**IN THE COURT OF APPEALS**
**TWELFTH APPELLATE DISTRICT**
**WARREN COUNTY, OHIO**

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| IN THE MATTER OF: | : | App. Case No. CA2018-07-069 |
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| CHANGE OF NAME OF H.C.W. | : | Trial Court Case No. 20189073 |
| | : | |
| | : | |
| | : | APPEAL FROM THE WARREN |
| | : | COUNTY COURT OF COMMON |
| | : | PLEAS PROBATE DIVISION |

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# BRIEF OF APPELLANT, STEPHANIE LEIGH WHITAKER

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## II. STATEMENT OF THE CASE AND FACTS

### 1. Procedural Posture

This appeal follows the denial of an uncontested Application for Change of Name of Minor ("Application") filed by Appellant Stephanie Leigh Whitaker in the Warren County Probate Court. (T.d. 7). Appellant filed the Application on behalf of her fifteen-year-old minor child, Elliott, on April 24, 2018. (T.d. 1). Both parents consented to the legal name change. (T.d. 3). A hearing on the Application was held by Warren County Probate Judge Joseph Kirby on June 18, 2018. (T.d. 4). The trial court denied Whitaker's name change application on June 22, 2018. (T.d. 7). Whitaker timely filed a Notice of Appeal of the trial court's decision on July 9, 2018. (T.d. 10).

### 2. Statement of the Facts

Appellant Stephanie Leigh Whitaker and her husband, Kylen Whitaker, are parents of a transgender teenage boy, Elliott Whitaker. (T.p. 5).[1] Elliott's given birth name and current legal name is Heidi Claire Whitaker, however, Elliott has lived his life in conformity with his male gender identity and has been going by his male name at school and with family and friends for well over a year. (T.p. 7, 9). Elliott is diagnosed with and being treated for gender dysphoria, a condition used by psychologists and physicians to describe people who experience significant distress when the sex assigned to them at birth is inconsistent with their gender identity. (T.p. 6). Elliott testified that "there's always been like a feeling

[1] Although Elliottt was assigned the sex of female by doctors at birth, his gender identity, and therefore his sex, is male. Gender identity is a well-established medical and psychological term that refers to a person's fundamental, internal sense of their gender. Sex is the gender a person was assigned at birth, which correlates with genitalia. Gender identity matches the sex assigned at birth for most, but not all, people. Transgender people are people whose gender identity does not match their sex assigned at birth. Gender dysphoria is a diagnosis that applies to some, but not all, transgender people. *See, e.g.*, Am. Psychological Assoc., Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients (2011), available at www.apa.org/pi/lgbt/resources/guidelines.aspx; *see also* World Professional Association for Transgender Health (WPATH), Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (2011), available at https://wpath.org/publications/soc.

of distress about it like from as far back as I can remember really." (T.p. 22). Elliott was referred to transgender health specialist Dr. Lee Ann Conard at Cincinnati Children's Hospital for hormone treatment after seeing his psychotherapist, Marcy Markley, more than twenty times. (T.p. 10, 22). The parents partly based their decision to legally change Elliott's name upon the advice of medical professionals. (T.p. 14). At the trial court hearing, Whitaker offered a signed letter from Marcy Markley regarding Elliott's medical history in support of the name change. (T.p. 9).[2] The Whitakers also complied with the other statutory provisions of R.C. 2717.01. (T.d. 1, 3, 6).

A legal name change is part of a transgender person's social transition and is a critical step in mitigating the harm and confronting the challenges faced by transgender and gender nonconforming people on daily basis. (T.p. 18-19). Appellant and her husband consulted with multiple medical professionals and a specialist for a year prior to seeking to change their child's legal name, and they are "convinced that it's in Elliott's best interest to change his name". (T.p. 6). For example, Elliott's school has to use his legal name on documents, and this causes him more anxiety when people like substitute teachers use the name "Heidi" rather than "Elliott" and out him as transgender to his classmates. (T.p. 18). A legal name change would help resolve some of these feelings of distress. (T.d. 7 at 2). Elliott's father testified that a legal name change is also important now rather than later for practical reasons such as "applying for driver's permits, and, then driver's license, and then eventually passports, and college." (T.p. 19). The parents also want Elliott's insurance and medical forms to state his name as "Elliott" for emergency situations. (T.p. 19).

The trial court denied Whitaker's name change application on June 22, 2018 citing Elliott's lack of "age, maturity, knowledge, and stability" until he becomes an adult. (T.d. 7 at 3). The trial court stated

[2] The trial court asked for a copy of the letter, but the trial court did not enter this as an exhibit.

at the hearing that juveniles' "brains have not fully developed yet, and they won't be until they're an adult." (T.p. 15). The trial court stated that a fifteen-year-old's brain is "still growing and changes, and is simply not ready to make this life-altering decision." (T.d. 7 at 3). The trial court did not set forth any facts or base its decision on any factors related to R.C. 2717.01 except for those focused on Elliott's transgender status. (T.d. 7). The trial court asked personal and irrelevant questions on public record, such as whether Elliott has "received any hospital stay or any type of suicidal ideations or attempts." (T. p. 10). The trial court also asked whether Elliott was considering "surgery, physical surgery, alteration" or whether he was sexually attracted to women. (T. p. 18, 22). The trial court also asked a series of questions about which restroom Elliott used at school:

> THE COURT: . . . I am not allowed into a female's restroom, right? I mean it's just, I would probably get in trouble or at least called out on it if I did, okay. Is the same as true if somebody who associates themselves as male? Uh, can she go into the male's restroom?
> MS. S. WHITAKER: . . . Elliott uses an, um, non-gendered bathroom.

(T. p. 20).

The trial court also suggested that Elliott's expression of his gender identity was not sincere but, instead, was the result of exposure of media coverage of the transition by Caitlyn Jenner. (T. p. 6-7, 22-23). The trial court noted the parent's "desire to assuage their child" but nothing about their extensive reasoning in coming to this decision with Elliott's best interests in mind. (T.d. 7 at 3; T.p. 6). Ultimately, the trial court denied Elliott's name change and told him to "ask this Court again once you become an adult." (T.d. 7 at 3).

## III. ARGUMENT

### 1. First Assignment of Error

**THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S APPLICATION FOR CHANGE OF NAME OF MINOR BECAUSE THE DENIAL WAS ARBITRARY, UNREASONABLE, UNCONSCIONABLE, AND BASED SOLELY UPON THE TRANSGENDER STATUS OF APPLICANT'S CHILD**

A. A judge's refusal to grant the name change of a minor based solely upon the minor's transgender status is arbitrary, unreasonable, and unconscionable.

An appellate court will reverse a trial court's determination to deny a name change application if it constitutes an abuse of discretion. *In re Hall,* 135 Ohio App. 3d 1, 3, 732 N.E.2d 1004 (1999). An abuse of discretion means the "court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

A legal name change application may be granted by an Ohio county probate court so long as there is "reasonable and proper cause" for the change, the person has been a resident of the county for one year, and the notice of the name change application was given in a newspaper of general circulation in the county at least thirty days before the hearing on the application. R.C. 2717.01(A). The other statutory restrictions on a court granting a name change is if the person committed identity fraud, a sexually oriented offense, or a child-victim oriented offense. R.C. 2717.01(B)-(C).

The Ohio Revised Code provides that a parent may file a name change application on behalf of their minor child along with either the consent of or serving notice of the hearing to the other parent. R.C. 2717.01(B). If a name change of a minor is contested between the parents or if the consent of one parent is not obtained, the court holds a hearing and makes a decision to resolve the dispute based on the best interests of the child. *In re Willhite*, 85 Ohio St.3d 28, 32, 1999-Ohio-201 ("Because Willhite did not consent, the probate court held a hearing pursuant to R.C. 2717.01(B)."), see also *Bobo v.*

*Jewell*, 38 Ohio St.3d 330, 528 N.E.2d 18 (1988). The Ohio Supreme Court in *Willhite* said:

> [I]n determining whether a change of a minor's surname is in the best interest of the child, the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

*In re Willhite*, 85 Ohio St.3d 28, 32, 1999-Ohio-201.

In the context of name changes unrelated to a child's surname in dispute between parents, Ohio courts have held that the probate court should deny a change of name if the change would involve a potential for fraud, if it would interfere with the rights of others, if the change would permit the applicant to avoid a legal duty, or if the change was in some way contrary to the strong public policy of the state. *In re Wurgler*, 136 Ohio Misc.2d 1, 2005-Ohio-7139, ¶ 11. An example of when a court should deny a name change application is an attempt to change a man's name to "Santa Clause" because it would mislead children and interfere with society's proprietary interest in the identity of a beloved icon. *In re Name Change of Handley* (2000), 107 Ohio Misc.2d 24, 736 N.E.2d 125. Another example of a proper denial is a sex offender's name change because the applicant wished to avoid having to register as a sex offender under state law. *In re Name Change of Whitacre,* Portage App. No. 2003-P-0051, 2004-Ohio-2926. Other examples of proper denials are if the new name is a number or an unpronounceable symbol. *In re Wurgler*, 136 Ohio Misc.2d 1, 2005-Ohio-7139, ¶ 17.

The Ohio Supreme Court stated, "It is universally recognized that a person may adopt any name he may choose so long as such change is not made for fraudulent purposes." *In re Bicknell*, 96 Ohio St.3d 76, 2002-Ohio-3615, quoting *Pierce v. Brushart*,153 Ohio St. 372, 41 O.O. 398, 92 N.E.2d 4.

There is no statutory or common law requirement that a child assigned female at birth must have a "female" name to correspond with the sex assigned at birth, or that a transgender person must have gender confirmation surgery prior to changing their legal name. *See, e.g., In re Maloney*, 96 Ohio St.3d 307, 2002 Ohio 4214, 774 N.E.2d 239.

In *Bicknell,* the Ohio Supreme Court reversed the 12th District Court of Appeals and held that an unmarried same-sex couple has a right to change the surname of their child to match the non-biological parent's surname. *In re Bicknell,* 96 Ohio St.3d 76, 2002-Ohio-3615. In *Maloney*, the Ohio Supreme Court reversed the 12th District Court of Appeals and applied "the authority" of *Bicknell* to grant the application of a transgender adult seeking a name change. *In re Maloney*, 96 Ohio St.3d 307, 2002 Ohio 4214. The court in *Bicknell* referenced a New Jersey case stating that "a properly presented request should not be denied because of an individual judge's preferences or speculation about whether the applicant has made a wise decision." *In re Bicknell,* 2002-Ohio-3615, quoting *In re Application of Ferner*, 295 N.J.Super. 409, 415, 685 A.2d 78 (1996). The *Bicknell* court also referenced a Supreme Court of Pennsylvania case that decided name change statutes and procedures indicate a "liberal policy regarding name change requests" and stated "we see no reason to impose restrictions in which the legislature has not." *Id.,* quoting *In re McIntyre* (1998), 552 Pa. 324, 330, 715 A.2d 400.

The issue of transgender minor name changes is a matter of first impression in this court, but other jurisdictions have considered this issue and determined factors for courts to use when deciding whether a name change is in a transgender minor's best interests when the parents are in dispute. *See, e.g., Sacklow v. Betts*, 450 N.J.Super. 425 (2017). For example, if one parent opposes the name change based on gender identity grounds, courts could consider the following factors in deciding whether to grant the name change application: (1) the age of the child; (2) the length of time the child has used the

preferred name; (3) any potential anxiety, embarrassment, or discomfort that may result from the child having a name he or she believes does not match his or her outward appearance and gender identity; (4) the history of any medical or mental health counseling the child has received; (5) the name the child is known by in his or her family, school, and community; (6) the child's preference and motivations for seeking the name change; and (7) whether both parents consent to the name change, and if consent is not given, the reason for withholding consent. *Id.*

Appellant and her husband presented a unified stance regarding the name change application and gave a reasonable and proper rationale for wishing to change their minor child's legal name. The trial court denied Whitaker's name change application based upon arbitrary, unreasonable, and unconscionable grounds: the fact that the minor child is transgender. The trial court cited cases dealing with factors related to the best interests of the child, however, no best interest factors are given in the decision. The trial court based its decision solely on the fact that Elliott is a transgender minor. Regardless, most of the *Willhite* best interest factors pertain to the change of a minor child's surname, not first name, because minor name change requests typically arise in the context of divorce or custody proceedings. As a result, most of the best interest factors have no relevance to the name change of a child when both parents consent and certainly not to transgender children. Elliott's new name is not "Santa Claus" or an attempt to avoid a sex offender registry. Elliott's new name is not a number or an unpronounceable syllable. Elliott's new name is not fraudulent or for improper purposes.

Quite simply – Elliott's name change application exceeds the statutory and common law requirements of R.C. 2717.01 because he is diagnosed with gender dysphoria and a name change is a critical part in his social transition. Elliott has a medical need for a name change to alleviate the anxiety and stress caused by the use of his legal name. (T.p. 18). The trial court ignored extensive

testimony from the parents regarding the name change decision, and instead speculated about whether the Whitaker family has made a wise decision.

Therefore, because no other reason was given to deny the name change application other than the child's transgender status, because the parents both consented to the name change, and because the name change application satisfied the statutory and common law requirements of R.C. 2717.01, the trial court abused its discretion in denying appellant's application for change of name of minor.

B. A judge's refusal to grant the name change of a minor based solely upon the minor's transgender status violates the equal protection clause.

The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Ohio's equal protection clause provides, "Government is instituted for [the people's] equal protection and benefit." Ohio Constitution, Article I, Section 2. Ohio's equal protection clause requires the same analysis as the Fourteenth Amendment to the United States Constitution. *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, 908 N.E.2d 401, ¶ 11.

The Equal Protection Clause prevents a state from treating people differently under its laws on an arbitrary basis. *State v. Williams*, 88 Ohio St. 3d 513, 530, 728 N.E.2d 342 (2000). The Equal Protection Clause requires that all people similarly situated be treated alike. *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254 (1985). Unless a suspect class or fundamental right is involved, the action need only bear a rational relationship to a legitimate state interest. *Williams* at 530. However, where laws or government practices differentiate based on gender, the state must show "at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to those objectives." *United States v.*

*Virginia*, 518 U.S. 515, 531, 116 S. Ct. 2264, 2275 (1996).

The United States Sixth Circuit Court of Appeals has held that discrimination based upon gender nonconformity, defined as an individual's "fail[ure] to act and/or identify with his or her gender" is akin to discrimination based upon gender or sex. *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004). Gender nonconformity explicitly includes transgender individuals. *EEOC v. R.G. &. G.R. Harris Funeral Homes*, No. 16-2424 (6th Cir. 2018); see also *Glenn v. Brumby*, 663 F.3d 1312, 1316 ("A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes."). The Southern District of Ohio has found that "transgender individuals are a quasi-suspect class because discrimination against them is discrimination on the basis of sex" and applied heightened scrutiny. *Bd. of Edn. v. U.S. Dept. of Edn.*, 208 F. Supp. 3d 850, 872 (S.D. Ohio 2016).

Therefore, discrimination based on sex-related considerations also includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition – and such discrimination based upon sex warrants heightened scrutiny.

Elliott's name change application was denied solely on the basis of his transgender status, which is a clear equal protection violation. But for Elliott's transgender status, he would have not been denied a name change. The trial court improperly based its decision on the judge's preferences or speculation about whether Whitaker has made a wise decision and no other factor. Because there is no sufficient justification to support a refusal to provide transgender minors with a name change based solely upon the their transgender status, the trial court erred and violated the equal protection clause under even the most deferential review.

2. **Second Assignment of Error**

**THE TRIAL COURT ERRED IN DENYING APPELLANT'S APPLICATION FOR CHANGE OF NAME OF MINOR BECAUSE THE DENIAL INFRINGED UPON THE FOURTEENTH AMENDMENT'S SUBSTANTIVE DUE PROCESS CLAUSE**

A. A judge's refusal to grant the name change of a minor based solely upon the minor's transgender status violates parents' constitutional right to raise their child.

The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U. S. 702, 720; see also *Troxel v. Granville*, 530 U.S. 57 (2000). Because parents have a fundamental right to control how they raise their children government interference with a parent's care and management of a child must be for the purpose of compelling state interests such as protecting the child's welfare and public safety, peace, order, or welfare. *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972) (upholding parents' decision declining to send their children to public or private school after they had graduated from the eighth grade).

The United States Supreme Court stated that a parent's right to "the companionship, care, custody and management of his or her children" is an interest "far more precious" than any property right. *May v. Anderson,* 345 U.S. 528, 533; 73 S.Ct. 840, 843, (1952); see also *Stanley v. Illinois*, 405 U.S. 645, 651; 92 S.Ct. 1208, (1972). The Supreme Court noted the "historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." *Santosky v. Kramer,* 455 U.S. 745, 102 S.Ct. 1388 (1982). A parent's fundamental rights "may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect." *Meyer v. Nebraska,* 262 U.S. 390, 399-400, 43 S. Ct. 625, 627

(1923).

The trial court gave no indication that Elliott's nor the public's health or safety were in jeopardy, but rather stated that Elliott lacks the "age, maturity, knowledge, and stability" to make the decision to change his legal name. (T.d. 7 at 3). The trial court noted the parent's "desire to assuage their child" but nothing about their extensive reasoning in coming to this decision with Elliott's best interests in mind. (T.p. 6). A parent's right to the care, custody, and management of their children is protected from the speculation of a particular judge about whether a decision is wise.

Therefore, because both of Elliott's parents consented to the name change application, the court erred by denying the name change absent satisfying heightened scrutiny to infringe upon the Whitakers' right to the care, custody and management of their children.

B. A judge's refusal to grant the name change of a minor based solely upon the minor's transgender status violates the family's constitutional right to privacy.

Privacy is a fundamental right which the state cannot invade without a compelling state interest. *Roe v. Wade.* 410 U.S. 113, 155 (1973). The United States Supreme Court has respected the "private realm of family life which the state cannot enter." *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); see also *Griswold v. Connecticut*, 381 U.S. 479 (1965). The United States Constitution protects the individual interest in avoiding disclosure of personal matters. *See, e.g., Whalen v. Roe*, 429 U.S. 589 (1977).

The trial court stated that Elliott is not able to change his name until he becomes an adult, and this compels Elliott to reveal his private health information each time his legal name is used and forced to be on documents. Elliott has been presenting as a male for over a year, and Elliott testified that without a legal name change it particularly causes him problems at school because his substitute teachers out

him as transgender to his classmates. (T. p. 18). Elliott's father testified that a legal name change is also important now rather than later for practical reasons such as "applying for driver's permits, and, then driver's license, and then eventually passports, and college." (T.p. 19). The parents also want Elliott's insurance and medical forms to state his name as "Elliott" for emergency situations. (T.p. 19).

Therefore, the trial court decision compels disclosure of Elliott's private information in contexts where this information would otherwise remain undisclosed (e.g., at school or a new job), regardless of whether Elliott's transgender identity may otherwise be known by others (e.g., to friends or family), and regardless of the Whitaker family's desire not to disclose that personal information.

The trial court also solicited numerous answers from the Whitaker family on public record regarding Elliott's private health information. (T. p. 10, 18, 20, 22). Questions included topics such as whether Elliott has "received any hospital stay or any type of suicidal ideations or attempts" and whether Elliott was considering "surgery, physical surgery, alteration." (T. p. 10, 18, 22). This line of inquiry invades the family's right to privacy, as they had already testified on the first page of direct testimony that they had seen a psychotherapist and consulted with Children's Hospital. (T.p. 5). No compelling reason exists for such inquiry by the trial court into the family's private health information during a routine name change hearing. The ability to exercise control over the circumstances surrounding disclosure of Elliott's transgender identity, including when, where, how, and to whom his transgender identity is disclosed, is important because transgender people are often subjected to violence and harassment while they are vulnerable.

Therefore, because the trial court denied the name change application, Elliott and his parents are deprived of significant control over the circumstances surrounding disclosure of Elliott's transgender identity, including when, where, how, and to whom his transgender identity is disclosed.

Because there is no government justification to support a refusal to provide transgender children with a name change when both parents consent and because the trial court decision interferes with the family's liberty and privacy interests, the trial court erred and violated Fourteenth Amendment's substantive due process clause under even the most deferential review.

**3. Third Assignment of Error**

**THE TRIAL COURT ERRED IN DENYING APPELLANT'S APPLICATION FOR CHANGE OF NAME OF MINOR BECAUSE THE DENIAL INFRINGED UPON THE FIRST AMENDMENT'S FREE SPEECH CLAUSE**

A. A judge's refusal to grant the name change of a minor based solely upon the minor's transgender status violates the First Amendment's free speech clause.

The First Amendment of the United States Constitution "guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say." *Riley v. Nat'l Fed'n of the Blind of North Carolina*, 487 U.S. 781, 796-97 (1988); U.S. Const. amend. I. The government interest in interfering with a person's freedom of expression must be compelling. *Cohen v. California*, 403 U.S. 15, 26 (1971). The freedom of thought and expression protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all, and both are complementary components of the broader concept of individual freedom of mind. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

The Ohio Supreme Court noted the importance of an individual's name because it symbolizes familial lineage and heritage and represents one's legal identity. *In re Willhite*, 85 Ohio St.3d 28, 32, 1999-Ohio-201. A person's name is a "signboard to the world... the most permanent of possessions... the only part that lives on in the world" when one dies. *Id.* Applicants may use the name change to "make a statement to society." *In re Wurgler*, 136 Ohio Misc.2d 1, 2005-Ohio-7139, ¶ 16. Therefore, the choice of name and the identity of a person, is protected speech by the First Amendment.

In denying Elliott the right to change his legal name until he is an adult the government is compelling him to live in a manner inconsistent with how he wishes to express himself and is punishing him for exercising his right to refrain from speaking about his transgender status until he chooses to do so. Being denied the legal name change leads to confusion in social and professional settings, forced outing and disclosure of private health information, and mental health and safety concerns. (T.p. 18, 19). Because there is no compelling interest for the trial court's denial of Elliott's name change application, the trial court erred by compelling Elliott to confront these consequences, thus abridging his First Amendment protections.

## IV. CONCLUSION

The trial court abused its discretion because the decision was arbitrary, unreasonable, and unconscionable. The trial court erred because the decision was based solely upon the minor's transgender status. The trial court erred because it impermissibly infringed upon the parents' fundamental right to raise their child. The trial court erred because it impermissibly infringed upon the family's right to privacy. The trial court erred because it impermissibly infringed upon the First Amendment's freedom of speech. For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's decision and order the court to grant the Application for Elliott's name change.

Respectfully Submitted,
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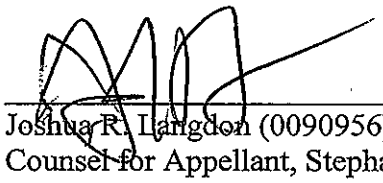
## V. CERTIFICATE OF SERVICE

I hereby certify that, given this case involves the denial of an unopposed application to change the name of a minor, there is no appellee or opposing counsel to serve or otherwise notify of this Brief of Appellant, Stephanie Leigh Whitaker.



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Counsel for Appellant, Stephanie Leigh Whitaker

## VI. APPENDIX

A-2. Trial Court's Entry Denying Application of Change of Name of Minor

A-2

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO
PROBATE DIVISION



| | | |
|---|---|---|
| In the matter of | : | Case No. 20189073 |
| Change of Name of Heidi Claire Whitaker | : | Judge Kirby |
| | : | |

This matter is before the Court on an *Application for Change of Name of Minor,* filed with the Court on April 24, 2018. Mother wishes to change the child's name from Heidi Claire Whitaker to a male name, Elliott John Whitaker, because the child identifies herself[1] as a transgender male. The child was born female. Mother and Father filed their Consent to Change of Name. The Court published Notice in the Journal-News Pulse of Lebanon and Mason. The Court heard testimony from Mother and the child, whose date of birth is May 19, 2003.

For the reasons stated below, the Court cannot find the name change as reasonable and proper and in the child's best interest at this time.

**FACTS**

Heidi is 15 years old and has been in therapy for approximately one year. She has been diagnosed as having Gender Dysphoria and receives counseling through the Lindner Center and is treated medically by Dr. Conard from the Cincinnati Children's Hospital Medical Center. She first realized she was transgender in the Spring of 2017 and started to cut her hair and wear boy clothes. Due to anxiety and being depressed, she was advised to seek out a specialist who deals with adolescent transgender issues. She availed herself of Marcy Marklay, an LPCC from the Lindner Center. She has met with Ms. Marklay twenty times. Heidi denies any suicidal ideations or recent hospitalizations.

Heidi has met with Dr. Conard on three separate occasions and blood draws have taken place to get a base-line for hormonal levels. Testosterone is anticipated to be administered beginning July 13, 2018. This will artificially put her body through male puberty.

[1] The Court is aware of the fact that using a pronoun as it pertains to a person's sex (which is their biological characteristics) as opposed to a pronoun for a person's gender (which is that person's social identity) is offensive to the transgender community. As a compromise, the Court attempted to utilize the singular, gender-neutral third person "they" pronoun in place of him/her and she/him, as introduced by the Associated Press' Stylebook; however, it made the entry difficult to read and comprehend. Therefore, the Court opted to use the pronoun associated with the child's sex and not their preferred gender. No disrespect is meant to the child in this decision.

Heidi is aware that some of the hormonal therapies are permanent in nature and are irreversible. She realizes that she is already called Elliott, but there are some instances in which her birth name Heidi is and will be used: her school still uses her birth name on their official rosters and yearbooks, substitute teachers call her by her birth name, her driver's license will have her birth name once she applies for one, and any future passport applications and college applications she makes will have her birth name as well.

By granting her a legal name change, it will help resolve some of the feelings of distress that accompanies her use of her birth name.

**LAW**

At common-law, a person has always been able to assume any name he or she wishes so long as taking the name is not for fraudulent purposes. A name change authorized by a court, however, is a different matter. Changing a name through judicial decree implies an official consideration and a judicial endorsement of the new name. *In re Wurgler*, 136 Ohio Misc. 2d 1, 2005-Ohio-7139, 844 N.E.2d 919, 2005 Ohio Misc. LEXIS 601 (Ohio C.P. July 12, 2005). It is the Probate Division of the Court of Common Pleas that is endowed with the exclusive jurisdiction to change the *legal* name of a person, be they an adult or a minor, and that authority is found in R.C. 2717.01.

A name change for a minor may be requested by either of the minor's parents, the child's legal guardian, or a guardian ad litem. *Id.* When application is made on behalf of a minor, in addition to the notice and proof required pursuant to division (A) of this section, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested. *Id.*

The Court must consider the best interest of the child in determining whether reasonable and proper cause exists when deciding whether to permit a name change for a minor child pursuant to RC 2717.0 1(A). *In re Willhite*, 85 Ohio St. 3d 28; 1999-Ohio-201, Syllabus 1. In *Willhite*, the Ohio Supreme Court held that when determining the best interest of the child,

> the trial court should consider the following factors: the effect of the change on the preservation and development of the child's relationship with each parent; the identification of the child as part of a family unit; the length of time that the child has used a surname; the preference of the child if the child is of sufficient maturity to express a meaningful preference; whether the child's surname is different from the surname of the child's residential parent; the embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's; parental failure to maintain contact with and support of the child; and any other factor relevant to the child's best interest.

*Id.* Syllabus 2, citing *Bobo v. Jewell* (1988) 38 Ohio St. 3d 330, paragraph 2 of the syllabus.

## DECISION

Adolescence is a time of fevered identity exploration. In addition, adolescents can become fixated on their immediate desires and far too often lack the ability to fully appreciate the long-term effects of their decisions. It is generally well-known and not seriously contested that adolescent minds and bodies don't fully develop during their minority and they are unable to cognitively and emotionally make adult-like decisions.

Here the Court is faced with a request from a 15-year-old who lacks the age, maturity, knowledge, and stability to make this decision.

Whether Heidi is experiencing Gender Dysphoria or is just not comfortable with her body is something that only time will reveal. Is Heidi's distress brought about by confusion, peer pressure, or other non-transgender issues -- or is it truly a mismatch between her gender identity and her body? Children change significantly and rapidly. A name change request today by a child could be motivated by short-term desires or beliefs that may change over the passage of time as the child matures. The Court recognizes the reality that Heidi's brain is still growing and changing, and is simply not ready to make this life-altering decision.

The Court is sympathetic to the parents of the child and their desire to assuage their child. In essence, the Court isn't saying "no" to the name change. The Court is simply saying "not yet."

Age.

Develop.

Mature.

And take advantage of your common-law right to use the name you are petitioning for in the meantime, so long as it's not for fraudulent purposes. Then, ask this Court again once you become an adult.

Based upon the foregoing, the Court finds the application for change of name of a minor to be ***NOT WELL TAKEN*** and hereby ***DENIED.***

It is so ordered.

ENTER:

Joseph W. Kirby, Judge

CERTIFICATE
I hereby certify that I have this 22nd day of June, 2018 mailed by ~~ecsi~~ mail a "~~certified~~ true copy" of the foregoing instrument to all parties named in distribution.

Deputy Clerk

Distribution:
Stephanie Whitaker, Applicant

**PARTIES ARE ADVISED OF THEIR RIGHT TO APPEAL THIS DECISION. ANY APPEAL OF THIS CASE MUST BE FILED WITH THE TWELFTH DISTRICT COURT OF APPEALS BY FILING SAME WITH THIS COURT WITHIN THE TIME FRAMES AS SET FORTH IN THE OHIO RULES OF APPELLATE PROCEDURE. HOWEVER, A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii) OR JUV. R. 40(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b) OR JUV. R. 40(D)(3)(b).**