MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ryan Wiedenhaupt,
Appellant-Petitioner,

v.

Desiree Perry,
Appellee-Respondent.

May 16, 2023

Court of Appeals Case No. 22A-JP-2655

Appeal from the Hamilton Superior Court

The Honorable Richard Campbell, Judge

Trial Court Cause No. 29D04-2203-JP-455

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] In 2016, Ryan Wiedenhaupt ("Father") and Desiree Perry ("Mother") had a child ("Child") together, although Father was not identified as Child's biological father at that time. In March of 2022, Mother petitioned the trial court to establish paternity. That July, the parties entered into a partial mediated agreement ("the Agreement") which established Father's paternity and awarded Mother primary physical custody. One month later, Father requested that Child's surname be changed from Mother's surname to his. After a hearing, the trial court denied Father's request. On appeal, Father argues that the trial court abused its discretion in denying his name-change request. We affirm.

Facts and Procedural History

[2] Child was born on June 14, 2016. Father was present for Child's birth; however, unsure that he was Child's biological father, he did not sign Child's birth certificate. As a result, Child was given Mother's surname. Father has been involved in Child's life since birth, including seeing Child every other weekend when Mother would bring Child to Father's parents' home. After Child's birth, Father provided some financial support by giving Mother $200.00 a month and sometimes buying diapers, wipes, and baby formula. When Child turned three years old, Father began giving Mother $400.00 a month, despite there being no child-support order. When Child turned five years old, Father began exercising overnight parenting time.

[3] On March 28, 2022, when Child was six years old, Mother filed a petition to establish paternity, custody, parenting time, and child support. Sometime thereafter, the parties entered into the Agreement, which the trial court approved on July 23, 2022. The Agreement established Father as Child's biological father and awarded Mother primary physical custody.

[4] On August 1, 2022, Mother filed a notice of outstanding issue and a request for hearing involving work-related childcare expenses. On August 26, 2022, thirty-four days after the trial court's approval of the Agreement, Father filed his response to Mother's request and his own notice of outstanding issue, in which he raised for the first time the issue of Child's last name. The trial court set a hearing for September 15, 2022.

[5] Prior to the September hearing, Mother moved to dismiss Father's notice of outstanding issue and request for hearing. On September 6, 2022, the trial court granted Mother's motion. In response, and after his attorney had withdrawn representation, Father filed *pro se* correspondence with the trial court in which he raised several issues, including Child's last name. The trial court set a hearing for Father's request on Child's last name for October 10, 2022. After the hearing, the trial court denied Father's request to change Child's surname.

Discussion and Decision

[6] Our standard of review in juvenile name-change cases is well-established. A biological father seeking a name change of his non-marital child bears the

burden of persuading the trial court that the change is in the child's best interests. *Petersen v. Burton,* 871 N.E.2d 1025, 1029 (Ind. Ct. App. 2007). Absent evidence of the name change serving the child's best interests, the father is not entitled to obtain the name change. *In re Paternity of Tibbitts,* 668 N.E.2d 1266, 1267–68 (Ind. Ct. App. 1996), *trans. denied.* We review the trial court's decision in such cases for an abuse of discretion. *In re Paternity of M.O.B.,* 627 N.E.2d 1317, 1318 (Ind. Ct. App. 1994) (citation omitted). A trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Petersen,* 871 N.E.2d at 1028. We do not reweigh the evidence; instead, we consider it most favorably to the judgment and draw all reasonable inferences in favor of the judgment. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999).

[7] When a name change is sought in a paternity action, the trial court may consider, among other factors, whether the child "holds property under a given name, whether the child is identified by public and private entities and community members by a particular name, the degree of confusion likely to be occasioned by a name change, and (if the child is of sufficient maturity) the child's desires." *C.B. v. B.W.*, 985 N.E.2d 340, 343 (Ind. Ct. App. 2013) (citing *Tibbitts,* 668 N.E.2d at 1268). Additional relevant factors include birth and baptismal records of the child, school records of any older children, health records, and the effect of a name change when there are siblings involved whose names would not be changed. *Id.* (citing *Tibbitts*, 668 N.E.2d at 1268).

[8] Father argues that the trial court abused its discretion in denying his request to change Child's name when Father had contributed financially to Child's upbringing, exercised parenting time, developed a longstanding relationship with Child, and when changing Child's name would cement the parental bond between Child and Father. In making his argument, Father directs our attention to *In re Paternity of N.C.G.*, 994 N.E.2d 331 (Ind. Ct. App. 2013). In that case, we concluded that the trial court had improperly denied father's request for a name change when the child was given mother's surname at the hospital and father had attempted to change child's name since birth, father had paid child support, exercised parenting time, and father had demonstrated that the name change would solidify his role in child's life. *Id*. at 333. We reasoned that "having a father's surname under circumstances such as those presented in the instant case is in a child's best interest because it is a tangible reminder that the child has two parents." *Id*. at 336.

[9] Additionally, Father relies on *C.B.*, 985 N.E.2d at 340, to argue that his name-change request should be granted. There, we reasoned that the father's name-change request served then-five-year-old child's best interest when the father "initiated proceedings to establish his paternity, pays support, exercises visitation, participates in the life of the child and shares joint legal custody […] with Mother[.]" *Id*. at 347. As a result, we concluded that the mother's argument in opposition to the name change was merely a request to reweigh the evidence and that she had failed to show that the trial court had abused its discretion in awarding the father's requested name change. *Id*. at 348.

[10] In any event, the facts of the cases on which Father relies are readily distinguished from the facts of this case. In *In re Paternity of N.C.G.*, the father had attempted to secure the child's name change since the child's birth. *Id*. at 335. The trial court granted the father's request to change the child's name when the child was merely two years old. *Id*. at 334. Here, however, Father waited until Child was six years old to request a name change, at which point Child had been enrolled in school and extracurricular activities under her current name. Our decision in *C.B.* is also unavailing. As mentioned, in affirming the trial court, we concluded that the mother had failed to prove that the trial court had abused its discretion as her argument in opposition to the name change was merely an impermissible request to reweigh the evidence. *C.B.*, 985 N.E.2d at 348.

[11] For her part, Mother argues that the trial court's denial of Father's name-change request is supported by the evidence. We agree. After considering the facts presented in this case, the trial court determined that a name change was not in Child's best interests. Again, although Father had the opportunity to sign Child's birth certificate and establish paternity at the time of Child's birth, Father did not do so. Additionally, despite being involved in Child's life from birth, Father never initiated paternity proceedings and only petitioned for Child's name change after the parties had entered into the Agreement, when Child was six years old. By that time, Child knew her last name to be "Perry" and had been using that name in public settings for some time. The trial court denied Father's request "based upon the evidence presented and [Father's]

arguments." We will "presume that the trial court correctly followed the law" and that "the court considered the best interests of the children" in making its decision. *In re H.M.C.*, 876 N.E.2d 805, 808 (Ind. Ct. App. 2007), *trans. denied*.

[12] In ruling on Father's name-change request, the trial court stated that, "based upon the evidence presented and the arguments for [Father], primarily because the child is six years old and Perry is the name that's on the birth certificate[,]" "[t]he Court is going to deny [Father]'s request to change the last name of the child." Tr. Vol. II p. 31. Moreover, Child "knows her last name to be Perry[,]" "she's been using this last name since she was three in school-related setting[s,]" and has been known by that last name in the community. Tr. Vol. II pp. 19, 23–24. Father's argument essentially amounts to a request that we reweigh the evidence, which we will not do. *Yoon*, 711 N.E.2d at 1268.

[13] As a result, after viewing the record in the light most favorable to the judgment, we cannot say that the trial court abused its discretion in denying Father's name-change request. *Yoon*, 711 N.E.2d at 1268. Again, Father essentially asks us to reweigh the evidence, which we will not do. *Id*.

[14] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.