

CHANGE OF NAME ) A court order changing the name of a father does  
VITAL STATISTICS ) not automatically change the name of his children  
) and may not be accepted by the Bureau of Vital  
) Statistics as sole basis for amending birth records  
) of such children.

March 22, 1951

3-23-51



Buford G. Hamilton, M.D.  
Director  
Division of Health  
Jefferson City, Missouri

Dear Sir:

This is in reply to your request for an opinion on questions as follows:

"1. Does the court order changing the surname of the father of a legitimate child apply also to the surname of the child?

"2. Can the Bureau of Vital Statistics accept a court order changing the father's surname as a basis for amending the surnames of children who have birth records filed in our office?"

We are unable to find any case directly in point on the questions contained in your request. We are, therefore, forced to resort to general principles of law and rules of construction of statutes.

The statutory provision for making application to a court for changing names is Section 527.270, RSMo 1949, and is as follows:

"Hereafter every person desiring to change his or her name may present a petition to that effect, verified by affidavit, to the circuit court in the county of the petitioner's residence, which petition shall set forth the

Buford G. Hamilton, M.D.

petitioner's full name, the new name desired, and a concise statement of the reason for such desired change; and it shall be the duty of the judge of such court to order such change to be made, and spread upon the records of the court, in proper form, if such judge is satisfied that the desired change would be proper and not detrimental to the interests of any other person."

(Emphasis ours.)

At common law an individual could lawfully change his name without resorting to any legal proceedings, and it has generally been held in this country that statutory provisions for the changing of a name are not exclusive and do not abrogate the common law but are only in affirmation thereof. The court had this to say in the case of *Reinken v. Reinken*, 184 N.E. 639, 1. c. 640:

"\* \* \* At common law, and in the absence of statutory restriction, an individual may lawfully change his name without resort to any legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth. 45 Corpus Juris 381. Our 'act to revise the law in relation to names' (Smith-Hurd Rev. St. 1931, c. 96, Cahill's Rev. St. 1931, c. 96) permits an individual to apply to the circuit court for the entry of an order changing his name. These statutory provisions are, however, not exclusive, but are merely permissive, and they do not abrogate the common-law right of the individual to change his name without application to the courts. 45 Corpus Juris, 381, 382, and authorities there cited. \* \* \*"

Buford G. Hamilton, M.D.

On the subject of construing statutes to which, we must resort, the Supreme Court of Missouri in the recent case of Donnelly Garment Co. v. Keitel, 193 S.W. (2d) 577, 1. c. 581, said:

" \* \* \* And a primary rule of construction of a statute is to ascertain from the language used the intent of the lawmakers if possible, and to put upon the language its plain and rational meaning in order to promote the object and purpose of the statute. Haynes v. Unemployment Compensation Commission, supra, 183 S.W. 2d loc. cit. 81, and cases there cited."

Another cardinal rule of construction of statutes is found in State ex rel. v. McKay, et al., 52 S.W. (2d) 229, 1. c. 230, where the court said:

"In Johnston v. Ragan, 265 Mo. 420, 435, 178 S.W. 159, 163, it is said: 'Statutes are not to be construed so as to result in an absurdity or to impose unnecessary burdens.'"

Changing the name of the father of a child by order of court is and should be a matter of vital interest and importance to first, the petitioner; second, the wife of petitioner; and third, petitioner's children.

From an examination of the authorities generally, it seems to have been at common law a personal privilege for a person so desiring to change his name. All that was necessary at common law was for an individual to have the desire to change his name and proceed in his daily duties to go under the desired name. At common law this was done without legal proceedings and may still be done in most states. However, the statutes of some states expressly prohibit the change of name of an individual by common law. Missouri apparently is not one of such states.

We find no authority stating that the change of name of a parent will change the name of the child of such

Buford G. Hamilton, M.D.

parent. Before the name of an individual can or should be changed, there should be a desire on the part of the individual that his name be changed, and he certainly should have something to say about what the new name should be.

To aid in construing the change of name statutes, Sections 527.270, 527.280 and 527.290, RSMo 1949, we refer you to the adoption law on change of name. Here the Legislature carefully provided that when a child is to be adopted and a change of name is sought, it must be so stated in the petition, and the court may then decree that the name of the person adopted be changed as requested in the petition.

Section 453.020, RSMo 1949, under adoption law, provides for what shall be contained in the petition and among other things we find: " \* \* \* and if it is desired to change the name of said person, the new name of said person. \* \* \*"

In Section 453.080, RSMo 1949, of the adoption law we have the following:

" \* \* \* and the court may decree that the name of the person sought to be adopted be changed, according to the prayer of the petition."

Under divorce laws of Missouri we find provision for changing the name of a wife obtaining a divorce. In Section 452.100, RSMo 1949, we find:

"When the wife shall obtain a divorce from the bonds of matrimony, \* \* \* and the court, upon her request, shall make an order, changing her name to that of any former husband, or to her maiden name, as she may elect."

(Emphasis ours.)

Buford G. Hamilton, M.D.

It clearly appears that the change of name both under the adoption laws and the divorce laws is carefully guarded by the Legislature. It will also be noted that before a wife's name in a divorce proceeding can be changed there must be a request on her part and a court order changing her name to that of a former husband or to her maiden name as she may elect.

Before a person's name can be changed under the provisions of Section 527.270, RSMo 1949, there must be a desire for the change on the part of the person whose name is to be changed. The beginning of the section is as follows:

"Hereafter every person desiring to change his or her name may present a petition to that effect, \* \* \*."

(Emphasis ours.)

Said Section 527.270, RSMo 1949, further provides that the petition for change of name shall be filed in the county of petitioner's residence, and that the petitioner shall set forth the following: "\* \* \* the petitioner's full name, the new name desired, and a concise statement of the reason for such desired change; \* \* \*" Had the Legislature had in mind or intended that the names of the petitioner's children should also be changed on the mere change of the name of the father, it would certainly have required that the petition contain the names of his children, so that they would be notified and have an opportunity to protest a change of their name. The same reasoning would apply to the wife of petitioner. She should have a right to be heard in a

Buford G. Hamilton, M.D.

proceeding where her name would also be automatically changed.

The law provides for no notice of the pendency of the proceeding to change the name of an individual either by printed notice, summons or otherwise to the interested parties such as members of the immediate family who on account of the close relationship should be vitally interested in the change of the name of a father, especially if such change would also change their names.

The only notice required in a statutory change of name proceeding is that notice be given at least three times by newspaper publication of the change of name of the petitioner within twenty days after the court order is made. Section 527.290, RSMo 1949, is as follows:

"Public notice of such a change of name shall be given at least three times in a newspaper published in the county where such person is residing, within twenty days after the order of court is made, and if no newspaper is published in his or any adjacent county, then such notice shall be given in a newspaper published in the city of St. Louis, or at the seat of government."

This section provides for notice of the change of name of the petitioner only. No notice is required in said Section 527.290, supra, for a change of name of petitioner's children.

Had the Legislature had in mind that a decree changing the name of the father would also change the name of his children, they would have provided for such change in the law. The Pennsylvania statutes on change of name provide that the minor children shall bear the changed name of the parent. This was done by their statutes, Purdon's Pennsylvania Statutes, Annotated, Title 54, Chapter 1, Section 4, which section is as follows to-wit:

"Whenever in pursuance of this act, a decree is made changing the name of anyone who is at the time thereof

Buford G. Hamilton, M.D.

the parent of a minor child or children or adopted minor child or children, then under the care of such parent, the new name of such parent shall thereafter be borne likewise by such minor child or children or adopted minor child or children: Provided, That any minor child or children or adopted child, upon attaining their majority respectively, shall also be entitled to the benefits of this act."

Section 61-102, Chapter 61, Compiled Statutes of Nebraska, 1929, page 1265, is as follows:

"Any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth: First--that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition; second--the cause for which the change of petitioner's name is sought; third--the name asked for. And it shall be the duty of the district court at any term thereof after the filing of said petition upon being duly satisfied, by proof in open court, of the truth of the allegations set forth in the petition, and that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application had been duly given in some newspaper printed in such county, or in case no newspaper be printed in the county, then in some newspaper in general circulation therein, to order and direct a change of name of such petitioner, and that an order for the purpose be made in the journals of the court."

In construing this statute In Re Tominosian, 97 Neb. Rep. 514, in a dissenting opinion, Sedgwick, J., made the following observation with reference to the Nebraska statute at l. c. 518:

Buford G. Hamilton, M.D.

"The change of the husband's name does not necessarily change the name of his wife. See an article on this question in 18 Law Notes, p. 164, in which a case in the California court of appeals is cited, and other cases. \* \* \* In the case at bar there is and can be no party named except the petitioner himself. No one is supposed to join issue with him. The majority opinion assumes that the wife and children are specially interested. If so, there should be a provision for making them parties, or at least for allowing them to appear and defend."

(Emphasis ours.)

A man's name is given to him when he is born, and it should so remain until he sees fit to change the name by common law or statutory proceeding. In *Laflin & Rand Company v. Steytler*, 146 Pa. St. Rep. 434, at l. c. 442, Mr. Justice Mitchell, speaking for the court, said:

"\* \* \* A man's name is the designation by which he is distinctively known in the community. Custom gives him the family name of his father, and such praenomina as his parents choose to put before it, and appropriate circumstances may require Sr. or Jr. as a further constituent part. But all this is only a general rule from which the individual may depart if he chooses. The legislature in 1852 provided a mode of changing the name, but that act was in affirmance and aid of the common law, to make a definite point of time at which a change shall take effect. But without the aid of that act a man may change his name or names, first or last, and when his neighbors and the community have acquiesced and recognized him by his new designation, that becomes his name. \* \* \*"

(Emphasis ours.)

Buford G. Hamilton, M.D.

Our principle reason for answering question number one in the negative is that the Statutes of Missouri do not provide for the change of name of anyone other than the petitioner. An absurd result would arise where a husband changed his surname by statute and the wife and children protested and objected to the change, and upon the decree being entered changing the name of the petitioner, the wife and children could by common law immediately change their names back to their original name. Under such circumstances it would be difficult to determine the name on any particular day of any members of the petitioner's family.

On the subject of the wife changing her name by common law to a name different to that of her husband in 18 Law Notes at page 164 we find the following:

"Some observations on names in their legal aspect are evoked by the report of a puzzling question that has been brought before the California Court of Appeals. It appears that a certain Mrs. White, a law student, who was formerly Mrs. Smith, has applied for admission to the bar under the name of Emma S. Smith. She has been told that she must reapply under the name of her present husband. This she refuses to do, insisting that nowhere in the statutes is there a provision requiring any woman to accept her husband's name; that it is simply a custom, and that she prefers to keep the name which she had prior to her marriage to White. So far as our investigations have gone, Mrs. White, or Smith, appears to be well within her rights. The law has been very liberal toward individuals in the matter of their names. At common law a man may change his name at will and sue or be sued in any name by which he is known and recognized. Linton v. First Nat. Bank, 10 Fed. 894. 'A man's name,' says the court in Lafin & Rand Powder Co. v. Steytler, 146 Pa. St. 434, 'is the designation by which he

Euford G. Hamilton, M.D.

is distinctively known in the community.' \* \* \*

\* \* \* \* \*

"In view of all the foregoing it would seem that our legal neophyte in California should have an unimpeachable right to take the name of Smith, although her husband's name is White. \* \* \* Mrs. White has chosen to be Mrs. Smith and that the name of Smith shall bear the honors of her future forensic triumphs. And Smith let it be, say we."

Let us assume a minor is twenty years old and his father obtains a statutory change of name. Would that child be deprived of his name without his knowledge or consent? We say "No." The child should have his day in court, an opportunity to be heard, to consent or protest, according to his desire in the proceeding which would automatically change his name. He has spent twenty years, his entire life, building a good reputation, and the foundation for that good reputation is his name, and a court certainly would have no authority to deprive him of his name and his reputation built upon the name without his knowledge and consent.

Change of name both by common law and by statute is based on the desire and consent of the party whose name is to be changed.

It is our opinion that the mere order or decree of court changing the surname of the father of a legitimate child shall not apply to or change the surname of his child.

In answer to your second question it is our opinion that the Bureau of Vital Statistics would not be justified in accepting a court order changing the father's name as the sole basis for amending the surname of the children who have birth records filed in its office.

#### CONCLUSION

Therefore, it is the conclusion of this department that when a court order is entered changing the name of a father

Buford G. Hamilton, M.D.

of a legitimate child, minor or adult, such change of name shall not apply to the child and such court order may not be accepted by the Bureau of Vital Statistics as the sole basis for amending the surname of the children who have birth records filed in its office.

Respectfully submitted,

APPROVED:

GROVER C. HUSTON  
Assistant Attorney General



---

J. E. TAYLOR  
Attorney General

GCH/fh