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DISTRICT II

March 20, 2019

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Jordan Elliot Beggs
5401 Yorkshire Ct.
Mount Pleasant, WI 53406

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Jillian Schumacher
7520 104th Ave.
Pleasant Prairie, WI 53158

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

2018AP97

In Re: the Name Change of Jordan Elliot Beggs:
Jordan Elliot Beggs v. Jillian Schumacher (L.C. #2017CV1522)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Jordan Elliot Beggs appeals from an order of the circuit court denying his petition requesting a name change. Based upon our review of his brief and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We reverse and remand.

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

Beggs filed his petition pursuant to WIS. STAT. § 786.36 a few months after he turned fourteen years old. Therein, he sought to assume his father's surname by changing his name to Jordan Elliot Phillips. At a hearing on the petition, Beggs's mother objected to the name change, contending, "I don't understand why he would need to change his name," and "[I]t's all been done completely behind my back. It's very surprising." Despite these contentions, she acknowledged that she had been notified of Beggs's request, that "Beggs"—her maiden name—was not her current last name (it was now Schumacher), and that her stated intention to return to her maiden name was not a guaranteed outcome. Beggs's father was also present for the hearing and explained to the court that it was his son's own decision to pursue the change after he turned fourteen.

Following this back and forth, the court denied the request, stating:

I'm not granting this. This is a matter that has to go back to family court. You can take it back to family court on your own. You don't need a lawyer here. If you have a valid order that says 60/40 split, this young man, unless there's a compelling reason why he shouldn't have contact with you—should have contact with you, and they can decide with respect to the issue of his last name. So the petition is denied.

The circuit court later entered an order indicating—by virtue of a checked box—that the petition was denied because "[t]he non-petitioning parent appeared at the hearing, showed that he/she has not abandoned or failed to assume parental responsibility for the child, and objects to the requested name change." Beggs appeals from that order.

The circuit court's stated basis for denying Beggs's petition tracks the language of WIS. STAT. § 786.36(1m)(b), which reads:

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, as described in [WIS. STAT.

§] 48.415(1)(a)3., (b), and (c), or failed to assume parental responsibility for the minor, as described in [§] 48.415(6), the court shall require the consent of the nonpetitioning parent before changing the name of the minor.

This provision—along with the rest of subsection (1m)—applies when the person seeking a name change is a minor under the age of fourteen. Sec. 786.36(1m). Before turning fourteen, a minor cannot file his or her own petition. Sec. 786.36(1), (1m). Subsection (1m) particularly addresses situations when a petition may be filed on the minor’s behalf by only one of the minor’s two living parents. Sec. 786.36(1m). Under these circumstances, that parent is considered the “petitioning parent,” while the other parent is considered the “nonpetitioning parent.” *Id.*

WISCONSIN STAT. § 786.36(1m)(b)—the provision implicitly cited by the circuit court—could not apply in this case, however, because Beggs filed his own petition after he had turned fourteen. Thus, the reason for the denial cited by the circuit court does not apply.

Because of Beggs’s age, his petition should have been considered under WIS. STAT. § 786.36(1), which provides, in relevant part:

[A]ny resident of this state, whether a 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 [WIS. STAT. §] 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.

Id. (emphasis added). The emphasized language affords courts “narrow” discretion to determine whether “there is a legitimate reason to deny a petitioner’s request for the change” based on the facts of the case and reasonable proof. *Williams v. Racine Cty. Circuit Court*, 197 Wis. 2d 841, 844-45, 847, 541 N.W.2d 514 (Ct. App. 1995) (affirming the denial of a petition from an inmate due to the State’s “legitimate interest in continuing to identify [the petitioner] by the name under

which he was convicted”); *see also Kruzel v. Podell*, 67 Wis. 2d 138, 153, 226 N.W.2d 458 (1975) (describing the discretion as “extremely narrow”).

“Discretionary decisions must be arrived at by application of the proper legal standards; the failure to apply the correct legal standards is an erroneous exercise of discretion.” *LeMere v. LeMere*, 2003 WI 67, ¶14, 262 Wis. 2d 426, 663 N.W.2d 789. The circuit court’s oral comments denying the name change did not offer a clear basis for denying the petition. Then in its written order, the court cited a standard applicable only to petitions filed on behalf of minors under the age of fourteen. While we ordinarily search the record for reasons to sustain an exercise of discretion, this record reflects that the circuit court’s decision was based on application of an incorrect legal standard. Accordingly, we reverse that decision and remand this matter for further proceedings consistent with this opinion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and remanded 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