NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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December 27, 2018

**LETTER OPINION**

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*Counsel for Respondent*

Re: *In re* A.V.T-A.[1]
Case No. CL-2018-11314

Dear Counsel:

This cause comes before the Court on the Petition of Mother ("Petitioner") for the name change of her minor child, A.V.T-A., to that of A.V.L-A., pursuant to Virginia Code

[1] The subject child is referenced only by her initials and her biological parents and stepfather are not named herein.

§ 8.01-217. "T" is Mother's maiden name, "A" is Father's surname, and "L" is Stepfather's surname and Mother's current legal surname.

This Court has the authority to order a change of name for a minor child if such change is in the best interest of the child. There is scant precedent defining specifically the confines of when it is in the child's best interest for the Court to grant a change in her name. The broad standard applicable is that the Petitioner must demonstrate "substantial reasons exist for the change." An illustrative, non-exhaustive, factored analysis for application of such principle was articulated by the Supreme Court of Virginia in *Spero v. Heath*, 267 Va. 477, 593 S.E.2d 239 (2004). From those factors this Court gleans there are at least two limiting principles of application in child name change cases. First, the Court should not by grant of a name change diminish any significant existing ties between the child and the parents whose last name she carries. Second, the child conversely should not be subjected to *substantial* embarrassment or distress, product of maintaining the surname sought to be changed or supplemented. While each petition concerning the name change of a minor child is to be examined on a case-by-case basis to discern what is in the best interest of such individual child, the aforementioned guidance suggests the bookends within which this Court may consider making its balanced determination.

Consequently, and in application of the principles aforesaid to the facts adduced, this Court shall by separate order GRANT Mother's Petition for the name change of her minor child.

## BACKGROUND

Mother and Father are the natural parents of a minor child, A.V.T-A., seven years in age. Mother and Father were never married, and the child's current legal surname is a hyphenation of the birth parents' surnames. At a point after the child's birth, Mother married and took her husband's surname. Mother and Stepfather have additional children together, each of whom bear Stepfather's surname.

Mother and Father share joint legal custody of the minor child, but Mother has primary physical custody. Since the child's birth, Father has regularly traveled from California to Virginia to visit the child, relocated to Virginia, and then continued regularly to travel to Virginia to visit the child upon his relocation back to California. Father travels from California to visit the child in Virginia as often as every five weeks, for a period of five to six consecutive days.

On July 30, 2018, Mother filed a petition, pursuant to Virginia Code § 8.01-217, to change part of A.V.T-A.'s surname to exclude Mother's maiden name and replace it with Stepfather's surname, i.e., yielding for the child a hyphenation of Stepfather's and Father's surnames. Father objected to the petition.

At trial, Father expressed concern that, if the petition for name change were granted, he would be alienated from his child's life. Father manifested his fear of such alienation by presenting evidence, such as a copy of the child's christening announcement and a copy of the child's gymnastics registration, each of which was prepared by Mother or one of her relatives, and included Mother's maiden name only to the exclusion of Father's name. Father posited such evidence demonstrates Mother is already excluding his surname from use when referencing the child. He contends he will

be further excluded should the petition for name change be granted, for then the child would only be referred to by the Stepfather's surname in similar circumstances.

Mother, on the other hand, presented evidence of various school and activity registrations she submitted using the child's full current legal name, including Father's surname. Mother also testified the child is undergoing a great deal of distress stemming from the fact her current legal name does not match in any way that of Mother, Stepfather, or her half-siblings. The child is the only one in her primary household left with Mother's maiden name. There was testimony at trial of an episode where the child was inconsolable in consideration of her current name, that she is in the care of a therapist to address this issue, and that it is the child's own passionate desire for her name to be changed. Mother's position is that she is not cutting Father out of the child's life, that she actively uses the child's full legal name, that the alteration to Mother's married name would not diminish the child's bond with her Father, and that the name change is yearned for by the child and required for her emotional well-being.

## ANALYSIS

This Court derives its authority to change the name of a minor child from Virginia Code § 8.01-217. In relevant part, that section states:

> On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, *that the change of name is not in the best interest of the minor*, order a change of name.

Va. Code § 8.01-217(C) (emphasis added). The petitioning parent, in this case Mother, has the burden of proving "by satisfactory evidence that the change is in the child's best

interest." *See Spero*, 267 Va. at 479-80, 593 S.E.2d at 240-41 (citing *Roland v. Shurbutt*, 259 Va. 305, 308, 525 S.E.2d 917, 919 (2000); *Beyah v. Shelton*, 231 Va. 432, 434, 344 S.E.2d 909, 911 (1986); *Flowers*, 218 Va. at 237, 237 S.E.2d at 113). "For most citizens, the statute speaks in fairly permissive terms . . . ." *Leonard v. Commonwealth*, No. 170965, at *3, 2018 WL 6566790, at *2 (Va. Dec. 13, 2018). The applicable statutory section is worded in a manner that imposes on this Court the requirement it find the name change *not* to be in the interest of the child before *denying* such relief. This distinction is subtle but of significance, for it suggests the General Assembly intended courts give mature consideration to child name change requests before rejecting the same. This chosen construction of the statute may further be calculated to facilitate unopposed name changes without the courts having to make affirmative findings that the change *is*, as opposed to *is not*, in the best interest of the child. The evidentiary burden on the Petitioner notwithstanding, if this Court were to deny the child's name change, it is thus required to detail not merely that the Petitioner has not met her burden, but also why the evidence compels the conclusion the name change is not in the best interest of the child.

In *Spero,* the Supreme Court of Virginia articulated

> [t]he petitioning parent may prove that the name change is in the best interest of the minor by showing that:
>
> 1) The parent sharing his or her surname with the minor has "abandoned the natural ties ordinarily existing between parent and child,"
>
> 2) The parent sharing his or her surname with the minor "has engaged in misconduct sufficient to embarrass the [minor] in the continued use" of the parent's name,
>
> 3) The minor "otherwise will suffer substantial detriment" by bearing the surname he or she currently bears, or

4) The minor "is of sufficient age and discretion to make an intelligent choice and . . . desires that [his or her] name be changed."

*Spero*, 267 Va. at 479-80, 593 S.E.2d at 240 (citing *Flowers v. Cain*, 218 Va. 234, 236-37, 237 S.E.2d 111, 113 (1977)). "*Flowers* and *Spero* merely provide a non-exclusive list of 'substantial reasons' that have been recognized by [the Supreme Court of Virginia] and others as prima facie evidence that the name change is in the child's best interest." *McMahon v. Wirick*, 288 Va. 197, 201, 762 S.E.2d 781, 783 (2014).

As previously mentioned, this Court finds these factors to impart principles creating the bookends by which the best interest of the child may be measured. On one end is the concept a court should not weaken a *substantial* relationship between a child and her parent through a name change. This principle is implemented almost unanimously in the case where divorce is the principal cited reason for removing the surname of a parent from that of a child. "[I]n the aftermath of divorce, [courts] have been reluctant to change a child's name over the objection of a devoted father for fear that the change would damage further the already strained father-child relationship." *Flowers*, 218 Va. at 236, 237 S.E.2d at 113. This Court finds such a principle also to be salient in the case of the name change of a minor child whose parents, while never married to each other, are both exemplary in caring for and devotion to the child. At the other end of the decisional window is the notion that a child should not be subject to *substantial* detriment imparted through the continued maintenance of the name of a parent. This detriment could be in the form of *substantial* embarrassment faced by the child at school or in other activities, or a lack of familial fellowship felt by the child, among other conditions, but may not be the product of mere unreasonable youthful whim. Thus, "a name change will not be authorized against

the father's objection . . . merely to save the mother or child *minor* inconvenience or embarrassment." *Id.* at 218 Va. 237, 237 S.E.2d at 113 (quoting Annot., 53 A.L.R. 2d 914, 915 (1957)) (emphasis added). In *Flowers,* the Supreme Court of Virginia found divorce alone posed a mere "minor inconvenience" insufficient to remove the biological father's name from that of two of his children in favor of the name of the stepparent whom their mother had married and whose surname she had taken. The mother in that case posited her petition should be granted to avoid embarrassment or confusion for the children in the new community to which they had moved. Like Father in the instant case, Mr. Flowers had significant bonds with his children. Great caution must always be exercised in extending application of precedent of the Supreme Court of Virginia beyond the context in which it was applied. In *Flowers*, the mere inconvenience of occasionally having to clarify the children were the product of their mother's earlier marriage did not alone justify severing the father's surname from that of the children. In this case in contrast, the inconvenience and embarrassment to the Mother and child is of greater degree. To those unfamiliar with Mother's maiden name, this circumstance could further suggest the existence of another parent beyond the named Father and Mother, since Mother is now known only by her married surname. The child and her Mother may thus have to account in various instances and forums for why the child carries Mother's maiden name when no one else in her immediate familial circle has that name.

Courts of this Commonwealth have previously found it appropriate to change the name of a child from the mother's maiden name to her married name, as requested herein. The court in *In re* Change of Name of J.R.O., 27 Va. Cir. 260 (Loudoun 1992), for example, found "[t]he only connection which the continued use of the maiden name of

Mrs. 'K' [(Mother)] to 'J's' [(child)] well being would be one of historical interest." 27 Va. Cir. at 262. In that case, the court held it to be in the best interest of the child to change his name from the mother's maiden name to her married name, and that "[l]eaving the child with his mother's surname will not symbolize the closeness of the child and father . . . ." *Id.* at 262-63. Moreover, that court also found changing the child's name to his mother's married name would help in "form[ing] the basis for a closer relationship with his half-sister." *Id.* at 262. While in *McMahon*, the court delimited it "has never held that it is fundamentally in a child's best interest to share a surname with a parent," that court, however, found relevance in a shared surname to determine the child's best interests, stopping short of saying sharing a surname with a parent is dispositive of those interests. 288 Va. at 202, 762 S.E.2d at 784.

The minor child in this case is blessed with exemplary parents and an outstanding Stepfather, all of whom love and care for her. This Court, unfortunately, does not see enough cases like this, where the parties have maintained a mature working relationship for many years to provide collaboratively for the child. Father has demonstrated his devotion to maintaining his relationship with the child by moving across the country to live near her. Even after relocating back to California for economic reasons, he still travels back to Virginia as often as every five weeks to spend time with the child. There is no evidence to show the child has suffered any embarrassment in maintaining Father's surname, nor does Mother seek to disturb that the child proudly carries Father's name.

This case is unusual in that Mother seeks not to exclude Father's name, but rather her own maiden name, to the inclusion of Stepfather's name, her married name. The child appears to the Court to be suffering substantial detriment by bearing Mother's maiden

name. There was testimony at trial of an episode wherein the child was inconsolable in consideration of her current name, that she is in the care of a therapist to address this issue, and that it is the child's own passionate desire for her name to be changed. The child is currently living primarily in a household with Mother, Stepfather, who has been in her life since she was about seven months of age, and her half-siblings, all of whom share a name, leaving the child the only one with an entirely different surname from that of the other household members. While the child is only seven years old, this Court recognizes she obsesses about this difference and desires to match the other members of her family. It is clear the child loves both of her parents as well as her Stepfather and is conflicted with her current legal name. Her desire to carry *all* their names is poignantly evident from written schoolwork, where the child meticulously included all three surnames.

After considering prior authority, which is by factual example notedly limited, and the factors to be evaluated in determining a child's best interest as presented in *Spero*, this Court finds it to be in A.V.T-A.'s best interest to change her name, replacing Mother's maiden name with Stepfather's surname, i.e., to A.V.L-A. In doing so, this Court recognizes the strong bond between the child and Father, and Father's commendable efforts to maintain such bond. Although this Court acknowledges Father's fears of the alienation of his surname, it cannot police the actions within the home in the context of a name change petition. Moreover, the isolated examples cited by Father wherein his name was excluded do not appear to be the product of Mother's advertent conduct. In fact, both parents make it a point to reference the child's activities to one another, such as by sharing photographs of events when the child is in their care. The child has by her conduct expressed a clear interest in maintaining Father's name alongside Mother's married

name. Bringing the child's name into conformity with Mother's married name will not in any manner diminish by mere label the intense bond she has established with Father, particularly when his surname continues to be her last name. While Father's concerns are understandable, the Court finds they must, in balancing of what is in the best interest of the child, give way to alleviating the child's current emotional distress at her name alienation not from her Father, but from the rest of her family, her two siblings, Mother and Stepfather. Accordingly, this Court finds it in the best interest of the child that Mother's Petition to change the child's name to replace her maiden with her married name be granted.

**CONCLUSION**

This Court has considered the Petition of Mother for the name change of her minor child, A.V.T-A., to that of A.V.L-A., pursuant to Virginia Code § 8.01-217. "T" is Mother's maiden name, "A" is Father's surname, and "L" is Stepfather's surname and Mother's current legal surname.

This Court has the authority to order a change of name for a minor child if such change is in the best interest of the child. There is scant precedent defining specifically the confines of when it is in the child's best interest for the Court to grant a change in her name. The broad standard applicable is that the Petitioner must demonstrate "substantial reasons exist for the change." An illustrative, non-exhaustive, factored analysis for application of such principle was articulated by the Supreme Court of Virginia in *Spero v. Heath*, 267 Va. 477, 593 S.E.2d 239 (2004). From those factors this Court gleans there are at least two limiting principles of application in child name change cases. First, the

Court should not by grant of a name change diminish any significant existing ties between the child and the parents whose last name she carries. Second, the child conversely should not be subjected to substantial embarrassment or distress, product of maintaining the surname sought to be changed or supplemented. While each petition concerning the name change of a minor child is to be examined on a case-by-case basis to discern what is in the best interest of such individual child, the aforementioned guidance suggests the bookends within which this Court may consider making its balanced determination.

Consequently, and in application of the principles aforesaid to the facts adduced, this Court shall by separate order GRANT Mother's Petition for the name change of her minor child, and until such time, THIS CAUSE CONTINUES.

Sincerely,

[redacted]

David Bernhard
Judge, Fairfax Circuit Court

**OPINION LETTER**