IN RE; CHANGE OF NAME OF "CHILD R", A MINOR, C.P. Franklin County Branch, Miscellaneous Volume BB Page 73.

Guardian sought the name change of a minor child to that of his biological father's, who was convicted of killing the man who was previously known as the minor's father, asserting that to do so would be in the best interests of the child.

1. Courts must look to the best interest of the child when reviewing petitions for changing the name of a minor child.

2. Petitioner has the burden of establishing that it is in the best interest of the child to change his or her name.

3. Petitioner must show more than that it would be in the best interest of the child to hold the name of his father simply because children traditionally use the father's surname as theirs.

4. Courts are granted wide discretion when determining whether the changing of a minor child's name is in his or her best interests when there has been no objection as a matter of law.

5. Factors which must be considered when reviewing petitions for name change are: (1) the natural bonds between parent and child, (2) the social stigma or respect afforded a particular name within the community, and (3) where the child is of sufficient age, whether the child intellectually and rationally understands the significance of changing his or her name.

6. It is unlikely that a child's bond with his or her mother will be affected by changing the child's surname.

7. It is unlikely that a child's ties to his family will be strengthened by changing his or her name to that of the mother when her other children do not hold her name.

8. Although a child has a biological bond with its natural father, no significant parent/child bond can be nurtured when the father is incarcerated for at least the next eight years.

9. Although the child will not have contact with his previous father, an important factor to consider is if that father's family still remains in contact with the child.

10. It is likely that a child may bear the social stigma of the circumstances surrounding the death of the child's former father at the hands of the child's natural father whether his surname is that of his former father's or that of his natural father's.

11. It is unlikely that it would be in the best interests of a child to change his or her name to that of a convicted killer.

12. A child of two and one half is not of an age in which he or she is able to make a rational decision concerning his or her name.

13. When no extenuating circumstances which warrant an immediate or compelling reason to change a name are offered, a court may wait till a later time when such circumstances exist to reconsider the name change.

Stephen D. Kulla, Esquire, Attorney for Plaintiff
Janice M. Hawbaker, Esquire, Guardian Ad Litem

OPINION & ORDER

WALKER, P.J., October 14, 1994

FINDINGS OF FACT

"Child R" is a two year, nine month old boy who resides with his biological mother, "B.A.F.". "Child R's" mother has been married numerous times and has a total of four children from those marriages. One child holds the surname of "X", two others hold the surname of "Y", and "Child R" holds the surname of "R".

At the time of "Child R's" birth, his mother was not married to the putative father, "B.K.R". She later married "B.K.R" but did so illegally by forging her previous husband's name on the consent form of the divorce decree. Consequently, "B.A.F." was never legally married to "B.K.R".

Although "B.K.R"'s name is listed as "Child R's" father on his birth certificate, "B.A.F." claims that she always knew that "J.D.K." was "Child R's" biological father. It is not known whether "B.K.R." ever knew that "Child R" was not his child or that he and "B.A.F." were never legally married.

"Child R" lived with his mother, his half brothers and sisters and "B.K.R" from his birth on January 1, 1992 until October 9, 1992 when "B.K.R." and "B.A.F." separated for a short period of time. On or about October 21, 1992, "B.K.R" filed a complaint for custody and an order was entered granting him temporary custody of "Child R" until a custody hearing could be held. Sometime in November, "B.A.F." and "B.K.R." reconciled and the family lived together once again until "B.K.R." was killed by "J.D.K." shortly thereafter.

"B.A.F." and "J.D.K." married some time after November 23, 1992. "B.A.F." also alleged that "J.D.K." was the natural father of her son "Child R", and on July 15, 1993, "J.D.K." signed an acknowledgment of paternity which was accepted by this court on July 20, 1993. Blood tests were performed and it was determined that the probability of "J.D.K." being the natural father of "Child R" was 99.79 percent.

"J.D.K." was convicted of killing "B.K.R" and was sentenced to ten to twenty years incarceration on April 20, 1994, said time to be computed from November 23, 1992.

"B.A.F." has visited "J.D.K." every other weekend since November 23, 1992 as has "Child R". During their visits, "Child R" sits on his biological father's lap and refers to him as "Daddy." "Child R" has also had regular contact with "J.D.K.'s" parents as well as "B.K.R"'s sister.

It is this court's understanding that "Child R" is not eligible for nor collecting social security benefits under "B.K.R"'s name.

DISCUSSION

It is well settled in this Commonwealth that when reviewing petitions for changing the name of a minor child, courts must look to the best interests of the child. *In re Change of Name of Zachary Thomas Andrew Grimes to Zachary Thomas Andrew Grimes-Palaia*, 530 Pa. 381, 609 A.2d 158 (1992); *Petition of Christjohn*, 286 Pa.Super. 112, 428 A.2d 597 (1981); *Petition of Schidlemier*, 344 Pa.Super. 562, 496 A.2d 1249 (1985); *In re: Richie by Bohem*, 387 Pa.Super. 401, 564 A.2d 239 (1989). It is the burden of the petitioner to establish that it is in the best interests of the child to change his or her name. *Palaia* at 394. The petitioner must show more than that it would be in the best interests of the child to hold the name of his father simply because children traditionally use the father's surname as theirs. *Schidlemier* at 1250.

Courts are granted wide discretion when determining whether the changing of a minor child's name is in his or her best interests when there has been no objection as a matter of law, such as for failure to give notice and improper venue. *Petition of Falcucci*, 355 Pa. 588, 50 A.2d 200 (1947). When exercising this discretion, the courts must review the situation "in such a way as to comport with good sense, common decency and fairness to all concerned and to the public." *Id.* at 592, 50 A.2d 200 at 202. Among the factors which need to be considered when reviewing petitions for a name change are: (1) the natural bonds between parent and child, (2) the social stigma or respect afforded a particular name within the community, and (3) where the child is of sufficient age, whether the child intellectually and rationally understands the significance of changing his or her name. *Palaia* at 394.

Because "Child R" is only two years and nine months old, he is not of an age in which he can make a rational decision concerning his name. Therefore, this court is left with the task of determining what is in the best interests of the child utilizing its own discretion.

Although "Child R" will not have any future contact with "B.K.R" due to the latter's untimely death, there is evidence that at least one member of "B.K.R.'s" family still remains in contact with "Child R". Although there are not any biological ties with the "R." family, it is apparent that "Child R." believed "Child R" to be his son because he is listed as the father on "Child R's" birth certificate, he married "Child R's" mother subsequent to "Child R's" birth, provided support for "Child R" and even fought for custody of "Child R" when he became separated from "Child R's" mother.

The court would find it hard to believe that "Child R's" relationship with his mother will be strengthened simply by changing his name, or that it will be weakened in any way because his name is not changed. Regardless of the outcome of this decision, "Child R" will always have a special bond with his mother; that of mother and son. No matter what "Child R's" last name is, he will always be "B.A.F.'s" son.

Although "Child R." has biological ties to "J.D.K.", he will have no significant contact with him in order to foster a normal father/son relationship other than visits every other weekend at the prison for at least the next eight years. "J.D.K." did not have any contact with "Child R" at his birth nor has "J.D.K." had any significant contact with "Child R" since his birth other than those visits which are carried out now.

Unlike the child in *In Re: Richie by Bohem*, "Child R" will not share the name of all whom he lives with. None of

"Child R's" half sisters or brothers hold the last name of "K." nor do they all hold the same last name. Therefore, it cannot be argued that by changing "Child R's" last name family unity will be strengthened. Considering "Child R's" mother's past marital history, this court is hesitant to change the name of a child to the name of her present husband only to find out later that she has remarried yet again and the child no longer has the same last name as his mother's.

It is likely that "Child R" may bear the social stigma of the unfortunate circumstances surrounding "B.K.R.'s" death whether his last name remains "R." or whether it is changed to "K.". This court fails to see how changing a child's name to that of a convicted killer is in the child's best interests. In *Petition of Christjohn*, 286 Pa.Super. 112, 428 A.2d 597 (1981), it was determined that a chancellor did not abuse his discretion by allowing a minor child's name to be changed from that of the child's biological father who killed the child's stepfather to that of the stepfather's due to the emotional stigma attached to holding the same name as that of the killer's. Therefore, this court fails to see how plaintiff has satisfied its burden of showing how it would be in the best interests of "Child R" to have his name changed to that of a killer.

Lastly, "Child R" is only two years, nine months old and is not in a situation where he will be attending school any time soon. Therefore, attendance at school does not offer any immediate or compelling reasons for changing "Child R's" name now rather than waiting till a later time to consider a change.

CONCLUSION

Although this court would not be depriving "Child R" of any social security benefits from "B.K.R" by allowing "Child R's" name to be changed, this court feels that plaintiff

has shown no compelling reasons for changing "Child R's" name. Plaintiff has failed to meet her burden of providing evidence to show that the change would be in the best interests of "Child R" at this time. As circumstances change, they may warrant a review of this issue in the future. However, at this time this court fails to see how changing a child's name to that of a convicted killer, whom the child has had no significant contact with since birth nor will have a normal father/son relationship with for at least eight years, will be in the child's best interests even though he is the child's biological father.

ORDER OF COURT

October 14, 1994, petitioner's request for a change of name of "Child R" is denied.