¶20} See *Bobo v. Jewell* (1988), 38 Ohio St.3d 330; *In Re: Willhite*, supra.

{¶21} A probate court's determination of whether a proposed name change should be granted will only be reversed if it constitutes an abuse of discretion. *In re Change of Name of Malott*, Brown App.No. CA2006-02-005, 2006-Ohio-7024, ¶6, citations omitted. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶22} In the case sub judice, the probate court held an evidentiary hearing and conducted a de novo review of appellee's application following the filing of the objection to the magistrate's decision, resulting in a five-page decision with findings of fact and conclusions of law. The court found, inter alia, that during the approximately seven

months that appellant lived near appellee, he was unemployed and had his apartment rent and other bills subsidized by appellee. The court also found, and appellant admitted, that he had not provided financial support for the child until CSEA intervened.³ The court noted that William's "current family unit" is appellee and her parents, and that William, at age two, would not be able to state a preference as to his last name. Furthermore, appellee testified that her pediatrician and pharmacist have started using "Pochubay" in their records, rather than the lengthier "Millhoff-Pochubay." On the other hand, the Internal Revenue Service dropped "Pochubay" from the child's name and utilizes only "Millhoff." The court also recognized: "As the minor gets older, he would have to explain why his name is different from his mother's." Judgment Entry at 5.

{¶23} Appellant directs us to *Willhite*, supra, wherein the Ohio Supreme Court stated: "A combined surname is a solution that recognizes each parent's legitimate claims and threatens neither parent's rights." Id. at 33. Indeed, in the present case, William started out with a hyphenated surname, although appellee testified appellant made this demand a condition of signing the birth certificate. However, *Willhite* does not mandate that a child's name cannot be "un-combined" under R.C. 2717.01 and revert to the mother's last name.

³ At the evidentiary hearing, appellant attempted to justify, at least in part, his failure to support William by renewing his allegation that he had been denied visitation, even though he forfeited his first attempt to obtain a juvenile court order in that regard. We take this opportunity to make clear that child support obligations are separate and distinct from visitation issues. See, e.g., *Porter v. Ferrall*, Portage App.No. 2002-P-0109, 2003-Ohio-6685, ¶22, citing *Davis v. Davis* (1988), 55 Ohio App.3d 196, 563 N.E.2d 320.

{¶24} Upon review of the record, we find the probate court duly considered the *Bobo v. Jewell* factors, and we are not inclined to conclude that the court abused its discretion in allowing the name change.

{¶25} Accordingly, appellant's sole Assignment of Error is overruled.

{¶26} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Probate Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Farmer, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
	:	
NAME CHANGE OF MINOR	:	JUDGMENT ENTRY
WILLIAM MICHAEL MAJOR	:	
MILLHOFF-POCHUBAY TO	:	
WILLIAM VICTOR POCHUBAY	:	Case No. 2009 CA 00098

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Probate Division, Stark County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES