

T-27

PROBATE COURT OF BUTLER COUNTY, OHIO

IN THE MATTER OF Belinda Lou Priddy and Jennifer Lane Bicknell

CASE NO. PI99-12-0174 and PI99-12-0175

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BUTLER COUNTY
PROBATE COURT
JUDGE RANDY T. ROGERS

7-1-00

MAGISTRATE'S DECISION

This matter came on for hearing on February 28, 2000 before Magistrate Charles Pater, upon Applications for Change of Name. The applicants have asked the Court to issue orders changing their names from Belinda Lou Priddy to Belinda Lou Rylen and from Jennifer Lane Bicknell to Jennifer Lane Rylen. The reason for the desired name change, as declared on the application for each of them, was, "Applicant desires to legally have the same last name as her long term partner of nine (9) years. This name change will only add to the level of committment [sic] they have for each other, as well as to that of their unborn child. Also, so that this tender and new family will have a unified name in the eyes of the law.

The applicants, Belinda Lou Priddy and Jennifer Lane Bicknell, appeared, *pro se*, and testified. Their testimony was the only evidence presented to the Court.

FINDINGS OF FACT

1. Belinda and Jennifer have lived continuously in Butler County for more than four years.
2. Notice of the hearing on Ms. Priddy's application for name change was published by the Journal-News on January 22, 2000. Notice of the hearing on Ms. Bicknell's application was published by the same newspaper on January 27, 2000.
3. The proposed new last name, "Rylen," is a composite of some of the letters in "Priddy" with some of the letters in "Bicknell."
4. The purpose of having and using the last name of Rylen is to have a new name which will proclaim a unity among the association of people living together in the Priddy-Bicknell household. Belinda and Jennifer view this association as a family.
5. Ms. Bicknell is now pregnant, having been impregnated at the University of Cincinnati Medical Center, by the sperm of an anonymous donor.
6. When this child is born Belinda and Jennifer want the three of them to be viewed as a family. They want the child to view both of them as his co-mothers, and they each want to have the same last name as that of the child.
7. Ms. Priddy desires to be artificially inseminated in a couple of years. She and Ms. Bicknell plan to view this future child as their child also.

8. Belinda and Jennifer view each other as marital partners. Nine years ago they pledged to each other that they would live together for the rest of their lives, and they exchanged wedding rings. They are currently wearing these rings as a symbol of their "marital" attachment to each other.

CONCLUSIONS OF LAW

1. Assuming they have no fraudulent intent, the applicants have the common-law right to change their names, virtually to any name they desire, without court intervention or approval.
2. The probate court procedure for changing a person's name has been established by Ohio statute, and serves as an alternative method to effect the name change. The statutory scheme has supplemented, but not supplanted the common-law right.
3. In Ohio an application to change name is governed by R.C. 2717.01. According to this statute the applicant must prove three things. If proven, the court has discretion to grant the application. The three elements to be proved are: (1) The applicant has been a bona fide resident of the county for at least one year prior to the filing of the application; (2) The applicant has given proper notice of the hearing; that is, notice by publication in a newspaper of general circulation in the county, at least thirty days before the hearing; and (3) Reasonable and proper cause exists for the applicant's desired change of name.
4. In this case the applicants clearly meet the residence requirement. They likewise meet the requirement of notice by publication.
5. The sole issue presented by these applications is whether enabling a homosexual couple to present themselves as a quasi-married couple is proper and reasonable cause for the granting of their name changes in light of the fact that "homosexual marriage" is prohibited by Ohio statute and therefore against public policy.
6. This intended result does not constitute reasonable and proper cause for the name changes. Therefore this Court must deny the applications.

RATIONALE AND DISCUSSION OF THE LAW

Case law on name changes for adults is scant nationally, and virtually non-existent in Ohio. Jane M. Draper has attempted to pull together cases on this topic from the various states, analyze those cases, and draw conclusions, in her article, "Circumstances Justifying Grant or Denial of Petition to Change Adult's Name." 79 ALR3d 562 (hereinafter cited as *Draper*). Many of the comments following are taken from her labors and conclusions and from an examination of the cases cited by her. This giving of credit does not mean that the conclusions and decision of this writer would be those of Ms. Draper. The remainder of this rationale and discussion will be arranged under the following outline: (A) general considerations regarding name changes for adults; (B) cases in which courts held that granting desired name changes would damage the public good; and (C) conclusion.

A. General Considerations Regarding Name Changes for Adults in American Case Law

Although the common-law privilege of changing one's name at will, merely by using the new name as one's own over a period of time, may still be exercised in the absence of a statutory prohibition, most jurisdictions have enacted statutes which prescribe the method by which individuals may obtain formal changes of name and which authorize the court to grant the name change applications upon compliance with the statutory requirements. Draper at 565. The common-law privilege of changing one's name at will, in the absence of fraudulent intent, has not been abrogated by present-day name change statutes, but such statutes have been held to be in aid of the individual's common-law right, giving the advantages of a public record of such change and a specific time at which the change is made. Draper at 566.

One type of statute governing an adult's petition for a name change requires a petition to be based on good and sufficient reason for the name change, and allows the court to determine, in its discretion, the sufficiency of the reasons set forth to support the application. Where a court is governed by the "good and sufficient reason" principle, the burden of proof lies with the petitioner. Draper at 566. Ohio's statute is of this first type. The other type of statute governing adults' petitions for name changes directs the court to grant the petition unless the court determines that there is a good and sufficient reason to deny the change of name. Under such a statute, the burden of proof rests with either the court or interested third parties to prove that there exists a lawful objection which overrides the petitioner's right to a name change. Draper at 566.

B. Cases in which Courts Held that Granting Desired Name Changes Would Damage the Public Good

A consideration in some cases in determining proper and reasonable cause for a name change is the effect of granting the name change on the "public good." Draper at 584. In *Application of B.* (1975) 81 Misc 2d 284, 366 NYS 2d 98, the applicant was a divorced woman who was living with a man married to another woman. The applicant desired to change her last name to that of the man with whom she lived. In denying the application the court declared that it would not grant an application for a name change where such change would foster a misrepresentation, or where the granting of it would connote judicial condonation of adultery. Draper at 587. A similar fact pattern existed, and a similar result obtained in *Hurley Name Change* (1965) 38 Pa D & C 2d 146. In this case the court concluded that harm to the public good would result if the petition were granted. Draper at 587.

C. Conclusion

By the wording of the Ohio statute, whenever a probate court of this state grants an application to change an adult's name, the court, of necessity, puts its stamp of approval on the reason for the change of name. In the order granting the petitioner's request, the court makes a specific finding that the facts adduced show reasonable and proper cause for the name change.

The Ohio Supreme Court has provided no binding precedent to inform the trial court as

to what constitutes reasonable and proper cause, or what purposes fall short of the reasonable and proper standard. Thus the trial court is thrust into the position of determining the propriety of the petitioner's reason for wanting the change of name.

Some courts have avoided this undesirable task by taking the approach that any reason is sufficient as long as the petitioner is not attempting to avoid creditors or evade the consequences of his criminal activities. Such an approach, under Ohio's statute, would represent a failure to exercise the discretion delegated to the courts by the legislature. It may be better policy for the judiciary to refrain from weighing a person's reasons for desiring to change his name, but until such time as the legislature sees fit to change the law, the court must exercise its judgment as to what is and what is not proper cause.

How, then, does one determine what is reasonable and proper? Does the judge rely on his "gut reaction"—how he feels about the name change? If this were to be the approach taken, the results would be unpredictable from court to court and from year to year. For example, it may seem improper to one judge for a person to change his name in order to disguise his ethnic origin so as to get along better in business. That judge might conclude that granting such a petition would work a fraud on the petitioner's customers in that it would prevent them from knowing the actual identity of the proprietor with whom they would be dealing. At the same time the judge in an adjacent county might find the desired result to be reasonable and proper, and the denial of such a petition to be an infringement on the rights of the petitioner. Is there any standard by which to adjudicate propriety?

That question takes us back to the common law. In American jurisprudence, when the court's decision is not dictated by the pertinent statute, the decision should arise out of the common law. The common law provides the standard with which the judicial decision must be consistent. Today, however, to many the setting up of the common law as a standard is no help at all. The common law is viewed as an amorphous standard at best, and at worst, a standard devoid of content.

When I use the expression "common law," I do not mean merely the accrual and synthesis of related holdings of various cases as these holdings continue to evolve. I mean the basic, immutable principles upon which valid case law has been built. This concept of common law as basic principles, perhaps best elucidated by Sir William Blackstone in his *Commentaries on the Laws of England* (hereinafter *Blackstone*), was adhered to by most of our nation's founders, but has been abandoned generally in the past generation or two.

Under this concept of common law, all statutes and all judicial decisions must be consistent with natural law. This natural law can generally be determined by the use of our reason. Our reason, however, being imperfect, in order to be dependable, must be checked by its consistency with divine edict, whenever such exists. See *Blackstone*, vol. 1, Introduction, section 2: "Of the Nature of Laws in general." It is contrary to natural law for two homosexuals to live as marital partners or sexual mates and to bring children into the world as their children.

Consistent with natural law Ohio has enacted statutes proclaiming that the only lawful marriages in Ohio are those between husbands and wives, that is between males and females.

See Ohio Revised Code, Chapter 3101 in general. In particular see R.C. 3101.01 ("Male persons * * * and female persons * * * may be joined in marriage."). See also R.C. 3101.13 and R.C. 3101.14 ("to the husband and wife"). Thus marriages between males and males or between females and females are prohibited in Ohio, and thus a legal nullity. More fundamentally such associations are violative of the law of nature.

The applicants are asking this court to grant implicit recognition of and acceptance of the quasi-marital relationship between them while the Ohio legislature has declared public policy proscribing such recognition. The court cannot find that the desired result constitutes reasonable and proper cause for the name changes.

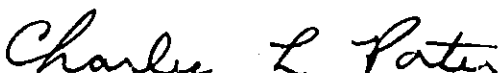
This court cannot prevent Ms. Priddy and Ms. Bicknell from using the same last name. It cannot prevent them from viewing each other as marital partners. It cannot prevent them from holding themselves out to the public as marital partners. It cannot prevent them from bringing children into the world through artificial insemination and teaching those children that they have co-mothers and no father. But neither is this court constrained to put its stamp of approval on such actions.

The court's response to the applications must be crafted to address not only the effect of the proposed change on the applicants, but also the well-being of society. To grant their petitions would be contrary to the public good, contrary to encoded public policy, and contrary to natural law. Therefore, not having found reasonable and proper cause for the name changes, the applications must be denied.

DECISION

Upon consideration of the evidence adduced, and for the reasons stated above, the applications of Belinda Lou Priddy and Jennifer Lane Bicknell to change their names to Belinda Lou Rylen and Jennifer Lane Rylen are hereby denied.

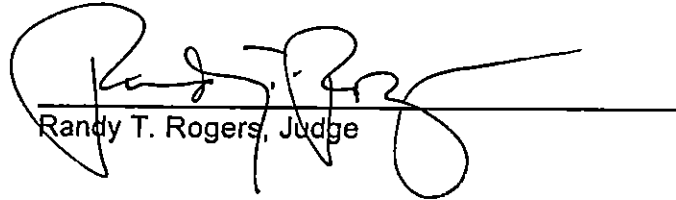
SO ORDERED,



Charles L. Pater, Magistrate

JUDGEMENT ENTRY ADOPTING MAGISTRATE'S DECISION

Pursuant to Civ. R. 53(E)(4)(c) the Court adopts the magistrate's decision and enters judgment accordingly. All parties are advised that they have fourteen days from the date of the filing of this decision to file with this Court any objections which they might have to the decision. Any such objections shall be in writing, shall be specific, and shall state with particularity the grounds of objection.



Randy T. Rogers, Judge

CERTIFICATE OF SERVICE

A copy of the above Magistrate's Decision was sent by ordinary U.S. mail, postage prepaid, to Belinda Lou Priddy, 3519 Arlington Avenue, Hamilton, Ohio 45015, and to Jennifer Lane Bicknell, 3519 Arlington Avenue, Hamilton, Ohio 45015; this 2nd day of March, 2000.



Jay Eckert
Deputy Clerk