IN RE: Change of Name Infant X, C.P. Civ. D. Franklin County, Mic. Doc. Vol. AA, Page 90

Change of name - 54 PA C.S.A. Section 702 - Standing to Petition

1. Only a person desiring to change his name can petition, not some other person.
2. An alleged father of a child who was later excluded as the father has no standing to change the child's name unless he claims to act in the child's interest.

Carol L. Van Horn, Esq., Counsel for Petitioner
Carolyn L. Carter, Esq., Counsel for Respondent

Keller, P.J., February 7, 1991:

This action was commenced on October 23, 1990 when we signed the order setting the hearing on this matter for December 6, 1990. Attached to the order was the petition of Adult X, hereinafter "petitioner". The petition requested this Court to set a hearing date, direct that notice be given to Adult Y, hereinafter "respondent" and enter a decree changing the name of Infant X to Infant Y.

The hearing was held as scheduled; testimony was elicited from bothe the petitioner and respondent. Pursuant to the testimony, we make the following findings of fact:

1. Petitioner and respondent were involved in a long-term relationship which terminated in April of 1988; however, the petitioner and the respondent were intimate through June 8, 1988.

2. On December 21, 1988, respondent gave birth to an eleven week premature baby boy who was named Infant X.

3. Petitioner visited the infant one time at the hospital after his birth.

4.Respondent is the mother of Infant X.

5. Respondent commenced a paternity action against the petitioner. That proceeding was dismissed when the petitioner was excluded as the father of Infant X.

Editor's Note: As there is an infant involved, the names of all parties are disguised, herein.

6. Adult X is not the father of Infant X.

7. Petitioner was married on August 12, 1988 to Spouse Z and a child was born of this marriage on March 26, 1989.

Initially, we note that "in granting or refusing a name change petition after hearing and notice, the court has wide discretion." *In re Richie by Boehm,* 387 Pa. Super. 401, 403, 564 A.2d 239 (1989), citing *Matter of Montenegro,* 365 Pa. Super. 98, 528 A.2d 1381 (1987). *See also, In re Petition of J.M. and R.M.,* 32 D&C 3d 229 (1984).

Pursuant to 54 Pa. C.S.A. §702, "[t]he court of common pleas of any county may by order change the name of any person resident in the county." The procedure can be found in Section 6 of Act 295 of 1982, which enacted Pennsylvania's current name change law. Section 6 appears in the Historical and Statutory Notes following 54 Pa. C.S.A. §101. It provides:

> (a) *Any person desiring to change his or her name shall file a petition* in the court of common pleas of the county in which he or she shall reside, setting forth such desire and intention and the reason therefor, together with the residence of the petitioner, and his or her residence or residences for and during five years prior thereto.

Clearly, this section requires the person desiring to change his or her name to file the petition, not some other person, as is the case at bar. The question of standing is related to the concept that in order for a party to commence an action, his rights must have been invaded or infringed. *Franklin Tp. vs. Com., Dept. of Env. Resources,* 500 Pa. 1, 452 A.2d 718 (1982). Since the petitioner is not seeking to change his own name, he lacks standing to bring suit and change someone else's name.

Additionally, Pa. R.C.P. 2027 and 2028 require a civil action to be brought by a minor through the minor's guardian. The guardian, as provided under Pa. R.C.P. 2006, can be court appointed, a next friend or a guardian *ad litem,* Moreover, if a dispute exists concerning whether the guardian is fairly representing the best interests of the minor, a party has the right to petition the court for a rule to show cause why the guardian should not be removed. *See,* Pa. R.C.P. 2033.

Such is not the case at bar. James Michael Satterfield, Jr., petitioned this Court on behalf of himself, not as the guardian of the minor, next friend or guardian *at litem.* The petitioner is concerned only with his interests as is evidenced by his disclaimer of all affiliation with the minor. Thus, there exists no doubt that the petitioner is precluded from representing the minor. Furthermore, if the respondent was appointed guardian of the minor, she would certainly voluntarily seek leave to withdraw the petition because she testified that she believes the best interests of the minor would not be served by changing his name.

The identical result is arrived at via common law, where

> "no individual [had] such a property right to his name as to entitle him to prevent another from adopting it, unless his doing so had such a fraudulent purpose as would justify equitable restraint." *Falcucci Name Case,* 355 Pa. 588, 591, 50 A.2d 200 (1947). No evidence was offered that respondent had a fraudulent purpose when she named her son after the petitioner. At that time, she believed petitioner was the father. Despite the fact that it has subsequently been established that petitioner is not the father of the minor, one fact remains - no fraudulent purpose exists. Thus, absent fraud, the petitioner lacks a property right in his name so as to prevent the respondent's son - Infant X - from using it also.

It has been seen, under the Pennsylvania statutes, the Pennsylvania Rules of Civil Procedure and the common law, the petitioner cannot maintain this action; thus, it must be dismissed.

ORDER OF COURT

NOW, this 7th day of February, 1991, the petition of James Michael Satterfield, Jr. to change the name of Infant X, to Infant Y is dismissed.

Costs to be paid by the petitioner.

Exceptions are granted the petitioner.

MCKNIGHT V. WILSON COLLEGE, C.P. Civ. D. Franklin County, A.D. 1990-477

Workmen's Compensation - Dual Capacity Doctrine - Tort Liability

1. The Workmen's Compensation Act provides the exclusive remedy for a worker against his employer for an injury incurred in the course and scope of his employment.
2. An employer may be liable in tort to its employee if it occupies not only the capacity of employer, but also a second capacity that confers upon it obligations independent of its role as employer.
3. If an injury occurs while an employee is engaged in the performace of his work the dual capacity doctrine is inapplicable.
4. The fact an employer owes a duty to the general public is not alone sufficient to evoke the "dual capacity" exception.
5. Where a housekeeper was injured in an assault while performing her duties at defendant college, her sole remedy is under the Workman's Compensation Act.

Robert B. MacIntyre, Esq., Counsel for Plaintiff
Timothy I. Mark, Esq., Counsel For Defendant

Kaye, J., March 1, 1991:

OPINION

Peggy J. McKnight (hereinafter "Plaintiff") has filed suit against Wilson College (hereinafter "defendant") in an effort to recover compensatory and punitive damages for injuries which she allegedly suffered as the result of a sexual assault which occurred on August 29, 1989 while Plaintiff was performing her work duties as a housekeeper for Defendant. Plaintiff alleges, *inter alia,* that Defendant's negligent failure to warn or to provide adequate security in the building in which the attack occurred was the direct result of her injuries.

Preliminary objections to the complaint have been filed by Defendant. Included among the preliminary objections is a challenge to this Court's subject matter jurisdiction on the ground that Plaintiff is precluded from filing suit by the exclusivity provision of Section 303(a) of The Pennsylvania