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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of: K.G.,

T.L.J.,

Appellant-Petitioner.

December 6, 2022

Court of Appeals Case No.
22A-MI-502

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause No.
59C01-2109-MI-180

Bradford, Chief Judge.

Case Summary

[1] T.L.J. (“Mother”) is the mother of K.D.G., a transgender child (“Child”). After Child informed Mother that Child identified as transgender, Mother began working with medical and mental-health professionals to determine an appropriate course of action. On September 21, 2021, Mother filed petitions to legally change Child’s name and gender marker on Child’s birth certificate. Following a hearing, the trial court denied Mother’s petitions, finding that Mother had failed to prove that the requested changes were in Child’s best interests. Mother challenges the trial court’s denial of her petitions on appeal. As for the denial of Mother’s request to amend Child’s birth certificate to change Child’s gender marker, we affirm the judgment of the trial court, concluding that the trial court did not have the statutory authority to grant Mother’s petition. As for Mother’s request to legally change Child’s name, our review of the trial court’s decision is limited by the trial court’s failure to provide any findings explaining why it determined that the requested change was not in Child’s best interests. We therefore affirm in part and remand the matter to the trial court for additional findings.

Facts and Procedural History

[2] Child was born on June 24, 2009. Mother is the Child’s mother. Child informed Mother that Child identified as transgender in March or April of 2021. Mother and Child then began working with medical and mental-health professionals “to make sure that [Child] knows what exactly that means and

that that truly is who [Child] is.” Tr. Vol. II p. 10. Mother also worked with Child’s medical and mental-health providers to create a plan for when to begin puberty blockers and hormone replacement therapy.

[3] On September 16, 2021, Mother filed verified petitions to change Child’s name and gender marker. The trial court conducted a hearing on January 14, 2022. During the hearing, Mother testified that since “coming out,” Child’s disposition and overall mood had improved, with Child being “happier, not as depressed.” Tr. Vol. II p. 10. Mother also submitted letters from Child’s doctor and social worker, supporting the change in name and gender marker. Specifically, Child’s doctor, Dr. Suzanne Kingery, wrote that

[Child] is being cared for by Norton Children’s Endocrinology integrated gender clinic for medical treatment. [Child] was assigned male at birth and identifies as female, using she/her/hers pronouns. [Child] has expressed experiencing significant distress related to being called by her legal name or being misgendered. This can also lead to bullying or targeting behaviors toward [Child] in some situations. As you may be aware, gender non-conforming teens have the highest percentage rate of discrimination, bullying, and assault. Likewise, they have the highest percentage of depression, self-mutilation, and suicide in the general teen population. Creating safe, affirming environments is critical in preventing these negative mental health outcomes. It is recommended that [Child’s] legal documents be updated to list her correct identifying information. This can decrease the barriers in school, community, and social settings to creating a safe and affirming environment.

Ex. Vol. p. 3. In addition, Child’s social worker, Ashley Manship, wrote that “[s]ince transitioning, I have seen [Child’s] mood and affect improve greatly.”

Ex. Vol. p. 4.

[4] In discussing whether the change of name and gender marker were in Child’s best interests, Mother emphasized that

[Child] fully has my support, whether the Court changes anything or not. But I do also know that the statistics for Transgender Youth who are not able to live their true selves, for them committing suicide it’s astronomical. And I just want what is best for my child. And if this how [Child] identifies then that’s how [Child’s] going to live. And like the letter states from the Social Worker, [Child] has been happier, [Child’s] had a better disposition; [Child] hasn’t been acting out as much in school since coming out. [Child] hasn’t been as depressed.

Tr. Vol. II p. 17. When asked by the trial court “what would be the harm in waiting [until] the child got to be older,” Mother responded “[i]n my opinion, I think that [Child] would feel invalidated. Like ... people aren’t taking [Child] seriously just because [Child] is a child.” Tr. Vol. II p. 21. On February 11, 2022, the trial court denied both petitions, finding that Mother “has failed to prove that it is in this minor child’s best interest to grant the petitions.”

Appellant’s App. Vol. II p. 6.

Discussion and Decision

[5] Mother contends that the trial court erred in denying her petitions to change Child’s name and gender marker on Child’s birth certificate. Specifically,

Mother asserts that the trial court abused its discretion in denying her petitions because her “testimony and documentary evidence showed that changing [Child’s] name and gender marker are in [Child’s] best interests.” Appellant’s Br. p. 9. However, we do not believe that the Indiana Code provides a mechanism for granting Mother’s requested relief relating to the request to change Child’s gender marker.

A. Gender Marker Change

[6] Indiana Code section 16-37-2-10, which applies to additions or corrections to birth certificates, provides as follows:

- (a) As used in this section, “DNA test” means an identification process in which the unique genetic code of an individual that is carried by the individual’s deoxyribonucleic acid (DNA) is compared with the genetic codes of another individual.
- (b) The state department may make additions to or corrections in a certificate of birth on receipt of adequate documentary evidence, including the results of a DNA test under subsection (c) or a paternity affidavit executed under section 2.1 of this chapter.
- (c) The state department may make an addition to a birth certificate based on the results of a DNA test only if:
 - (1) a father is not named on the birth certificate; and
 - (2) a citation to this subsection as the authority for the addition is noted on the birth certificate.

We recognize that other panels of this court have interpreted Indiana Code section 16-37-2-10 as providing a mechanism by which a parent can seek to have a child’s gender marker changed on the child’s birth certificate. *See In re Petition for Change of Birth Certificate*, 22 N.E.3d 707, 708–09 (Ind. Ct. App. 2014)

(the seminal case involving an adult petitioner); *Matter of R.E.*, 142 N.E.3d 1045, 1052 (Ind. Ct. App. 2020) (holding that adult petitioner need only show that request to change gender marker on birth certificate is made in good faith and not for a fraudulent or unlawful purpose); *Matter of A.B.*, 164 N.E.3d 167, 169–71 (Ind. Ct. App. 2021) (first case to hold that a parent has the authority—under the “broad” language of the statute and in light of the “fundamental right of parents to make important decisions for their minor children”—to file such a petition on behalf of their minor child and adopting a best interests standard); *see also In re A.L.*, 81 N.E.3d 283, 285 (Ind. Ct. App. 2017) (holding that there is no statutory requirement to publish notice of intent to change one’s gender marker). However, we do not believe that the statute can be read in such a broad manner.

[7] As Judge Pyle, a member of this panel, pointed out in his dissent in *Matter of A.B.*, a plain reading of the text of Indiana Code section 16-37-2-10 reveals that the statute has nothing to do with amending a birth certificate to reflect a parent’s desire to change a minor child’s gender to reflect their gender identity and presentation. Instead, it clearly applies only to the use of DNA testing or other documentary evidence in order to establish paternity for the purpose of including the proper parent’s name on a child’s birth certificate. Given the statute’s unambiguous language, we must apply the statute’s plain and ordinary meaning without enlarging or restricting the obvious intent of the legislature. *See In re S.H.*, 984 N.E.2d 630, 635 (Ind. 2013) (providing that when a statute is unambiguous, courts apply its plain and ordinary meaning without enlarging or

restricting the obvious intent of the legislature). The statute does not provide a mechanism for the trial court to grant the requested belief.

[8] Furthermore, as Judge Bailey, also a member of this panel, pointed out in *In re H.S.*, 175 N.E.3d 1184, 1187 (Ind. Ct. App. 2021), *trans. denied*, to date, the Indiana General Assembly has not addressed this emerging area of the law, leaving us “again asked to expand upon the generic language for birth certificate alteration found in Indiana Code section 16-37-2-10(b).” Because we do not believe that Indiana Code section 16-37-2-10 provides the court with the authority to grant the requested relief, we conclude that the trial court did not err in denying Mother’s petition to change Child’s gender marker.

B. Name Change

[9] “[T]he circuit courts, superior courts, and probate courts in Indiana may change the names of natural persons on application by petition.” Ind. Code § 34-28-2-1. “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.” Ind. Code § 34-28-2-2(b). “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 [Indiana Code section] 31-17-2-8.” Ind. Code § 34-28-2-4(d). Indiana Code section 31-17-2-8 provides that in determining the best interests of the child, the court shall consider all relevant factors, 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.

[10] In arguing that the trial court erred in denying her petition to change Child's legal name, Mother asserts that bringing the child's legal name "into alignment with how [Child] is otherwise recognized cannot be against [Child's] best interests when ... that recognition has demonstrably improved [Child's] mental health and is a necessary component of [Child's] medical care." Appellant's Br. p. 10. While we agree with Mother that protecting Child's health and safety "should be the paramount best interest concern," Appellant's Br. p. 11, given the trial court's lack of findings, we are unable to ascertain why the trial court found that Mother had failed to meet her burden of proving that the requested change was in Child's best interests. On remand, we instruct the trial court to make additional factual findings explaining its decision, focusing specifically on the statutory best-interests factors listed in Indiana Code section 31-17-2-8.

[11] The judgment of the trial court is affirmed in part and the matter is remanded with instructions.

Bailey, J., and Pyle, J., concur.