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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

December 4, 2018

To:

Hon. Tammy Jo Hock
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Robert B. Loomis
Herrling Clark Law Firm, Ltd.
800 N. Lynndale Drive
Appleton, WI 54914

Peter Reinhart
3254 Bitters Court
Green Bay, WI 54301

You are hereby notified that the Court has entered the following opinion and order:

2017AP1923

Tracy Alpert v. Peter Reinhart (L. C. No. 2017CV1021)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Peter Reinhart appeals an order granting Lily Grace Reinhart's petition to change her last name from "Reinhart" to "Alpert." Peter argues that the statute governing Lily's petition for a name change, WIS. STAT. § 786.36 (2015-16),¹ is void for vagueness. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Peter's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.

On August 1, 2017, Lily, who was fourteen years and seven months old, petitioned to change her last name from “Reinhart” to “Alpert,” stating her father, Peter, was in jail and she did not want to be associated with him. Peter filed an “answer” stating he did not consent to the proposed name change. After a hearing, the circuit court granted Lily’s petition and this appeal follows.

On appeal, as below, Peter argues that the statute governing name changes is void for vagueness, thus also voiding the order granting Lily’s petition. Vagueness is a due process issue, and due process determinations are questions of law that this court reviews de novo. *See State v. Aufderhaar*, 2005 WI 108, ¶10, 283 Wis. 2d 336, 700 N.W.2d 4. “‘The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment’ and also depends on whether there are civil or criminal penalties.” *Gross v. Woodman’s Food Mkt., Inc.*, 2002 WI App 295, ¶56, 259 Wis. 2d 181, 655 N.W.2d 718 (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982)). In a civil context, like the present matter, “[u]nless a statute is so vague and uncertain that it is impossible to execute it or to ascertain the legislative intent with reasonable certainty, it is valid[.]” *Forest Home Dodge, Inc. v. Karns*, 29 Wis. 2d 78, 94, 138 N.W.2d 214 (1965).

Here, the challenged statute provides, in relevant part:

(1) Except as provided in sub. (3) [related to those engaged in the practice of any profession for which a license is required by the state] or s. 301.47 [prohibiting name changes for those required to register as sex offenders], any resident of this state, whether a

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

minor or adult, upon petition to the circuit court of the county where he or she resides and upon filing a copy of the notice required under s. 786.37 (1), with proof of publication, may, if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court. *Subject to sub. (1m)*, if the person whose name is to be changed is a minor *under the age of 14 years*, the petition may be made by whichever of the following is applicable:

- (a) Both parents, if they are living, or the survivor of them.
- (b) The guardian or person having legal custody of the minor, if both parents are dead or if the parental rights of both parents have been terminated by judicial proceedings.
- (c) The minor's mother, if the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and if paternity of the minor has not been established.

WIS. STAT. § 786.36 (emphasis added).

Under the clear language of the statute, if a minor is fourteen years or older, the process for a name change is the same as it would be for an adult. Peter nevertheless contends his consent to the name change was required pursuant to WIS. STAT. § 786.36(1m)(b), which provides:

If the nonpetitioning parent appears at the hearing on the petition or otherwise answers the petition and shows that he or she has not abandoned the minor ... or failed to assume parental responsibility for the minor ... the court shall require the consent of the nonpetitioning parent before changing the name of the minor.

As the circuit court properly explained, however, the matter is not subject to the requirements of (1m)(a) and (b) unless the minor is under the age of fourteen years. Therefore, and despite Peter's argument to the contrary, any reference to "minor" in sub. (1m)(a) and (b) necessarily refers to a minor under the age of fourteen years and does not render the statute so "vague and uncertain" that it is impossible to execute it or to ascertain the legislative intent. Because Lily

was not under the age of fourteen when she petitioned for the name change, parental consent was not required under the statute, and the circuit court properly granted her petition.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals