UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1127

September Term, 2015

ALISON TOEPFER,
Mother of Jackson

v.

GEORGE WILLIAM MEADOR et al.

Reed,
Friedman,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: August 5, 2016

Appellant, Alison Toepfer (Toepfer), unsuccessfully applied to the Circuit Court for Calvert County to change from Meador to Toepfer the surname of the child of the parties, then age four. She submits that the court was required to change the name because the child's father, the appellee, George William Meador (Meador), has been convicted of a sexual offense in the third degree. We shall affirm the denial of change for the reasons hereinafter set forth.

Background Facts

The parties were married March 14, 2009. A son was born to the marriage July 12, 2010. By agreement of the parties, he was named Jackson Carl Meador. At that time the family was living in Greensboro, Caroline County, Maryland.

On July 1, 2012, Toepfer separated from Meador because he "was involved in another relationship." Shortly thereafter he was indicted in Caroline County. At that time the parties had been residing in Calvert County during the work week, because Toepfer was attending school. They had been spending the weekends at their home on the Eastern Shore.

Meador was convicted at a jury trial in the Circuit Court for Caroline County in February 2013 of violating Maryland Code (2002, 2012 Repl. Vol.), § 3-307 of the Criminal Law Article. It proscribes sexual offenses in the third degree, some of which are based on the age of the victim and the age or age differential of the person committing the sexual offense. Meador was born April 10, 1983. The victim was Toepfer's then fourteen-year-old

sister. Meador was sentenced to six years imprisonment. His release date, excluding credits, is December 16, 2016, but, with credits, could be as early as July 2016.

Toepfer divorced Meador in the Circuit Court for Calvert County in August 2013. She was awarded sole physical and legal custody of Jackson and resumed her family name. Meador has no visitation rights under the decree, but he plans to seek supervised visitation upon his release.

The instant change of name action was brought on March 9, 2015. Thirty-eight persons, in addition to the appellee, filed oppositions to the change, supported by affidavits.[1] Thirty-four of those opposed have Maryland addresses, principally in Southern Maryland. These affiants are members of the Meador family by blood or marriage or are family friends.

The change of name case was tried June 22, 2015. In its oral opinion at the conclusion of the evidence, the court observed that the "courtroom is jampacked [with] multiple members of both families ... and every row practically is taken."

The parties agree that, based on the crime of which Meador was convicted, he is a Tier III sex offender. He will be required to register as such with the applicable local law enforcement unit every three months. Maryland Code (2001, 2015 Supp.), § 11-707(a)(2)(i) of the Criminal Procedure Article (CP). The term of the requirement is the lifetime of the registrant. CP § 11-707(a)(4)(iii). The local law enforcement unit may give notice of the

[1]They did not seek intervention.

registration to organizations that serve children within the community of the registrant's residence. CP § 11-709(f)(4).[2] The Department of Public Safety and Correctional Services is required to make registration statements, or information about them, available to the public, CP § 11-717(a)(1), and to post on the Internet the registrants' names, identifying information and, in plain language, the crime of the offender that is the basis for the registration. CP § 11-717(b)(1) and (2).

Trial Evidence

The court was liberal in admitting evidence and, in essence, allowed each party to say his or her piece.

Appellee was taken as the first witness. Upon his release, he intends to reside in Owings, Calvert County with his father and will seek visitation with his son, even if the name change were granted. He traveled back and forth between Caroline and Calvert Counties during his criminal trial and there was no publicity about the case. He considers that he had a close relationship with Jackson prior to the start of his trial, but he has not seen the child since his confinement.

Meador has twenty-three uncles and aunts and over twenty cousins. It is a close-knit family. Meador testified that his family has done many good things, of which Jackson can

[2]There is a suggestion in the record that a local law of Calvert County requires notification to schools within one mile of the registrant's residence.

be proud, and that it would be unfair to deprive him of the surname because of this one "negative" that Meador is currently facing.

Three other witnesses testified in the plaintiff's case, Toepfer, her sister Melanie (not the victim), and a former neighbor from Greensboro. Toepfer and Jackson now live in Calvert County in her mother's home which is next to Meador's father's home. Jackson never asks about his father. Appellant seeks the change of name before Jackson starts school. Asked to describe what she believed to be the extreme circumstances warranting a name change in this case, Toepfer testified:

> "I believe that because Jackson's father is going to be released from jail, reside in the same mile radius of the schools where Jackson goes to school, that he will be judged and shunned, and he would suffer emotional harm because people associate Jackson the child with Jackson [*sic*] the sex offender. And even though it's not fair, and it's mean, and, you know, people's ignorance isn't necessarily fair to the child, but he will not be able to live a normal life if he is known as the sex offender's son."

Toepfer fears that Jackson will not be invited to the homes of other children, that other children will not accept invitations to Jackson's home, and that "people might view him as being illegitimate because he has a different last name than [Toepfer has]."

Appellant denies vindictiveness. On cross-examination, she stated that she has not read Jackson letters that Meador has sent to him from prison. She has saved them in a box until the child is older. Nor has she acknowledged to Meador's family gifts that they have sent Jackson. Unless Jackson asks, or until Meador is released and visitation begins,

Toepfer has "no intentions of ever mentioning" Meador to Jackson. At that time she plans to tell the child that Meador "did something bad and he is learning to be nice."

Jackson was attending Cardinal Hickey preschool. Toepfer testified that she "registered him as Jackson." Although she did tell the preschool the child's legal last name, she "did not register him using his full name."

The former neighbor from Greensboro is a licensed daycare provider. It is her practice to look up on Case Search the parents of every one of her daycare children. She assesses Toepfer as a "phenomenal" mother. The witness believes that, when Jackson starts kindergarten, "he is going to be alienated away from kids because of his last name."

Appellant's sister babysits Jackson while Toepfer is at work. This witness has never heard Jackson ask about his father. She is fearful that the child will be questioned and ridiculed because of his Meador name.

Richard Wayne Meador (Richard), appellee's father, age sixty at trial, was called as a witness. He has three brothers and four sisters. The family has lived in Calvert County since 1963. They were raised on a farm. To his knowledge, there was no publicity in Calvert County about appellee's crime or conviction in Caroline County. He has had people ask him how Meador was doing. He does not think that a lot of people "even know of [the conviction]."

Richard has been visiting Meador in prison twice a week but has not seen Jackson for over two and one-half years. Richard has sent Facebook messages to Toepfer, to have some contact and to inquire how Jackson was doing, "trying to get some kind of answer." Ultimately, Toepfer deleted Richard from her Facebook account.

The paternal grandfather described community activities in which he and other members of the Meador family participate. He also told the court that he sired a daughter by a woman, surnamed Hogan, to whom he was never married. That daughter was present in court. She now has a daughter of her own. That daughter of Richard has used Meador as her name for "her entire life." She went to school and was "active in everything" but it "never was a problem."

Richard's viewpoint is that, even if Jackson's name were changed, he would still be Meador's son. If the child were to face some embarrassment, he would have to face the problem and not try to hide what happened. The extended Meador family would stick by him and be supportive.

Jessica Meador, from Huntington, Calvert County, is Meador's sister-in-law. She teaches fourth grade. She has no concerns that her son, age two at the time of trial, would have any problems because of the Meador name when he starts school.

The Circuit Court's Decision

The court initially recognized that "Meador" was jointly selected by Jackson's parents as his surname, as reflected by the child's birth certificate. In that kind of a case, the presumption is that one parent should not change it unless there has been an extreme change in circumstances. These fall into two categories, one of which, abandonment, is not alleged. The other is "misconduct by [a] parent that can make the child's continued use of the parent's surname shameful or disgraceful."

A third degree sex offense against a fourteen-year-old female was, the court found, "by any stretch of the imagination, a disgraceful act." Thus, the question was "whether the child will suffer any ill-effects of this." This required a forecast or prediction. In past name change cases, the court said that it had considered the uniqueness of the name in the community and the pervasiveness of the knowledge of the crime. The court found that the Meador name was not "necessarily unique."

With respect to pervasiveness of the knowledge of the crime, the court found:

> "I don't feel that the evidence has shown me that since the crime occurred on the Eastern Shore in Caroline County several years ago, there has been no publicity, at least this member of the bench having lived in this community for over 20 years knew anything about it, and there is just nothing in the media that calls my attention to it. Unlike several cases that I have personally prosecuted in this community where the name was well known, and if you had that name and you knew anything about, it was a murder, you definitely knew who the family was. I can't say that in this case."

The court recognized that Meador, on release, would be known as a registered sex offender to some unknown number of people at Jackson's school. How Jackson would respond was a matter about which both families needed to be concerned. But, the judge did not "think the evidence has been compelling enough for me to make a forecast that this is such a well-known crime, so pervasive in its depravity that the child will be branded with this."

In concluding its ruling the court said:

> "Will other parents figure this out? That's possible. In this day and age when computers are readily accessible and this information is well known, I'm sure that some people will. Will that mean that this child will be so heavily impacted that he will suffer the shame and disgrace of living in the community? In making a forecast, the prediction about the impact, I can't say that the evidence is so compelling to warrant a name change. I understand the concern, and I'm mindful of that concern. I think that the crime is one that is a disgraceful crime, but whether the impact is going to be visited on the child if he keeps his father's name, I'm not convinced that changing the name would accomplish that."

From the ensuing order denying the change of name, this appeal was noted.

Discussion

If the court, in a non-jury trial, concludes that it is not persuaded by the case presented by the party having the burden of persuasion, there ordinarily is no basis for a reversal on appeal. *Starke v. Starke*, 134 Md. App. 663, 680-81, 761 A.2d 355, 364 (2000). Thus, Toepfer makes a frontal assault on the standard applied by the trial court. She submits that the court erroneously applied a "best interest" standard when it considered whether the child

might become embarrassed or humiliated. That test applies, asserts Toepfer, "only where there has been no agreed-upon surname." The correct test, appellant contends, is that "[w]here an offense is of such magnitude that surname by a child would result in significant harm or disgrace to the child, a trial court must grant a change of surname." Applying the assertedly correct legal test, appellant concludes that when the court found that this third degree sex offense was "'a disgraceful act,'" the "analysis should have ended." Toepfer says that "[t]he court had no discretion to exercise" and, thus, "erred as a matter of law in failing to grant her request." As distilled in appellant's reply brief, the argument is that "Meador's crime ... was shameful and disgraceful criminal misconduct of a magnitude warranting change of his minor child's surname." (Upper case type reduced). Meador considers that the court correctly applied the applicable law. In large part the dispute evolves into an interpretation of the seminal Maryland case on name changes, *West v. Wright*, 263 Md. 297, 283 A.2d 401 (1971).

The children in that case were boys, age twelve and eleven when the name change was sought by their mother. She and the boys' father, whose surname they were given at birth by parental agreement, were divorced and the mother desired them to have the stepfather's surname. The circuit court had ordered the change, but the Court of Appeals reversed and ordered dismissal of the petition. The Court concluded the law to be as follows:

> "This is a case of first impression in Maryland, but the rule in other courts has been to look at what is in the best interests of the child before determining if a name change is warranted. However, courts are also most reluctant to allow such a change except under extreme circumstances. As the New York court said in *Application of Yessner*, 61 Misc.2d 174, 304 N.Y.S.2d 901, 903 (1969) '*** to deprive the son of his father's surname is a serious and farreaching action *** the father has a natural right to have his son bear his name and *** the court should not endeavor to interfere with the usual custom of succession of paternal surname nor foster any unnatural barrier between father and son.' Nevertheless, the father's right to perpetuate his name in his son is certainly not absolute; it can be forfeited by conduct inimical to the child. 'The sins of the father should not be visited upon the child.'
>
> "Courts of our sister states have usually made inquiries along the following lines in deciding cases involving a name change of minor children:
>
> "1. Is there any proof of misconduct by the natural father which might make the continued use of the name by his child shameful or disgraceful?
>
> "2. Has the father wilfully abandoned or surrendered the natural ties between himself and his children?"

Id. at 299-300, 283 A.2d at 402-03 (some citations and footnote omitted).

Accepting these general considerations, the Court observed that "[t]he most prevalent basis for allowing a change of name is where there is proof of serious misconduct by the father that adversely affects the best interests of his children." *Id.* at 301, 283 A.2d at 403. And further, the Court instructed:

> "There are no hard and fast definitions as to the type of misconduct required [for extreme circumstances]; however, the offense must be of such great magnitude that the continued use of the name by the children would result in significant harm or disgrace to them."

Id.

Thus, the trial court's conclusion that Meador was convicted of a crime that is disgraceful is not a dispositive finding. One must determine (somehow) if shame and disgrace would be brought upon the children if they continued to use the name. This inquiry points in the direction of the best interest of the child standard that Toepfer argues is not the applicable law.

This Court had occasion to apply *West* in *Schroeder v. Broadfoot*, 142 Md. App. 569, 790 A.2d 773 (2002). We distinguished from "'change of name'" cases those in which the parents agreed upon a surname, it was used, and, later, one parent sought to change it over the opposition of the other. In the latter situation, we said, citing *West*, that "a name change only is warranted if it is in the child's best interest *and* the moving party shows 'extreme circumstances.'" *Id.* at 581, 790 A.2d at 781 (emphasis in original). By contrast, where there had never been an agreement, the question is answered by "what surname will serve the child's best interests." *Id.* (citing *Lassiter-Geers v. Reichenbach*, 303 Md. 88, 492 A.2d 303 (1985)).

In *Dorsey v. Tarpley*, 381 Md. 109, 847 A.2d 445 (2004), the child was born to unmarried parents. The mother's name was placed on the birth certificate, but, in the father's action to have his name added, the trial court made no finding concerning original agreement. In explaining the need for a remand, this Court's review of *West* casts light on the relationship between "extreme circumstances" and best interests. In stating the rule for

unilaterally sought changes of an agreed name, the Court incorporated both extreme circumstances and best interests, saying:

> "Unlike in the case where no initial surname is given a child at birth, the rule in a change of name case is to 'look at what is in the best interests of the child before determining if a name change is warranted.' *West v. Wright*, 263 Md. 297, 299, 283 A.2d 401, 402 (1971), and cases cited therein. Other than in the case of adoption proceedings, there is a presumption against granting such a change except under 'extreme circumstances.' *Id.*"

Id. at 115, 847 A.2d at 448.

The Court further said that in agreed name cases the party seeking the change "must satisfy, by admissible evidence, the 'extreme circumstances' standard in order to generate a prima facie case for the name change." *Id.* at 116, 847 A.2d at 448.

We understand *Dorsey*'s interpretation of *West* to mean that in agreed name cases, absent extreme circumstances, the proponent of the change fails in his or her burden to produce. If extreme circumstances are established, the case proceeds for a best interests analysis in which the proponent has the burden to produce and persuade.

Toepfer cites *In re Roberto d.B.*, 399 Md. 267, 923 A.2d 115 (2007), which she says "makes it clear that a best interest analysis does not apply to 'change of [agreed] name' cases." Brief of Appellant at 20. There, a man hired a carrier for *in vitro* fertilization with his sperm. The procedure resulted in a birth. He succeeded in having the carrier's name removed from the child's birth certificate. The opinion recognized that, in agreed name cases, "there is a presumption against granting such a change except under 'extreme

circumstances.'" 399 Md. at 289, 923 A.2d at 128. Toepfer does not inform us how *In re Roberto d.B.* supports the proposition for which she cites it. Overcoming the presumption and establishing a *prima facie* case does not, *ipso facto*, require judgment for the change proponent in cases in which the opponent of change produces best interests evidence to the contrary which persuades the court.

Here, we can assume, without deciding, that the fact of conviction for a sexual offense in the third degree establishes "extreme circumstances." That does not end the inquiry. Toepfer does not contend that the evidence of best interests was insufficient to support the judgment. The court, unpersuaded by appellant's case, was not legally compelled to order the change of name.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.