A Rose Is A Rose

But Would A Kid By Any Other Name Smell As Sweet?

by Luis E. Insignares

For many couples, naming a child can be a stressful experience, because a child's name can be important, and potentially affect the child for the rest of his or her life. Even in the most stable and committed relationships, disagreements can occur. But did you know that the state of Florida actually has a statute on disputes about naming kids? It's true! And as you might expect, different rules apply when the parents are married versus unmarried, and depending upon which parent has custody.

The child-naming statute is actually a part of the more generalized "birth registration" statute, Section 382.013, since the name on the birth certificate is the child's legal name. Subsection (3), entitled "Name of child," sets forth three rules for naming kids. The first pertains to children born to married couples:

> (a) If the mother is married at the time of birth, the mother and father whose names are entered on the birth certificate shall select the given names and surname of the child if both parents have custody of the child, otherwise the parent who has custody shall select the child's name.

Fla. Stat. § 382.013(3)(a) (2013). That's about what you'd expect, if the couple are married and both have custody it's a joint decision, otherwise to be made by the sole party with custody.

But what if they disagree? This:

> (b) If the mother and father whose names are entered on the birth certificate disagree on the surname of the child and both parents have custody of the child, the surname selected by the father and the surname selected by the mother shall both be entered on the birth certificate, separated by a hyphen, with the selected names entered in alphabetical order. If the parents disagree on the selection of a given name, the given name may not be entered on the certificate until a joint agreement that lists the agreed upon given name and is notarized by both parents is submitted to the department, or until a given name is selected by a court.

Fla. Stat. § 382.013(3)(b) (2013). Note that this appears to apply to all disputes between birth certificate-named parents, married or not. The "alphabetized-hyphenation" rule covers last names when there is joint custody, and if the parties won't agree on a first name, a ***judge*** names the baby! However, the second sentence, on judges picking first names, is vague. Does it also apply only to joint-custody parents?

Here is the last provision on name changing, which may raise as many questions as it answers:

> (c) If the mother is not married at the time of birth, the parent who will have custody of the child shall select the child's given name and surname.

Fla. Stat. § 382.013(3)(c) (2013). Exactly how all the above provisions work together in all situations is not very clear. For example, if the parties are unmarried yet the father successfully is awarded rotating custody, does subsection (3)(b) or (3)(c) apply? Also, how can subsection (3)(b), written in terms of "mother" and "father," be applied to situations where a child might have two parents of the same sex? If same-sex marriages are declared legal in Florida, which now

Continued on page 14

Continued from page 12

seems likely, the statute will probably have to be re-written or judicially modified.

The further question arises as to whether the child's name can be changed later. Under Section 68.07(7), married couples may jointly petition to change their last names and their kids' names, in which case the parents have to make the same showing as other adults and the minor children's names may be changed at the discretion of the court. Under subsection (8) of the same statute, when only one parent petitions for child's name change, proof of service of process on the other parent must be filed, but if the other parent is a nonresident, constructive notice may be given, and without the necessity of recordation. The standard is simply whether the change is in the child's best interests. *Azzara v. Waller*, 495 So. 2d 277 (Fla. 2d DCA 1986); *Durham v. McNair,* 659 So. 2d 1291 (Fla. 5th DCA 1995); *Levine v. Best*, 595 So. 2d 278 (Fla. 3d DCA 1992). However, because of the rule that such decisions must be based on evidence other than the parties' "conclusory assertions," see, *Hutcheson v. Taylor*, 43 So.3d 921 (Fla. 1st DCA 2010), in practice the standard has often been hard to meet. *C.f., id.* (paternity not a sufficient basis for giving out-of-wedlock child hyphenated name to include father's name, despite father's claim that child having mother's maiden name "may eventually send the child a negative message regarding the Mother's attitude about the Father-daughter relationship"); *Wilson v. Smith*, 126 So.3d 413 (Fla. 2d DCA 2013)(child's father had limited contact with child, father had more time to serve before release from incarceration, and father was not financially supporting child or child's mother; held: name change requested by mother reversed); *Cothron v. Hadley*, 769 So. 2d 1148 (Fla. Dist. Ct. App. 5th Dist. 2000)(embarrassment children might suffer due to father's status as convicted sex offender and hearsay testimony that older child wanted no association with father's name insufficient for change). RG

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