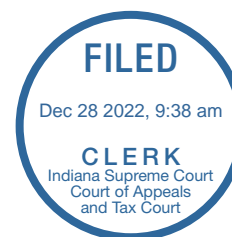


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the matter of the Name
Change of Israel James Croney:

Apryl E. Underwood,
Appellant.

December 28, 2022

Court of Appeals Case No.
22A-MI-1892

Appeal from the Allen Circuit
Court

The Honorable Wendy Davis,
Judge

Trial Court Cause No.
02C01-2204-MI-234

Bailey, Judge.

Case Summary

[1] Apryl Underwood (“Mother”) appeals the denial of her motion to correct error, which challenged the trial court’s order denying her petition to change the name of her minor child, Israel James Crony (“Child”), to include Mother’s surname. Mother presents a single, consolidated issue for review: whether the trial court misapplied Indiana Code Section 34-28-2-2(b) to require that the written consent of both parents be filed with the name change petition. We reverse and remand.

Facts and Procedural History

[2] Child, who was born in 2018, was given the surname of his biological father (“Father”). Child’s parents divorced and Mother’s maiden name of Underwood was restored to her in the dissolution decree. On April 20, 2022, Mother filed a petition to change Child’s name to also include her maiden surname. Notice of the legal action was published pursuant to Indiana Code Section 34-28-2-3¹ and personal service of the petition was made upon Father, a California resident.

¹ This statute prescribes three weekly publications in a newspaper of general circulation published in the county in which the petition is filed in court. Pursuant to Indiana Code Section 34-28-2-4(b), the court may not hear the petition and issue a final decree until after thirty days from the later of (1) the filing of proof of publication or (2) the service of the petition upon the parents or guardian of the minor child.

[3] On July 21, 2022, the trial court conducted a hearing upon the name change petition. Father did not appear, and he filed neither an objection nor written consent. On July 25, 2022, the trial court denied the petition, stating that Indiana Code Section 34-28-2-2(b) requires that “written consent of the non-petitioning parent must be filed with the petition.”² Appealed Order at 1. Mother filed a motion to correct error, which the trial court summarily denied. Mother now appeals.

Discussion and Decision

[4] Indiana Code Section 34-28-2-2 prescribes the procedure for changing the name of a minor in Indiana. As relevant here, subsection (b) provides:

In the case of a parent or guardian who wishes to change the name of a minor child, the petition must be verified, and it must state in detail the reason the change is requested. In addition, except where a parent’s consent is not required under IC 31-19-9, the written consent of a parent, or the written consent of the guardian if both parents are dead, must be filed with the petition.

Subsection (c) provides that a minor child’s name may not be changed before a copy of the petition has been served upon the parents or guardian of the child.

[5] Mother contends that the trial court grafted an additional requirement onto the statutory language, by requiring written consent from both parents to be filed

² The trial court acknowledged that Indiana’s adoption statutes, Ind. Code § 31-19-9, include a provision for dispensing with parental consent in some circumstances. This provision is not applicable here.

with the petition. We generally review a trial court's ruling upon a motion to correct error for an abuse of discretion. *Santelli v. Rahmatullah*, 993 N.E.2d 167, 173 (Ind. Ct. App. 2013). However, the reviewing court owes no deference to the trial court's interpretation of a statute, which presents a question of law. *St. Margaret Mercy Healthcare Ctrs., Inc. v. Poland*, 828 N.E.2d 396, 408 (Ind. Ct. App. 2005). "The first and often the only step in resolving an issue of statutory interpretation is the language of the statute. Nothing may be read into a statute which is not within the manifest intention of the legislature as ascertained from the plain and obvious meaning of the words of the statute." *Indiana Civil Rights Comm'n v. Indianapolis Newspapers, Inc.*, 716 N.E.2d 943, 946 (Ind. 1999) (internal citations omitted.)

[6] We have previously observed,

The name change statutes provide who may file a name change petition, who shall be listed in the petition, who shall receive notice of the petition, and who may participate in the hearing on the petition. Those statutes do not require both parents of a minor child to be named as parties in a petition to change the minor's name.

In re Change of Name of Fetkavich, 855 N.E.2d 751, 755 (Ind. Ct. App. 2006).

Likewise, the relevant authority does not require both parents to file written consent to a name change. Here, the requirement that "a" parent file written consent is satisfied.

[7] Indiana Code Section 34-28-2-4(c)-(d) sets forth the procedure when a parent has refused or failed to give written consent to a name change:

(c) In the case of a petition described in section 2(b) of this chapter, the court shall set a date for a hearing on the petition if:

- (1) written objections have been filed; or
- (2) either parent or the guardian of the minor child has refused or failed to give written consent as described in section 2(b) of this chapter.

The court shall require that appropriate notice of the hearing be given to the parent or guardian of the minor child or to any person who has filed written objections.

(d) In deciding on a petition to change the name of a minor child, the court shall be guided by the best interest of the child rule under IC 31-17-2-8. However, there is a presumption in favor of a parent of a minor child who:

- (1) has been making support payments and fulfilling other duties in accordance with a decree issued under IC 31-15, IC 31-16, or IC 31-17 (or IC 31-1-11.5 before its repeal);
and
- (2) objects to the proposed name change of the child.

[8] Here, Father refused or failed to give written consent. Such written consent was not required; rather, if publication and proper service has been performed,

the trial court is to conduct a hearing and “shall be guided by the best interest of the child rule under IC 31-17-2-8.”³ *Id.*

Conclusion

[9] The trial court misinterpreted Indiana Code Section 34-28-2-2 to require, with the filing of the petition, the written consent of both parents of a child for whom a name change has been requested. We reverse and remand with instructions to the trial court to conduct a hearing regarding the best interests of Child.

³ Indiana Code Section 31-17-2-8 provides a non-exclusive list of factors appropriate for consideration in a child custody determination, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child’s parent or parents.
- (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child’s parent or parents;
 - (B) the child’s sibling; and
 - (C) any other person who may significantly affect the child’s best interests.
- (5) The child’s adjustment to the child’s:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.
- (9) A designation in a power of attorney of:
 - (A) the child’s parent; or
 - (B) a person found to be a de facto custodian of the child.

[10] Reversed and remanded.

Riley, J., and Vaidik, J., concur.