NAME CHANGE IN PATERNITY CASE

On March 21, 2013, in *C.B. v. B.W.*, the Indiana Court of Appeals, in an opinion authored by Judge Najam, discussed whether the trial court in Marion County abused its discretion in granting Father's request for the child's surname to be changed to Father's surname. The Court of Appeals AFFIRMED the trial court's ruling.

Here is a link to the Court of Appeals website with archived cases. You will need to scroll down to the date of "3-21-13" for the *C.B. v. B.W.* case:
http://www.in.gov/judiciary/opinions/archapp.html

Child was born on 4/6/2007. Father and Mother were engaged and agreed to change the child's last name to Father's name when the married. They never married and, instead, separated in 12/2009. Father then filed to establish paternity on 2/25/11.

The parties reach an agreement, in mediation, regarding all issues except the child's last name post-decree.

After a June 21, 2012 hearing, the Marion County Circuit Court - Paternity Division, issued an Order granting Father's request that the child's last name be changed. Mother appealed.

The opinion lists the factors that the trial court may properly consider in a name change action in a paternity: (**emphasis added**)

1. whether the child **holds property** under a given name;
2. whether the child is **identified in public, and private, and by the community**, under a particular name;
3. the **degree of confusion** for the child in changing the child's name; and
4. the **child's desires** (if the child is sufficiently mature).
5. **Birth and baptismal records** of child;
6. **School records** of older children;
7. **Health records**; and
8. **Impact of name change** when siblings are involved.

J.T. v. S.W. (In Re: Paternity of: Tibbitts), 668 N.E.2d 1266, 1268 (Ind.Ct.App. 1996.)

In the instant case, the trial court entered Findings of Fact and Conclusions of Law *sua sponte*. It is not necessary that each and every finding be correct, and even if one or more are in error, the judgment may still be affirmed if the judgment is supported by other findings or otherwise supported by the record. *In Re: Marriage of Snemis*, 575 N.E.2d 650 (Ind.Ct.App. 1991).

On appeal, Mother argued: 1) findings were not supported by the evidence; and 2) findings contained erroneous statements, thus Father failed to meet his burden of proof for the name change to be in the child's best interests.

Mother argued that the child was 5 years old, and entering kindergarten, and would have difficulty writing and learning a new last name. Mother also argued that several other findings were incorrect.

The Court of Appeals found Mother's arguments to be a request to reweigh the evidence, which the Court could not do. Even if Mother was correct, that there was no evidence to support the findings challenged by Mother, Mother had still not established reversible error by the trial court.

However, the Court of Appeals did question the significance of one of the trial court's findings that Mother and Father had **agreed** to change the child's surname once the parties were together and married. Quoting from the instant opinion: *"That fact, even if proven, cannot be used to support the name change. Prior agreements of parents regarding the name of their minor child is not a proper basis upon which a trial court should determine whether a child's surname should be changed. See Carlisle Libbert v. Van Winkle (In Re: Paternity of J.C.),* 819 N.E.2d 525, 528 (Ind.Ct.App. 2004).

Mother argued that Father has failed to meet his burden of proof in presenting evidence and testimony that the name change was in the chld's best interests. The Court of Appeals stated that the trial court is not limited to Father's

testimony in deciding what is in the best interest of the child. The court may, and should, consider any relevant and probative facts and circumstances before the court, and may draw reasonable inferences from those facts and circumstances. *D.R.S. v. R.S.H.*, 412 N.E.2d 1257, 1266 (Ind.Ct.App. 1980).

The Court of Appeals opinion did find a **split in authority from past cases** regarding whether a father's financial support for a child, visitation with a child, and involvement with a child, is sufficient evidence to demonstrate that changing the child's surname to his father's name is in the best interests of the child.

In both *In Re: Paternity of M.O.B.*, 627 N.E.2d 1317 (Ind. Ct. App. 1994) and in *Garrison v. Knauss*, 637 N.E.2d 160 (Ind.Ct.App. 1994), previous panels of the Court of Appeals **reversed** the trial court's grant of the father's petition to change the child's last name.

In both *J.T. v S.W. (In Re: Paternity of Tibbits)*, 668 N.E.2d 1266 (Ind. Ct. App. 1996), *trans. denied*, and *Peterson v. Burton*, 871 N.E.2d 1025 (Ind. Ct. App. 2007), **affirmed** the trial court's grant of the father's petition to change the child's last name.

In the instant case, the Father was the one who filed a petition to establish paternity. The parties then reached an agreement in mediation that included joint legal custody of the child. The trial court found that Father "*...sought and maintained a relationship with child,"* and, since establishing paternity, "*...Father has financially supported the child*."

The Court of Appeals acknowledged, in the instant opinion, as it had previously, in *Peterson,* that "*there has been a change in modern attitudes and practices regarding the surname of children born out of wedlock"* thereby not giving significance to *"tradition*" in naming the child after Father as the Court had done in previous cases,

This case had present one factor, that was not present in *Tibbits.* The parties agreed that Father would share **joint legal custody**, "*...which is further evidence of his commitment to participate regularly and directly in the child's upbringing. See I.C. 31-9-2-67."* This factor, combined with Father initiating the proceedings to establish paternity, paying support (after paternity was established), exercising parenting time, and participating in the life of the child, "*...are indicators of Father's desire to maintain a parent-child relationship and evidence that Father's request to change the child's surname is in the child's best interests."*

The trial court also considered Father's "demeanor" in the courtroom, which is a component of credibility. Demeanor evidence is not reviewable on appeal. *Wampler v. Review Bd. of Ind. Emp. Sec. Div.*, 498 N.E.2d 998, 999 (Ind. Ct. App. 1986). "*Demeanor evidence may be a significant factor in the trial court's evaluation of Father's sincerity and commitment to the child which, in turn, is a factor to be considered in a best interests determination."*

Another quote from the opinion: "*Father's surname will connect the child with his non-custodial parent and is a tangible reminder to the child that the child has two parents who care for him, which is in the child's best interests."*

HELD: ***"Evidence, taken as a whole, supports the conclusion that it is in the child's best interests to share Father's surname.*** *Our opinion supports the general principle that it is in the best interests of children born out of wedlock for their fathers not only to provide financial support but also to actively and visibly identify themselves as parents and to participate in their children's upbringing."*

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Note that Father had another child with a different woman. That child does not share Father's last name. Father did not petition for a name change for that child. This information is listed in footnote #1 of the opinion.

Respectfully submitted,
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