

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 563

(Delegate Kullen, *et al.*)

Judiciary

Family Law - Divorce - Change of Surname of Child

This bill sets forth the circumstances under which a court may change the surname of a child when granting a decree of absolute divorce.

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

Bill Summary: This bill modifies the rulings by the Maryland Court of Appeals in the *West v. Wright*, 263 Md. 297 (1971) and *Dorsey v. Tarpley*, 381 Md. 109 (2004) cases by removing the presumption against a name change in a divorce action except "under extreme circumstances" and specifically providing that a change in surname may be considered if it is in the best interest of the child. The bill codifies the requirement for a hearing and the factors that the court may consider to determine if a surname change would, in fact, be in the child's best interest.

Upon request of either party in an absolute divorce action, the court may change the surname of any child of the parties if, after a hearing, the court finds that the change is in the best interest of the child. The court may consider the following factors:

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

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 of the parties.

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 *West* case established that the court must determine the best interest of the child before deciding whether a name change is warranted. The Court of Appeals found that 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 *Dorsey* case, 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 same as specified in the bill.

Before a court orders a name change for a child as part of a divorce decree, the court must engage in fact-finding to determine whether there was an agreement between the parties about the child's surname.

Background: The Administrative Office of the Courts advises that 37,091 divorce or annulment cases were opened or reopened in fiscal 2006. According to a recent study conducted by the Women's Law Center for the Administrative Office of the Courts, about 30% of cases with custody issues were contested.

State and Local Expenditures: The Judiciary advises that some additional trial time would be necessary to meet the bill's requirements. The Department of Legislative Services advises, however, that the Judiciary should be able to meet the bill's requirements with existing resources.

Additional Information

Prior Introductions: A similar bill, HB 871 of 2006 received an unfavorable report from the House Judiciary Committee. Another similar bill, HB 1438 of 2005, received an unfavorable report from Judiciary.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2007
nas/jr

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510