

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001906-MR

ALI AL-MAQABLH

APPELLANT

v.

APPEAL FROM TRIMBLE FAMILY COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 14-CI-00054

LINDSEY JO ALLEY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, D. LAMBERT, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Ali Al-Maqablh appeals from an order by the Trimble Family Court changing the name of his biological child from “Elias Miles Alley” to “Elias Miles Ali Alley.” Al-Maqablh moved the court to change the child’s name to “Faisel Ali Maqableh.”¹ He argues the family court did not properly consider the best interest of the child in making its determination. Because we

¹ There are different acceptable spellings of this surname. Al-Maqablh stated in the hearing that the spelling of the child’s proposed last name of “Maqabelh” makes it easier to pronounce.

hold that the family court considered the best interest of the child, and there was no abuse of discretion, we affirm.

Al-Maqablh has family in the Middle East and the United States. He came to the United States to further his education in 1999 and has since completed a bachelor's degree, a master's degree and, most recently, a Ph.D. from the University of Louisville. Although he was unemployed at the time of the hearing, he was seeking employment in his field. Lindsey Jo Alley resides in Trimble County and works as an x-ray technician.

Al-Maqablh and Alley met in June 2013. Al-Maqablh testified that he and Alley underwent three months of mandatory abstinence before engaging in an Islamic wedding ceremony shortly thereafter.² Both parties admit that this ceremony was not legally binding. Alley became pregnant in September 2013, and afterwards Alley and Al-Maqablh's relationship began to deteriorate.

After the child was born, Alley named him "Elias Miles Alley." Al-Maqablh filed numerous motions regarding the child, all of which were settled in mediation except for his motion to change the child's name to "Faisel Ali Maqableh."

The Trimble Family Court held a hearing concerning the child's potential name change. During that hearing, Al-Maqablh explained while he preferred a different first name, he was focused on the cultural importance of the child's

² Al-Maqablh testified that under Islamic law, the parties to a marriage should be abstinent for three months before getting married.

middle and last names and, traditionally, the middle name of the child is the father's first name and the child's last name is the last name of the father. Al-Maqablh testified that he had many successful relatives, including doctors and professors.

Dr. Hassan Qazzaz testified that he performed an Islamic marriage ceremony between Alley and Al-Maqablh but he did not issue a marriage license. He also testified that he explained Islamic culture to both parties.

Alley argued that the name Maqableh could result in the child's being socially ostracized due to the prejudice inherent in her small community; she also noted that many people would probably mispronounce it. Alley argued Al-Maqablh currently refers to the child as Faisel while around friends and relatives, and he could continue to do so. She also noted that even though some members of her family have criminal records (which could potentially stigmatize the child's last name), these crimes are old, occurred in a different county and she and other family in Trimble County are respected members of the community.

The family court found that changing the child's name could increase the bond between the child and Al-Maqablh, would not alter Alley's relationship with the child, would not result in insecurity or lack of identity for the child and could increase a sense of identity for the child, but the proposed name would likely result in regular misspellings and mispronunciations. It noted potential bullying or harassment in child's rural community was a factor to consider with regard to the best interest of the child and changing the surname from that of Alley, the current

custodial parent, could result in some embarrassment or inconvenience to Alley.

The family court found there was no misconduct on the part of either parent towards the child. It found that Alley did not agree to raise the child subject to Islamic traditions based on their ceremonial marriage because Dr. Qazzaz testified he did not counsel the couple about raising children and while mother referred to Al-Maqablh as husband, she asked Al-Maqablh whether they could create a modern Islamic-American family.

The family court considered the factors provided by this Court in *Hazel v. Wells*, 918 S.W.2d 742, 745 (Ky.App. 1996). Ultimately, the family court concluded:

[N]one of the factors outlined by *Hazel* persuade this Court that it is in the child's best interests to change his last name. However the Court does believe it is in the child's best interests to have a link to both his father as well as heritage on his father's side. Per [Al-Maqablh's] testimony, changing the child's middle name to Ali specifically marks him as "the son of Ali."

To strengthen the bond between father and son, and to provide the minor child with a sense of identity, the Court orders the minor child's name changed to Elias Miles Ali Alley.

The sole issue before this Court is whether the family court erred when it determined the name "Elias Miles Ali Alley" was in the best interest of the child.³

³ Both parties make arguments concerning preservation. While it is true that courts generally may not raise issues *sua sponte*, we disagree that any arguments concerning the best interest of the child here were not preserved. The fact that a court engages in a different line of reasoning than the parties does not affect an issue's preservation.

To the extent that Al-Maqablh has argued the "neutral principles" doctrine, it is inapplicable. The "neutral principles" doctrine provides that "[s]ecular courts are not prohibited from hearing

Al-Maqablh argues that the family court erred in its findings for several reasons. Al-Maqablh argues that although the parties' marriage was not legally binding, the fact the parties had a traditionally Islamic wedding should be evidence of Alley's consent to form a marriage consistent with Islamic values and, therefore, the child should bear his family's name. Al-Maqablh argues that in his Middle Eastern cultural and religious tradition, a child's name is extremely important because it reflects the child's heritage and for a child to bear his mother's surname instead of his father's is very shameful and will result in ostracization. He asserts that his family is well-respected in the Islamic community and that many members of Alley's family have a criminal history. Finally, Al-Maqablh argues that the family court's order was culturally insensitive because it rejected giving the child his surname because the people in Trimble County might have difficulty pronouncing it or be racist.

Kentucky Revised Statutes (KRS) 213.046(10) governs under what circumstances the father of a child born out of wedlock shall have his name entered on the birth certificate and how the child's surname shall be determined. The provisions respecting the child's surname are as follows:

- (a) . . . The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.

. . .

cases involving religious organizations where the dispute can be resolved by the application of neutral principles of secular law.” *St. Joseph Catholic Orphan Soc’y v. Edwards*, 449 S.W.3d 727, 739 (Ky. 2014) (footnote omitted). This case did not involve a religious organization.

(c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(d) In all other cases, the surname of the child shall be any name chosen by the mother.

In *Hazel*, 918 S.W.2d at 745 (footnote omitted), quoting from *James v. Hopman*, 907 P.2d 1098, 1100 (Okla.App. 1995), the Court held family courts should use the following factors to determine which name is in the best interest of the child:

Identification of the child as a part of a family unit; the effect on the child's relationship with each parent; the motivation of the parties; the effect the failure to change the name will have in furthering the estrangement of the child from a father exhibiting a desire to preserve the parental relationship; the age of the child and how long the child has had the current name; the effect of the change of the child's surname on the preservation and development of the child's relationship with each parent; the degree of community respect associated with the present and proposed surname; the possibility that a different name may cause insecurity or lack of identity; the use of a particular surname for a substantial period of time without objection; the preference of the child if age and maturity permit; difficulty the child may experience with the proposed surname; and embarrassment or inconvenience that may result if the child's surname differs from that of the custodial parent.

It also noted additional factors to be considered "include parental misconduct and failure to support the child." *Hazel*, 918 S.W.2d at 745 (citation omitted). "As to what constitutes the best interest of the child, any factual findings are reviewed under the clearly erroneous standard; any decisions based upon said facts are

reviewed under an abuse of discretion standard.” *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky.App. 2009).

The family court properly applied the *Hazel* factors in making its determination. In determining the best interest of the child, the family court stated that it considered the child’s stability, fostering familial bonds and minimizing contention between the parents in determining the child’s name. It made a specific factual finding against Al-Maqablh’s claim that Alley consented to raise the child in accordance with his cultural traditions and, thus, name him in accordance with those traditions.

The family court thoughtfully addressed Al-Maqablh’s cultural concerns when it added the child’s middle name “Ali,” which it did in order to “strengthen the bond between father and son, and to provide the minor child with a better sense of identity[.]” Having reviewed the record, we can determine no abuse of discretion by the family court.

Based on the foregoing, the Trimble Family Court’s order changing the child’s name is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ali Al-Maqablh, *Pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kenneth L. Gibson, Jr.
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