

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1438

(Delegate Kullen)

Judiciary

Family Law - Absolute Divorce - Modification of the Name of a Child

This bill authorizes a court, in granting a divorce decree, to modify the name of a child of the parties, if a parent requests the modification and both parents agree. If one parent objects to the modification, the court may modify the name if it finds that the change is in the child's best interest. The modification must include the mother's birth name and the father's surname in the form specified in the bill.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources.

Local Effect: The bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Current Law: Statutory law provides for the restoration of a former name to a party to a divorce, but does not address the name of a child who is part of a divorce proceeding.

Under common law, parents generally enjoy the right to jointly adopt any surname for their child, just as they decide on a child's given name. Neither parent has a superior right to determine the initial surname of the child (*Lassiter-Geers v. Reichenbach* 303 Md. 88 (1985)).

The case of *West v. Wright* 263 Md. 297 (1971) established that the court must determine the best interest of the child before deciding whether a name change is warranted. There is a presumption against granting a name change except in “extreme circumstances.” The *West* court stated there were two paramount factors to consider when deciding if the requisite extreme circumstances exist that warrant a name change for a child: (1) any evidence of misconduct by a parent that could make continued use of the parent’s surname shameful or disgraceful; and (2) whether the parent willfully abandoned or surrendered his or her natural ties to the child.

In the case *Dorsey v. Tarpley* 381 Md. 109 (2004), the Court of Appeals reiterated that if the parents agreed on the child’s surname at birth, then in a divorce case, the petitioning parent must satisfy, by admissible evidence, the “extreme circumstances” standard to create a *prima facie* case for a name change. If there was no agreement regarding the child’s surname at birth, then the petitioning parent must demonstrate that the requested name change is in the child’s best interest. The factors to consider in deciding what surname will serve the child’s best interest are:

- the child’s reasonable preference, if the child has sufficient age and maturity;
- the length of time the child has used any of the surnames under consideration;
- the effect of having one name or the other on the preservation and development of the parent-child relationship;
- identification of the child as part of a family unit;
- the embarrassment, difficulties, or harassment that could occur from the use of a particular surname;
- misconduct by one of the child’s parents in disparaging the other parent’s surname;
- failure of one parent to contribute to the child’s support or maintain contact with the child; and
- the degree of community good will or respect associated with a particular surname.

Before a court could order a name change for a child as part of a divorce decree, the court must engage in fact-finding to determine whether or not there was an agreement between the parties about the child’s surname.

Background: The Administrative Office of the Courts advises that 37,589 divorce cases were opened or reopened in fiscal 2004. The number of divorce cases involving contested custody issues is unknown.

State and Local Expenditures: The Department of Health and Mental Hygiene advises that the bill would have no fiscal impact as the Division of Vital Records routinely modifies the names on birth records in response to court orders. The Judiciary advises that little additional trial time would be necessary to meet the bill's requirements and no fiscal impact is expected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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ncs/jr

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