

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of Jennifer Lane:
Bicknell, *et al*

Appellants

On Appeal from the Butler County
Court of Appeals, Twelfth Appellate
District

Ohio S. Ct. Case No. 01-609

REPLY BRIEF OF APPELLANTS
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II. TABLE OF AUTHORITIES

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III. ARGUMENT

A. Even under an 'abuse of discretion' standard, the appellate court should have reversed the trial judge and allowed the name change applications.

The only evidence of record in this matter was the testimony of the therapist that having a common family name would be in the best interests of the children. (Hearing on Objections to Magistrate's Decision, T.p. 16, p. 3-4, 6 Supp. p. 3-4, 6, 13). It was clearly an abuse of discretion for the trial judge to ignore the only record evidence, without comment. It is additionally an abuse of discretion, as the dissenting judge noted, for a judge to give greater weight to his personal predilections over this evidence of record. No part of discretion allows a judge to decide a case based on his personal feelings about the applicant's sexual orientation.

Additionally, as to matters of legal interpretation of the statute involved, this Court may freely review the lower courts' actions *de novo*. Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d77, 80, 461 NE2d 1273, 1276.

B. Using the 'best interests of the child' test acknowledged by the AFA, the Appellants' name change applications must be allowed.

The AFA acknowledges that In re Newcomb stands for the proposition that it is error for courts not to consider the best interests of a child in a name change case. *Brief Amicus Curiae of AFA*, p. 15. The AFA also acknowledges that in Charles B., this Court "properly" enforced the public policy for cases involving minor children that "the 'best interests of the child' is the paramount consideration". *Id.* at 25. The AFA, however, urges this Court to ignore this "paramount consideration" in the Appellants' case, no doubt because if the best interests of the

children are considered, the Appellants' name change requests must be allowed. It is unsupportable for the AFA to refuse to acknowledge that the best interests of children is a factor in this case, despite the fact that this was the Appellants' reason for requesting the name changes.

The Appellants applied for name changes prior to the actual birth of their children so that their legal identification could be changed to reflect their family name by the time any children were born. Their prompt application was prudent and, in retrospect, perhaps should have been filed even earlier.

C. Denying a name change to the Appellants does nothing to further any public policy favoring marriage over cohabitation.

Although the AFA devotes most of its brief to arguing that Ohio's public policy favors marriage over cohabitation, *it never explains how such a policy is promoted by denying a name change to a couple for whom marriage is not possible.* The AFA's primary argument is therefore nothing more than a red herring. Ohio will not gain one solemnized marriage by denying a name change to this couple - there is no evidence in the record that Ms. Priddy and Ms. Bicknell will re-think their settled, long-term, happy relationship if they are not successful in achieving a statutory name change. They are raising their twins together and, according to their testimony and that of the examining therapist, show every indication they will be doing so for the foreseeable future. The AFA's argument that denying their name change will somehow promote marriage and discourage cohabitation is therefore specious.

IV. CONCLUSION

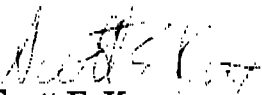
As the dissenting judge observed, what the lower courts decisions have at their core is disapproval of two women living together and raising children. As he noted, however, Ohio

courts have not found that moral objections to an adult's sexual orientation, in and of themselves, are reasons to deny legal rights. Even under an abuse of discretion standard, the Court of Appeals' decision must fail.

No lower court nor the AFA could advance any argument showing how denying these name change applications to a couple prohibited from marrying promotes any public policy encouraging marriage. The only effects of the denial of these name changes are to discourage these women from raising their children in what is undisputed in the record to be in the best interests of those children, and in thwarting the public policy encouraging Ohio citizens to record their name changes formally. Even under an 'abuse of discretion' standard, the Court of Appeals decision must be reversed.

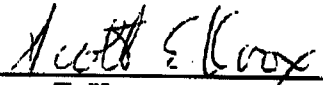
Under the test for name changes urged by the Appellants, the trial judge would continue to have the discretion to determine whether a requested name change is sought for fraudulent purposes and whether the name is in and of itself patently ridiculous or offensive. If so, the requested name change can be found to be unreasonable or improper, and the name change denied. This test satisfies the AFA's concern with applicants requesting numbers or a single word as a name, which could still be rejected.

Respectfully submitted,


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Proof of Service

No Proof of Service is required, as these applications for name changes were unopposed.


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