COURT OF APPEALS
DECISION
DATED AND FILED

November 19, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1089 **Cir. Ct. No. 94-PA-78**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE PATERNITY OF SEAN D.F.:

DAWN M.F.,

PETITIONER-APPELLANT,

V.

CHRIS A.K.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Oneida County: MARK A. MANGERSON, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Dawn M.F. appeals an order changing her child's name from Sean D.F. to Sean D. F.-K., the hyphenated surname reflecting both parents' last names. Dawn argues that the trial court erroneously determined that changing Sean's last name was in his best interests. She further contends that the

court erroneously exceeded its statutory authority granting the name change in a post-judgment proceeding. We affirm the order.

¶2 On May 26, 1994, Sean was born to Dawn, who was not married to Sean's father, Chris A.K. Paternity was adjudicated in June 1995. Sean resided primarily with his mother but had periods of placement with his father.

¶3 In 1998, the court ordered the child's primary placement transferred to Chris following proceedings upon his objection to Dawn's move to Kansas City, Missouri. At the hearing on the transfer of placement, the court took under advisement the father's request that the child's surname be changed. The court suggested to counsel, "see if you can reach an agreement," and added the issue to a number of items to be taken up at a later hearing if the parties did not reach a stipulation.

¶4 In January 1999, in an order addressing a number of issues, the court denied the name change request on two grounds: First, there was no evidence presented at the previous hearing on the issue of name change and, second, recent case law indicated that a name change was not authorized in paternity proceedings.

¶5 In February 2002, Chris requested the court to order Sean's name to be changed to a hyphenated surname to include the last names of both parents pursuant to WIS. STAT. ANN. § 767.51(3m) (West 2002),[1] which authorizes the circuit court to order a name change in a paternity judgment. At the hearing on his motion, Chris testified that he had been referring to his son as Sean F.-K. since

[1] This statute became effective September 1, 2001. *See* 2001 Wis. Act 16, § 3793m.

Sean was three years old. Chris had asked Sean's school to use a hyphenated name since he was in kindergarten in 1999. Chris stated that he believed it is important for people in the community to know who a child's father is. He further expressed his concern that recently the school was unwilling to continue using a hyphenated name when it was not Sean's legal name.

¶6 The court found that it was in Sean's best interests to avoid confusion regarding his name. It determined that Chris had primary physical placement and that "it's very likely that any confusion over the last name of the child being different that his would show itself more prominently in his life and in the child's life, because, again, the child is with him most of the time and he's making most of the decisions and requesting information for this child." Over Dawn's objection the court found that the name change would be in Sean's best interests and granted the request.

¶7 Dawn argues that the court erroneously exercised its discretion when it determined that it was in Sean's best interests to hyphenate his surname to reflect both parents' last names. She argues that the court's primary focus was on the father's rights and convenience.

¶8 WISCONSIN STAT. ANN. § 767.51(3m)(a) and (b) (West 2002), outline the procedure for granting a name change in a paternity action. Under these sections, the court may order a hyphenated surname as follows:

> (3m)(a) Upon the request of both parents, the court shall include in the judgment or order determining paternity an order changing the name of the child to a name agreed upon by the parents.
>
> (b) Except as provided in par. (a), the court may include in the judgment or order determining paternity an order changing the surname of the child to a surname that consists of the surnames of both parents separated by a

> hyphen or, if one or both parents have more than one surname, of one of the surnames of each parent separated by a hyphen, if all of the following apply:
>
> 1. Only one parent requests that the child's name be changed, or both parents request that the child's name be changed but each parent requests a different name change.
>
> 2. The court finds that such a name change is in the child's best interest.

¶9 The parties agree that whether to grant a name change is addressed to trial court discretion. *See* ***Kruzel v. Podell***, 67 Wis. 2d 138, 154, 226 N.W.2d 458 (1975). Judicial discretion is the reasoned application of the proper principles of law to the facts that are properly found. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶10 Here, the record reflects a reasonable exercise of discretion. Sean has lived with his father since 1998 and attends school in his father's community. Chris testified that he had been referring to Sean using a hyphenated last name since Sean was three. It was reasonable for the court to infer that the use of only his mother's name would cause confusion in Sean's community and at school. The court could reasonably find that avoiding confusion with respect to Sean's last name was in Sean's best interests. Because the record discloses a rational basis for the court's determination, we do not overturn it on appeal.

¶11 Next, Dawn argues that the trial court exceeded its statutory authority by granting a name change in a post-paternity judgment proceeding. She argues that the unambiguous language of WIS. STAT. ANN. § 767.51(3m) (West 2002), refers only to the original judgment and provides no authority for the court to revise the paternity judgment to include a name change. She further contends that WIS. STAT. §§ 767.32 and 767.325 (1999-2000), apply to child support

modification and custody and placement revisions. She claims that these sections fail to authorize modification of a paternity judgment to include a name change.

¶12 Dawn's statutory argument was not made to the trial court. "It is a fundamental principle of appellate review that issues must be preserved at the circuit court." ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. "Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal." ***Id.*** "The party who raises an issue on appeal bears the burden of showing that the issue was raised before the circuit court." ***Id.***

¶13 This rule is "not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice." *See* ***id.*** at ¶11. "The rule promotes both efficiency and fairness, and 'go[es] to the heart of the common law tradition and the adversary system.'" ***Id.*** (quoting ***State v. Caban***, 210 Wis. 2d 597, 604-05, 563 N.W.2d 501 (1997)). The rule serves several important objectives:

> Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties and the trial judge notice of the issue and a fair opportunity to address the objection. … [It] encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.

Id. at ¶12 (citations omitted). Because Dawn's statutory argument was not presented to the trial court, we do not consider it for the first time on appeal.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).