

**NOTICE**

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**FILED**

January 9, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2018 IL App (4th) 170419-U

NO. 4-17-0419

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

HEATHER WHITE,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Livingston County
JASON FULLER,	)	No. 17MR33
Respondent-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices DeArmond and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court remanded the matter for a clarification of the record as to the custodial rights of the parties and for such further proceedings as may be warranted based on that clarification.

¶ 2 Respondent father, Jason Fuller, appeals *pro se* from the trial court’s order granting the petition of petitioner mother, Heather White to change the surname of the parties’ minor child from the father’s to her own. We remand with directions.

¶ 3 I. BACKGROUND

¶ 4 Our recitation of the facts is limited because the record on appeal contains only the 38-page common-law record with no transcript, report of proceedings, or bystander’s report. We lack context for some of the events described in the record. The mother has not filed an appellee brief.

¶ 5 From the father’s brief, it appears the parties in this appeal were also parties in a pending parentage case (Livingston County case No. 15-F-46). In fact, the father attached a copy of a January 5, 2016, docket entry from that parentage case. Although the docket entry did not reveal any substantive matter, it demonstrated the parentage case existed. According to the father, the trial court in the parentage case, Judge Robert Travers, entered a visitation order permitting him to visit with the minor. Whether Judge Travers entered orders establishing paternity, parentage, or custody is outside the record before us.

¶ 6 In the instant case (Livingston County case No. 17-MR-33), the mother filed a petition to change the surname of the parties’ minor child from the father’s to her own. The mother’s name-change petition is a preprinted form containing no fact-specific bases for the requested change.

¶ 7 In an April 10, 2017, docket entry, the trial court denied the father’s request to appear at the hearing on the mother’s name-change petition on the following basis:

“The court having carefully considered [the father] is housed approximately 225 miles from Livingston County, the relative costs of transportation together with the inherent risks of accident and/or escape against [the father’s] right to appear for this particular case and noting OP still in effect (15-OP-88, Livingston County), denies [the father’s] petition for writ of *habeas corpus ad testificandum*[.]”

From this docket entry, we discern the mother presumably obtained an order of protection against the father, perhaps stemming from the circumstances resulting in his convictions for

aggravated domestic battery and unlawful restraint for which he was currently serving prison sentences.

¶ 8 Following a hearing, the trial court granted the mother’s name-change petition. The court’s written order provides only “[t]hat[,] by clear and convincing evidence, the name change is in the best interest of the minor child(ren)[,]” without further factual findings. The court’s docket entry from the hearing provides as follows:

“Correspondence contesting the name change on file by [the father]. [The mother] appears *pro se* and is sworn – [the father] not present – [the father’s] motion to continue denied – court considers [the father’s] written objection filed 5/4/17 – [the mother] testifies she is sole provider for minor – parties separated before child turned [one] – court finds name change is in best interest of the minor that petition be granted – father incarcerated for aggravated domestic battery and unlawful restraint – decree entered – clerk to send this docket entry to [the father, who is an inmate with the Illinois Department of Corrections)].”

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Under Illinois law, a party can seek a name change by more than one means. See *In re Wright*, 363 Ill. App. 3d 894, 896, 844 N.E.2d 427, 428 (2006). Two of those means are relevant here. The first is under section 21-101 of the Code of Civil Procedure (Code) (735 ILCS 5/21-101 (West 2016)), which addresses the name change of a minor if the court finds by clear and convincing evidence the change “is necessary to serve the best interest of the child.” The

statute lists several factors to be considered. Section 21-102 provides the petition for the name change must be signed by “the parent or guardian having the legal custody of the minor.” 735 ILCS 5/21-102 (West 2016).

¶ 12 The second relevant means for seeking a name change is through the court with jurisdiction over custodial matters. *Wright*, 363 Ill. App. 3d at 896. Our supreme court has said “changing a child’s name is a matter incident to custody of the child.” *In re Marriage of Presson*, 102 Ill. 2d 303, 307, 465 N.E.2d 85, 87 (1984). That is, the court with jurisdiction over the custodial issues has jurisdiction over a petition regarding a dispute over a name change. *Wright*, 363 Ill. App. 3d at 896.

¶ 13 This court, in *Wright*, considered the propriety of both of these means when two parents who shared joint custody disagreed over one parent’s petition to change the name of their child. In *Wright*, the parties were awarded joint custody of their minor child as part of a parentage case. *Id.* at 895. Approximately one year later, the father filed a petition to change the child’s name in a separate, miscellaneous-remedies case. *Id.* at 896. Over the mother’s objection, the trial court granted the father’s name-change petition. *Id.* The mother appealed, arguing the father lacked standing to seek the name change because both parties under section 21-102 of the Code (735 ILCS 5/21-102 (West 2004)) must agree to a name change when a joint-custody agreement is in place. *Id.* We initially found the name-change petition was resolved under the Code rather than through a court with jurisdiction over custodial matters, given the fact it was filed as part of a miscellaneous-remedies case, the petition was heard by a judge other than the one presiding over the parentage case, and the parties focused their arguments before the trial court and this court on standing to seek a petition change under the Code. *Id.* Turning to the statutory language, we found “[s]ection 21-102’s use of ‘the parent \*\*\* having the legal

custody,' implicat[ed] no custodial dispute over the name change. (Emphasis added.)” *Id.* at 897, (quoting 735 ILCS 5/21-102 (West 2004)). Because the father (“a party with joint custody”) sought a name change over the objection of the mother (“the other joint custodian”), we concluded “the disagreement over the name change creat[ed] a custody dispute that should be resolved by the court within the confines of the proceeding wherein parentage was declared.” *Id.* at 897. We reversed the court’s order granting the father’s name-change petition under the Code. *Id.* at 897.

¶ 14 As in *Wright*, the mother’s name-change petition here seemed to be resolved under the Code. Although neither the petition nor the order granting the petition referred to the applicable section of the Code, the case was filed as a miscellaneous-remedy (MR) case and considered by a judge other than the judge presiding over the parentage (F) case.

¶ 15 It is unclear whether the disagreement over the name change was properly resolved under the Code or should have been resolved within the confines of the parentage proceedings. That is, based on the record presented, it is unclear whether (1) custody remains to be in dispute in the parentage case, (2) the mother has sole custody, or (3) the parties share joint custody. To assure the mother had standing to present her name-change petition under the Code, we find it necessary to remand the matter for a clarification of the record as to whether the mother has sole custody of the minor child. In the event custody remains to be in dispute or the parties share joint custody, the order granting the mother’s name change should be vacated and the issue be addressed within the confines of the parentage proceedings.

¶ 16 III. CONCLUSION

¶ 17 We remand the matter for a clarification of the record as to the custodial rights of the parties and for such further proceedings as may be warranted based on that clarification.

¶ 18

Cause remanded with directions.