

IN THE COURT OF APPEALS OF IOWA

No. 9-849 / 09-0090
Filed November 12, 2009

DARRELL EUGENE COWAN JR.,
Petitioner-Appellant,

vs.

HEATHER KAY LANCASTER,
Respondent-Appellee.

Appeal from the Iowa District Court for Montgomery County, Timothy O'Grady, Judge.

In a paternity case, the father appeals the district court's decision regarding the child's surname. **AFFIRMED AS MODIFIED AND REMANDED.**

Joseph Nugent, West Des Moines, for appellant.

Heather Lancaster, Red Oak, pro se.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

This is a paternity case involving a girl (Kayley) who was born in November 2007. The parties stipulated to paternity and on October 16, 2008, the district court entered a decree awarding them joint legal custody. The mother, Heather Lancaster, received physical care of the child. The father, Darrell Cowan Jr. was granted visitation and ordered to pay child support. Although Heather had married by the time of trial and no longer went by the name "Lancaster," the district court ordered that Kayley should bear the hyphenated surname "Lancaster-Cowan."

Having unsuccessfully moved for reconsideration, Darrell appeals this portion of the final decree. He argues that in light of Heather's name change, there is no reason for Kayley to bear a last name her mother no longer uses. Also, Darrell maintains that it will be an inconvenience for Kayley to have to write such a long last name. Finally, as the noncustodial parent, he is concerned that over time there might be a temptation for the custodial parent to shorten Kayley's last name, so that "Cowan" drops off.

Heather has not filed a brief, so we will not go beyond the ruling of the trial court in searching for a theory upon which to affirm its decision. *See Pringle Tax Serv., Inc. v. Knoblauch*, 282 N.W.2d 151, 153 (Iowa 1979).

Our scope of review in this surname dispute is *de novo*. *Montgomery v. Wells*, 708 N.W.2d 704, 705 (Iowa Ct. App. 2005). We give weight to the findings of the trial court but are not bound by them. Iowa R. App. P. 6.907.

In *Montgomery*, we listed a number of factors that should be considered in determining the child's name as part of a custody case, with the overriding consideration being the best interests of the child.¹ These factors are:

- (1) Convenience for the child to have the same name as or a different name from the custodial parent.
- (2) Identification of the child as part of a family unit.
- (3) Assurances by the mother that she would not change her name if she married or remarried if the child maintains the mother's surname.
- (4) Avoiding embarrassment, inconvenience, or confusion for the custodial parent or the child.
- (5) The length of time the surname has been used.
- (6) Parental misconduct, such as support or nonsupport or maintaining or failing to maintain contact with the child.
- (7) The degree of community respect associated with the present or changed name.
- (8) A positive or adverse effect a name change may have on the bond between the child and either parent or the parents' families.
- (9) Any delay in requesting or objecting to name change.
- (10) The preference of the child if the child is of sufficient maturity to express a meaningful preference.
- (11) Motivation of the parent seeking the change as an attempt to alienate the child from the other parent.
- (12) And any other factor relevant to the child's best interest.

Id. at 708 (citations omitted).

As we read the first four of the foregoing factors, we think they speak to a common theme: A child's last name, all things being equal, should match the last name of one or both of his or her parents. This helps reduce the number of questions the child and/or the parents will have to answer as the child gets older. Thus, we believe that considerations of convenience and avoidance of confusion

¹ We are reviewing the paternity order itself. Thus, this case involves an initial name determination pursuant to Iowa Code section 598.41 (2007), not a subsequent name change pursuant to section 674.6. See *Braunschweig v. Fahrenkrog*, ___ N.W.2d ___ (Iowa 2009).

favor “Cowan” over “Lancaster-Cowan,” since “Lancaster” is no longer the last name of either parent.

In this case the district court disagreed with Darrell’s contention that the hyphenated name would be confusing, embarrassing, or inconvenient, and seemingly accepted Heather’s argument that it would provide Kayley with a “stronger sense of belonging with both families.” Were it not for the fact that Heather has already remarried and stopped using the “Lancaster” name, we would be inclined to agree. However, on our *de novo* review, we believe there will be less questioning, inconvenience, and confusion down the road if Kayley simply has her father’s last name, rather than a hybrid of her father’s last name and a last name that neither parent uses. This of course does not alter the fact that Kayley’s mother will have physical care of the child.

We think the facts and specific holding of *Montgomery* also provide some guidance here. There, in choosing between the mother’s last name and the father’s last name, we (and the district court) opted for the latter, giving significant weight to the fact that the mother planned on getting married in the near future and taking a different last name. *Id.* at 710. We favored the father’s last name over a last name that neither parent would be using even though, as here, the father was the noncustodial parent. *Id.*

We note also that Kayley is very young (less than one year old at the time the decree was entered), and there is no evidence of delay or bad faith. *See id.* at 708-09. Thus, factors that might counsel against dropping “Lancaster” from Kayley’s last name are not present here. For the reasons stated, we affirm the

district court's paternity order, except with respect to Kayley's surname, which we find should be "Cowan" rather than "Lancaster-Cowan."

We affirm as modified herein and remand to the district court for entry of an order consistent with this opinion.

AFFIRMED AS MODIFIED AND REMANDED.