Circuit Court for Prince George's County
Case No. CAE17-18724

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2689

September Term, 2018

ANNE MARIE PAUL

v.

PIERRE GERALD

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 27, 2020

The Circuit Court for Prince George's County granted a motion to change the last name of Anne Marie Paul and Pierre Gerald's minor child[1] from "Paul" to "Paul-Gerald" to foster the father-child relationship. Ms. Paul, the child's mother, challenges the decision to grant the motion and hyphenate the child's surname as insufficiently supported by record evidence. We disagree, and so affirm.

BACKGROUND AND PROCEDURAL HISTORY

This is the second time our Court is being asked to review the circuit court's decision to grant the change in surname for the child. *See Anne Marie Paul v. Pierre Gerald*, No. 2108, 2016 Term (filed July 21, 2017). As such, we draw upon the previous unreported panel decision to recount, as appropriate, relevant background information.

The child whose name is at issue was born in October 2011. Ms. Paul and Mr. Gerald were never married to each other, and Mr. Gerald was neither present nor officially recognized as the father at the time of birth. Accordingly, the minor child was solely given Ms. Paul's surname at birth. (As we will discuss further, this fact—that the parties never agreed on an initial surname at the time of birth—affects the legal standard by which we now assess the circuit court's decision to grant a name change).

A paternity test established Mr. Gerald as the child's father in May 2012. Soon after, in June 2012, the parties began contesting custody and visitation. (The same circuit court judge who handled the name change petition also oversaw the parties' custody and child support disputes. Although these other issues are not at issue in this appeal, we note

[1] In the interests of privacy, we will omit the minor child's first name.

this fact to underscore that the circuit court judge who granted the name change was well familiar with the full context of the minor child's life circumstances).

Mr. Gerald first filed a Petition for Change of Name in January 2014, to have the child's surname reflect that he was the biological father. Due to procedural concerns about Mr. Gerald's filing, the circuit court did not make a ruling on the name change petition in 2014.

Subsequently, in October 2016, the circuit court held a hearing on a motion brought by Mr. Gerald to modify a previous order concerning visitation. At the close of that hearing's evidentiary stage, the circuit court determined that it would grant a change to the child's surname. After asking Mr. Gerald for his preferences, the court determined that the hyphenated last name "Paul-Gerald" would be acceptable.

Ms. Paul successfully appealed that 2016 order to change the child's last name. This Court, in the 2017 panel opinion, held: (1) Rule 15-901's notification and publication requirements for changing a name had not been met, and (2) the circuit court had not made specific factual findings that were relevant to whether a name change was in the child's best interests. With respect to this second point, the panel opinion concluded that the circuit court's "best interest findings" had been made "in the context of resolving the issues of custody and visitation, not changing the child's name," Slip Op. at 14, and that "the trial court made no connection between its findings and the propriety of changing the minor child's name." Slip Op. at 15. As a result, the panel vacated the portion of the circuit court order that had granted the name change and remanded the case

for an evidentiary hearing "should [Mr. Gerald] elect to pursue the matter." Slip Op. at 19.

This brings us to the current appeal. Mr. Gerald filed a new name change petition in August 2017. In turn, Ms. Paul filed a motion to dismiss and other associated pleadings.[2] After denying the motion to dismiss, the circuit court held a merits hearing on Mr. Gerald's name change petition on June 25, 2018. The court heard argument by counsel for both sides, as well as testimony from Ms. Paul, Mr. Gerald, and Mr. Gerald's 21-year-old son Tyler (*i.e.*, the minor child's half-brother).[3] In a memorandum and order dated August 31, 2018, the court issued a three-page decision.[4] In relevant part, the memorandum determined that the minor child, who was about to turn seven, "ha[d] been using both surnames [*i.e.*, Paul and Paul-Gerald] for equal time during his life span." Additionally, the court concluded that it "deem[ed] it appropriate that in order to foster a

[2] On appeal, Ms. Paul does not rely upon a procedural argument that she made before the circuit court: that because Mr. Gerald was in possession of a birth certificate naming the child's last name as "Paul-Gerald" at the time that he filed his 2017 petition to change the name, the name had not yet been officially changed "back" to "Paul" following this Court's previous mandate, and so it was premature—or moot—to "change" the name to "Paul-Gerald." At the hearing, the circuit court did not believe that any such procedural hiccup should hold up the equitable issue that was squarely before it as a result of this Court's previous panel decision: whether the child's last name should be "Paul" or "Paul-Gerald."

[3] Including Tyler and the minor child, Mr. Gerald has three sons. Additionally, Mr. Gerald considers himself to be the father to an adult daughter, although he is not the daughter's biological father.

[4] Though not relevant to this appeal, we note that the circuit court later issued a clarifying order that included the minor child's middle name in the designated new name (*i.e.*, the initial order inadvertently omitted the middle name from the new name).

sense of belonging to his father, the minor child's other half siblings, and the length of time that he has used the name that the continued use of the hyphenated name, 'Paul-Gerald' is in his best interest."

Ms. Paul appealed the decision to grant the name change.

DISCUSSION

I. STANDARD OF REVIEW

When a child's parents never agreed on a surname at the time of the child's birth, a court's inquiry upon a motion to change the child's name is a pure "best interests of the child" standard. *Schroeder v. Broadfoot*, 142 Md. App. 569, 581 (2002) (citing *Lassiter-Geers v. Reichenbach*, 303 Md. 88, 95 (1985)).[5] Under this standard, the circuit court's

[5] By a "pure" best interests standard, "we mean the [circuit] court decides the issue without either party bearing a burden of proof that would act a legal tie-breaker . . . in the event the court finds the evidence to be in equal balance." *Schroeder*, 142 Md. App. at 586. In contrast, when the parents had previously agreed upon a surname, but then one parents seeks to change it, "a name change only is warranted if it is in the child's best interests *and* the moving party shows 'extreme circumstances.'" *Id.* at 581 (quoting *West v. Wright*, 263 Md. 297, 299 (1971)) (emphasis in original); *accord Dorsey v. Tarpley*, 381 Md. 109, 116-17 (2004). In a similar vein: although we have been colloquially referring to the "change" in the child's surname to "Paul-Gerald," technically speaking, "because the parents did not [initially] agree upon a surname for the child, [he] was without a surname[] [and] we do not see this as a change-of-name case but as a case to determine what is the proper surname of the child in question." *Lassiter-Geers*, 303 Md. at 93.

Additionally, we note that Ms. Paul has not attempted to argue that equitable principles should have led the circuit court to apply the standard that would be more stringent to Mr. Gerald. *See, e.g.*, *Schroeder*, 142 Md. App. at 587-88 ("Because the [standard] is one of equity, however, the doctrine of laches applies. Thus, if a father delays in seeking a determination of paternity, or in asserting his objection to the name the mother has selected for the child, the court may conclude that the father has acquiesced in the mother's naming of the child, and treat his challenge as a request for

(Continued…)

"discretion to determine what is in a child's best interests is broad," and we review the court's ultimate decision for an abuse of discretion. *Schroeder*, 142 Md. App. at 582. "There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court . . . or when the court acts without reference to any guiding rules or principles." *Meyr v. Meyr*, 195 Md. App. 524, 550 (2010) (Citation and quotation marks omitted). The circuit court's factual findings are reviewed for clear error, *Reichert v. Hornbeck*, 210 Md. App. 282, 303-04 (2013), and "if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *Id.* at 304 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). In short, "an appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007).

II. THE CIRCUIT COURT'S DECISION MET THE "SCHROEDER" FACTORS THAT GOVERN CHANGE OF NAME CASES, AND ITS FINDINGS WERE NOT CLEARLY ERRONEOUS.

"[W]hen parents never have agreed upon their child's surname, there are a multitude of factors that come to bear in deciding what surname will serve the child's best interests." *Schroeder*, 142 Md. App. at 584. As set forth in *Schroeder*—and later

the child's name to be changed, to which the 'extreme circumstances' standard applies." (Footnote omitted).

adopted by the Court of Appeals in *Dorsey v. Tarpley*, 381 Md. 109, 117 (2004)—when deciding what surname will serve a child's best interests, a circuit court should consider:

> 1) [T]he child's reasonable preference, if the child is of the age and maturity to express a meaningful preference; **2) the length of time the child has used any of the surnames being considered**; **3) the effect that having one name or the other may have on the preservation and development of the child's mother-child and father-child relationships**; 4) the identification of the child as a part of a family unit; 5) the embarrassment, difficulties, or harassment that may result from the child's use of a particular surname; 6) misconduct by one of the child's parents disparaging of that parent's surname; 7) failure of one of the child's parents to contribute to the child's support or to maintain contact with the child; and 8) the degree of community good will or respect associated with a particular surname. 142 Md. App. at 588. (Emphasis added).

Ms. Paul contends that, pursuant to these "*Schroeder* factors," there were insufficient grounds put forth by Mr. Gerald at the hearing to undergird the circuit court's ultimate decision to change the minor child's last name. That is to say, Ms. Paul argues that neither basis for the circuit court's decision—*i.e.*, that a name change would foster a sense of belonging with Mr. Gerald (*Schroeder* factor #3), and/or that the child had used the names "Paul" and "Paul-Gerald" for an equal amount of time (*Schroeder* factor #2)—was supported by evidence in the record. We disagree. We believe that the circuit court could, in fact, reasonably conclude, based on Mr. Gerald's testimony, that a name change was in the child's best interests to cultivate a sense of belonging with Mr. Gerald.

For example, to highlight some of Mr. Gerald's testimony from the hearing:

- On direct examination, Mr. Gerald testified that hyphenating the last name would "unif[y] and connect[] [the child] back to me . . . [w]henever he's with me I want to make sure that he understands who he is." Mr. Gerald soon added that not having the "Gerald" attached to the child's surname would cause a "confusion" that could affect his relationship with the child.

- Later, when asked how having the name "Gerald" attached to the child's surname would foster his relationship with the child, Mr. Gerald stated: "[C]learly he will [] understand about who he is and this is part of his family. So when I'm walking around and my name is Pierre G. and his name is [unhyphenated] . . . perception could be why is your name [Gerald] and my name is [Paul] [or] when his brothers are [Gerald's] [] but [he's] a [Paul]. That creates a separation, again, from my perspective."

- At a later point in his testimony, Mr. Gerald added: "[E]ven if [the child] [is with Ms. Paul] for ten months, if there's no fostering going on – you know, I can't control that, but I know when he goes to school they ask for his full name, and if this is granted, he will be reminded that he's a [Gerald], number one. Whenever we're together, he will continue to be reminded that he is a [Gerald]. So there will be fostering – if not done by [Ms. Paul], it will be done by me. It will be done by me; it will be done by the [Gerald] family." Mr. Gerald then argued that having the hyphenated name would also help the child foster relationships with the extended Gerald family during family reunions, which occur twice a year, and during the Gerald family's Thanksgivings.

- Mr. Gerald later testified that having the "Gerald" added to the child's last name would prevent the deterioration of his relationship with the child: "You know, I only get him two months out of the year, so if that is not reinforced and continual, then, yes, I would expect that would be the case."

As these quotes illustrate, Mr. Gerald's testimony was sufficient to support the circuit court's ultimate finding that it would be in the child's best interest to have a hyphenated last name, so as to foster and preserve a sense of belonging with Mr. Gerald. In arriving at this conclusion, we remain generally mindful that, as an action tried without a jury, it was up to the circuit court to judge the credibility of the witnesses. Md. Rule 8-131(c). Furthermore, we are especially mindful that assessing witnesses' demeanor and credibility is no less within a circuit court's discretion when applying the best interests of the child standard. *See, e.g., Evans v. Wilson*, 382 Md. 614, 623 (2004); *Boswell v. Boswell*, 352 Md. 204, 223 (1998); *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020)

("The trial judge who 'sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child]." (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)) (Internal quotation marks omitted, alterations in original).

Simply put, we believe that the circuit court could reasonably credit Mr. Gerald's desire to foster the relationship with the child, as well as credit Mr. Gerald's fear that leaving the surname unhyphenated could be detrimental to their father-son bond. Moreover, the full hearing transcript amply reflected that the circuit court judge was well versed in the contours of the child's life, having handled the previous custody and child support disputes between Ms. Paul and Mr. Gerald. And unlike in the previous appeal (when the circuit court had made the best interest findings in the context of resolving custody and visitation issues), here the court's findings were made after an evidentiary hearing that was exclusively dedicated to the propriety of granting a name change. As such, we do not believe the circuit court abused its discretion in concluding that hyphenating the child's surname would be in the child's best interests.

Nor are we persuaded by Ms. Paul's argument that the circuit court erred (in ruling on the basis of "belonging") because it somehow overlooked that the child's sense of belonging had *already* been fostered, and thus a name change was not necessary because the father-son bond had already been created. On the one hand, we note that the relevant *Schroeder* factor expressly states that the circuit court can consider the effect that a name

"may have *on the preservation* and development of the . . . father-child relationship[.]" 142 Md. App. at 588 (Emphasis added). Furthermore, we are not persuaded by the general view that a child's sense of belonging must somehow be cabined into a conceptual "on-off" switch—as if once a sense of belonging has been "attained" at any given point in time, no further cultivation is necessary or possible. The "preservation and development" of the parent-child relationship remains an ongoing process of care and nurturing throughout an entire childhood. We believe that any view to the contrary underestimates the continual growth and development that human relationships are capable of, and which we hope would mark a parent's bond with a child throughout their entire life.

Our conclusion that the circuit court did not err in determining that the hyphenated surname "Paul-Gerald" would foster the father-child relationship is sufficient to uphold the circuit court's decision.[6] However, we add in closing that we are not persuaded by Ms. Paul's separate argument that the circuit court reversibly erred by basing its decision, in part, on the finding that "the minor child . . . has been using both surnames . . . for equal time during his life span." Ms. Paul argues that the circuit court's math on this

[6] Ms. Paul has not argued otherwise, but we underscore that a circuit court need not rely upon a certain minimum number of *Schroeder* factors when making its decision. *Schroeder* itself explained that each of the delineated factors ought to be considered "when relevant," 142 Md. App. at 588, and that a circuit court "should consider whichever of these factors *is pertinent* in making its decision[.]" *Id*. at 589 (Emphasis added). In adopting the *Schroeder* factors in *Dorsey*, the Court of Appeals added that they are the factors to consider "when they exist and are appropriate in a given case[.]" 381 Md. at 117.

point was simply incorrect, given that from the time of the child's birth in 2011 until November 2016 (when the circuit court issued its first name change order), the child's surname was officially "Paul." (That is to say, Ms. Paul points out that the time span when the child's surname may have been understood officially as "Paul-Gerald"—November 2016 through July 2017—was not an "equal time during his life span"). Nonetheless, even if the circuit court was attempting to make a statement of rigid mathematical precision (which we are not necessarily persuaded of), we note that the court's decision only stated that the child had been "using" both surnames for equal time periods, not that the child's surnames had been *legally used* for equal times—and notwithstanding the legal status of the child's surname at any point in time, Mr. Gerald presented evidence suggesting that the name "Paul-Gerald" had been used in certain situations (such as school forms) since 2014. Although it is not ultimately necessary for the purpose of resolving this appeal, we believe that the circuit court could have simply been referring to the notion that the child had been known in certain circles as "Paul-Gerald" for years, even if unofficially, and that the periods when each name had been used were roughly equal, give or take. In any event, any ambiguity on this point does not necessitate vacatur, given that the circuit court's conclusion with respect to the issue of "belonging" was sufficient to support its ultimate decision, for the reasons we have described above.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.