State of New Hampshire
Supreme Court

NO. 2023-0165

2023 TERM

JUNE SESSION

Name Change of
O. Pottie and N. Pottie

RULE 7 APPEAL OF FINAL DECISION OF THE
BRENTWOOD FAMILY COURT

BRIEF OF PETITIONER/APPELLANT, PATRICIA PATE

June 22, 2023

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STATEMENT OF FACTS AND STATEMENT OF THE CASE

I. Father Estranged Himself From the Children

Patty Pate and James Pottie were married in 2013. They have a daughter, O,[1] who was about 13½ at the time of the probate court hearing, and a son, N, who was 9. BIRTH CERTIFICATE OF O (Aug. 11, 2009), *Appx*. at 4; BIRTH CERTIFICATE OF N (June 6, 2013), *Appx*. at 5. On their birth certificates, both children's last names are "Pottie."

In November 2019, Pate filed for divorce. PETITION FOR DIVORCE (Nov. 12, 2019), *Appx*. at 42. A month later, Pottie assaulted Pate, for which he was later charged and convicted. His sentencing conditions included no contact with Pate except for communications regarding the children. COMPLAINTS (Simple Assault, CR-0134) (Mar. 2, 2020), *Appx*. at 66; CASE SUMMARY (CR-0134) (Apr. 11, 2022), *Appx*. at 68; DV PETITION ¶4 (July 5, 2022), *Appx*. at 86.

In the summer of 2020, Pottie repeatedly texted Pate, in violation of the no-contact order, for which he was also charged and convicted. ORDER ON CRIMINAL CONTEMPT (CR-01233) (May 3, 2022), *Appx*. at 76; CASE SUMMARY (Breach of Bail, CR-01233) (June 14, 2022), *Appx*. at 77.

In February 2020, Pottie criminally threatened Pate's mother while she was visiting with the children, for which he was also later charged and convicted. COMPLAINT (Criminal Threatening, CR-0112) (Mar. 3, 2020), *Appx*. at 72; CASE SUMMARY (CR-0112) (Jan. 5, 2022), *Appx*. at 73.

In January 2021, the family court approved Pate's and Pottie's stipulated divorce decree and parenting plan, which provided for joint decision-making and routine visitation. FINAL DIVORCE DECREE (Jan. 11, 2021), *Appx*. at 46; PARENTING PLAN (Jan. 8, 2021), *Appx*. at 56.

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[1]Because this brief is a public document, to preserve their privacy, the children are referred to herein by their initials. Their names are readily discernable in the record.

In January 2022, during the trial for threatening Pate's mother, from the witness stand, Pottie "directly address[ed] [Pate] in a matter that has nothing to do with her children" in violation of the no-contact order issued in the assault case against Pate. COMPLAINT (Criminal Contempt CR-0393), *Appx*. at 80. For that, Pottie was charged and sentenced to good behavior. CASE SUMMARY (Criminal Contempt, CR-393) (May 3, 2022), *Appx*. at 81.

In February 2022, after hearings, the divorce court ordered Pottie enroll in counseling, anger management therapy, drug and alcohol evaluations, and seek co-parenting help. ORDER ON REVIEW HEARING (Feb. 28, 2022), *Appx*. at 63.

In June 2022, after she learned that Pottie was stalking her or spying on her, Pate petitioned for a domestic violence order of protection. DV PETITION (DV-045) (June 6, 2022), *Appx*. at 83; DV PETITION (DV-055) (July 5, 2022), *Appx*. at 88.[2] Although Pottie posited that the domestic violence petition was "yet another attempt to alienate the children from [Pottie]," MOTION TO DISMISS (DV-045) (June 9, 2022), *Appx*. at 86, in issuing the protective order, the court found that Pottie:

> committed the acts described in the petition.... [He] has a pattern of abuse that creates a current credible threat to the plaintiff's safety including still tracking the plaintiff's whereabouts in 2022. The defendant was not credible in his denials and appeared to be smiling/smirking several times during the proceeding.

[2]At the July 5, 2022 hearing on Pate's June 6, 2022 petition, the court discovered an accidental error in notice. The petition was withdrawn and refiled while the parties were still at the courthouse. ORDER ON WITHDRAWAL (DV-045) (July 5, 2022) (omitted from appendix); DV PETITION (DV-055) (July 5, 2022), *Appx*. at 88.

DV FINAL ORDER (DV-055) (July 22, 2022), *Appx*. at 92.[3]

During 2022, Pottie had ceased being engaged with the children, and was non-compliant with court-imposed conditions. Thus, in September 2022 in

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[3]The petition alleged:

1. Since filing for divorce from James Pottie in October 2019, I have been abused, threatened, harassed, stalked and assaulted by him. His inability to allow me to exit the marriage continues. On September 1, 2018, he groped my breasts and buttocks without consent. He threatened to force me to have "angry sex" with him.
2. On October 5, 2019, he repeatedly tracked me through the phone app Find My Friends. I confronted him about tracking me and he had admitted to it "for quite some time."
3. Very close in time my lingerie went missing. It is lingerie he purchased. I found it hidden in his closet. When confronted, he told me it was to prevent me from wearing it for other men.
4. On December 29, 2019, James grabbed my shoulder as I tried to walk away from him. He wouldn't remove his hand and taunted me, asking me if I was "tough." He was arrested and convicted of this assault.
5. I set up a camera in my bedroom where I slept alone. I viewed him rummaging through my belongings. He denied this. This occurred Febraury 6, 2020.
6. On February 12, 2020, I was forced to barricade myself in the bathroom with my 2 children to protect us from his rage. As there was no lock on the door, he forced entry repeatedly by throwing door [the] open and yelling at me. That same evening, after police left, he asked me why I continued to "poke the bear."
7. On Febuary 20, 2020, he was arrested for criminal threatening against my mother, Margaret Pate. In front of my children, he charged at her when she was acting as a chaperone for my safety.
8. Late summer 2020, he violated the contact provisions of his bail. He received a suspended fine on June 13, 2022.
9. While testifying on his own behalf at the criminal threatening against my mother, he looked directly at me and spoke to me. He was charged with contempt for which he is presently on good behavior in a file without a finding.
10. I went away March 28 to April 3, 2022. I did not tell James. My parents watched my children. When I returned my daughter informed me that James told her he was aware I was away and inquired who was watching her. I never informed him I would be out of town.
11. On May 5th of this year, my son retrieved the mail from the mailbox. A thick envelope was addressed to me in James's … handwriting. There was a return address for James Pottie. There was no cancellation showing the mail went through USPS. I had a panic attack believing he chose to come to my house rather than sending me divorce documents via my legal counsel.
12. I have placed surveillance cameras on all of my doors as a precaution.

DV PETITION (July 5, 2022), *Appx*. at 88 (capitalization and punctuation altered).

the divorce case, the Brentwood Family Division (*Ellen V. Christo*, J.) found Pottie in contempt. ORDER ON REVIEW HEARING (Sept. 9, 2022), *Appx*. at 64. Among other conditions, the court ordered "reunification counseling," which Pottie was required to fund because, "the need for reunification counseling is a direct result of [his] actions." *Id.*

II. Children's Surname Causes Them Distress and They Want it Changed

When they were born, Pottie insisted the children bear his last name. Not having grown up with the moniker herself, when the children were young, Pate did not protest, but she noted that only the children's first and middle names were mutually agreed. *NC-Hrg*.[4] at 7.

The name "Pottie," has troublesome connotations, which Pottie acknowledges. *NC-Hrg*. at 15. As the children entered school, it became obvious to them and to Pate that their conspicuous last name caused both children great distress.

When O was in first grade and beginning to be responsible for writing her own name, her behavior changed from charismatic to embarrassed and withdrawn because her friends teased her about her name. "She pleaded that her whole name not be on her desk tag and asked if [her teacher] wouldn't call her by her last name." LETTER FROM FIRST GRADE TEACHER (Jan. 16, 2023), Exh. 4, *Appx*. at 30; *NC-Hrg*. at 8. It was apparent to the teacher that O "was only six, but already feeling negatively towards her identity." *Id.*

As O has gotten older, she has continued to request her current middle school teachers avoid her last name. LETTER FROM CURRENT TEACHER (Jan. 10, 2023) Exh. 2, *Appx*. at 28. Among her peers, when another girl at school had the same first name, O suggested a way to distinguish "so that she does not have to use her own last name as an identifying factor." *Id.* N has suffered similarly. During summer 2020, for example, N attended a soccer camp and had been told by the coach to "bring potty jokes to the next practice," which caused him "shame and humiliation." *NC-Hrg*. at 7.

Both O and N have expressed to their counselors that they would prefer

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[4]The probate court held an offer-of-proof hearing on the name change on January 20, 2023. The transcript of the Name Change hearing, which this court has, is referred to herein as "*NC-Hrg*."

their name be changed. In discussions with his counselor, N:

> reported that he sometimes gets teased for his name and that he is embarrassed by it. He stated that if he had control over the decision, that he would choose to change it.

LETTER FROM COUNSELOR MARSTON (Jan. 17, 2023), Exh. 5, *Appx*. at 31. O's counselor wrote:

> On more than one occasion, [O] has brought up the desire to change her last name. When discussing this desire in sessions [O] reported increased anxiety relating to how others, at school, in particular, have treated her because of her last name. [O] has voiced concerns about being made fun of and bullied because of her last name. Each time [O] has talked about this subject she has strong emotional responses and has consistently voiced the same desire, to change her last name.

LETTER FROM COUNSELOR ROWE (Jan. 13, 2023), Exh. 3, *Appx*. at 29.

The children have been explicit to their father, telling Pottie they would like their last name changed. *NC-Hrg*. at 18. During a reunification counseling session, with Pottie, O, and the reunification counselor present:

> [O] then brought up the issue of wanting to change her name. She had difficulty articulating this issue to her father, but eventually told him how she was feeling. [Pottie] shared some of his emotions and consciously struggled to do so in a way that did not put undue burden on [O]. Ultimately they voiced understanding of where the other were coming from in terms of Dad's disappointment and [O's] difficulty living with her last name.

REUNIFICATION SESSION SUMMARY (Jan. 9, 2023), Exh. 1, *Appx*. at 25 (punctuation and paragraphing altered).

Both children have repeatedly turned to their mother, Pate, to help them change their name. *NC-Hrg*. at 5, 7, 10, 14; LETTER FROM COUNSELOR

MARSTON (Jan. 17, 2023), Exh. 5, *Appx*. at 31.

During the marriage, when Pate raised with Pottie the issue of changing the children's last name, he was openly hostile to the idea, and discussions often ended in "verbal abuse." MOTION TO WAIVE CONSENT (O) (Dec. 5, 2022), *Appx*. at 19; MOTION TO WAIVE CONSENT (N) (Dec. 5, 2022), *Appx*. at 16; *NC-Hrg*. at 5, 11.

III. Petition to Change Children's Names

In the context of the domestic violence, divorce, and criminal case orders, and pressured by her children, in November 2022, Pate filed a petition to change their last names. She requested their last names be changed from "Pottie" to "Pate," which fortuitously would not alter their initials. As grounds, Pate noted the children had been subjected to:

> consistent bullying, teasing, taunting, and ridicule from peers and adults they are exposed to since the start of grade school; diagnosed anxiety disorder and leads to anxiety in anticipation of bullying/teasing when meeting new people.

PETITION FOR CHANGE OF O'S NAME (Nov. 4, 2022), *Appx*. at 11; PETITION FOR CHANGE OF N'S NAME (Nov. 4, 2022), *Appx*. at 6.

Parental consent is not a requirement for a name change. *See* RSA 547:3-i ("The probate court may grant the petition of any person to change the name of that person or the name of another person. The court shall not require the petitioner to obtain consents to the name change."); RSA 550:4, XI ("The probate court may … proceed without notice in … changing the names of persons … who apply therefor."); *c.f.* RSA 314-A:8 (parental consent before body piercing or tattooing of minor); KAN. STAT. ANN. § 23-2223 (2014) (Kansas statute requiring consent of both parents to minor's name change). However, Pottie had made it clear to Pate and the children that he was never going to support it. *NC-Hrg*. at 6.

Pate felt that while there was never going to be a perfect time to make the change, the children had already struggled with the matter for years, it was not building anyone's character, and the detrimental emotional and health effects were not diminishing as they got older. *NC-Hrg*. at 6. In addition, the type of bullying that the name had engendered had become less societally acceptable. *See, e.g.,* LETTER FROM FIRST GRADE TEACHER (Jan. 16, 2023),

Exh. 4, *Appx*. at 30.

O and N had both expressed to Pate that they want to change their names at the same time, as it would be odd for them to be born from the same parents but have different surnames. *NC-Hrg*. at 6, 9. At age 13, O had matured enough to advocate for herself, and had also expressed her wish to make the change before she graduated to a driver's license and other formal identifications. *NC-Hrg*. at 6; LETTER FROM CURRENT TEACHER (Jan. 10, 2023) Exh. 2, *Appx*. at 28.

Moreover, although the children had been in reunification counseling with Pottie for a year, at the urging of the reunification counselor, it was being suspended. *See* REUNIFICATION SESSION SUMMARY (Jan. 23, 2023), *Appx*. at 32.

IV. Court Ignored Relevant Evidence and Ruled on Inappropriate Grounds

After Pate filed the name change petition, she hired a lawyer. In an effort to channel her children's wishes, Pate filed motions to allow them to testify, which were denied on the grounds that the motions were filed late and there was no "showing that the child could be considered a mature minor." MOTION TO ALLOW O TO TESTIFY (Jan. 17, 2023), *Appx*. at 23; MOTION TO ALLOW N TO TESTIFY (Jan. 17, 2023), *Appx*. at 22. Pate requested reconsideration of the denial, to which Pottie objected, and which was later denied. MOTION TO RECONSIDER (Jan. 18, 2023) (margin order, Jan. 20, 2023), *Appx*. at 24.

In January 2023, the Brentwood Probate Court (*Ellen V. Christo*, J.) held a hearing on the petition for name change. Because the reconsideration regarding minors' testimony had not yet been ruled on, Pate escorted O to the courthouse, and renewed her request for O to testify, but it was again denied. *NC-Hrg*. at 4-6, 14-15. The hearing went forward on offers of proof. At the end of the hearing, Pate renewed her request that the children testify. *NC-Hrg*. at 18.

In light of their prior interactions about a name change, it was apparent to Pate that Pottie would not only be opposed, but that he would claim Pate's motivation and timing were an effort to alienate him from the children. At the hearing, Pottie's lawyer began his statement asserting:

> Your Honor. Alienation. [Pate's] [c]ounsel is correct, this is a case about alienation.

NC-Hrg. at 14. Pottie repeated the alienation allegation throughout the hearing and – apart from a few anecdotes about notable people who have overcome adversity – largely based his argument on it. *NC-Hrg*. at 15, 16, 17.

Pate insisted her motives were not about alienation, and emphasized efforts she had made to ensure the children's connection with their father. *NC-Hrg*. at 13. Pate noted that O herself had indicated that the reasons for

wanting her name changed were not a reflection on her relationship with her father, but because of how society treated *her* as a result of the name itself. *NC-Hrg*. at 10.

Pate attempted to refute Pottie's alienation accusation by presenting evidence that Pottie's estrangement was a result of his own actions, some of which the children had witnessed. Thus, she requested the court incorporate portions of the records in the divorce, domestic violence, and criminal cases, which would show the extent of Pottie's self-estrangement and Pate's countervailing efforts. The court ruled that, even though it was familiar with the other cases because they were presided over by the same judge, the records were inadmissible because they were not relevant. *NC-Hrg*. at 11-13; MOTION TO WAIVE CONSENT (O) (Dec. 5, 2022), *Appx*. at 19; MOTION TO WAIVE CONSENT (N) (Dec. 5, 2022), *Appx*. at 16.

At the end of the hearing, the court indicated it would determine the matter "in the best interests of the child." *NC-Hrg*. at 10; *see Name Change of Goudreau*, 164 N.H. 335 (2012).

In June, the court issued its ruling, denying the name change. ORDER at 2 (Jan. 27, 2023), *Addendum* at 30. As grounds, the court cited the timing of Pate's petition and its relation to reunification efforts, and the fact that "the parents got divorced and are no longer unified in their parenting." It held that there are "other reasons for [the petition] besides being teased over her last name." *Id.*

The court found that alienation may have played a role in the timing of Pate's petition, and that it is "not convinced that teasing and bullying about the last name meets the standard for a name change of minors." *Id.* Without providing additional detail, the court found:

> After a review of the file and exhibits, and considering all the testimony, including credibility and demeanor, … [Pate] has not met her burden of proof to show that changing the minors' last names is in their best interests.

Id. The court suggested O and N should wait to change their names "when they reach the age of majority." *Id.* at 3.

Pate filed a motion for reconsideration, which was denied. MOTION TO RECONSIDER (O) (Feb. 3, 2023) (margin order), *Appx*. at 34; NOTICE OF DECISION (N) (Feb. 10, 2023), *Appx*. at 41. This appeal followed.

SUMMARY OF ARGUMENT

The surname Pottie causes O and N distress, and they want it changed to Pate. They are old enough and experienced enough to have valid opinions, and it is *their* name. They have made their preferences clear to Pate, to Pottie, to teachers, and to counselors, and it is in their best interest to have it changed.

To the extent that alienation is an appropriate factor to consider, any estrangement the children have from Pottie is self-created. He committed criminal acts in their presence, creating the necessity for reunification counseling. The court impeded itself from hearing both sides of the alienation allegation, yet still ruled on the matter.

There may be no entirely convenient time to change one's name. The suggestion that O and N wait until they reach the age of majority, however, ignores the trauma they will endure from now until then, and merely delays a simple and effective solution that can alleviate the problem immediately.

This court should thus reverse, and direct the probate court to grant the name change petition.

ARGUMENT

I. Evidence of Associated Domestic Violence, Divorce, and Criminal Cases Should Have Been Admitted to Refute Claim of Alienation

Pottie asserted that Pate was attempting to change the children's last names as an act of parental alienation. Anticipating that, Pate attempted to put into evidence portions of the records in the associated domestic violence, divorce, and criminal cases. Those cases, individually and collectively, show that any alienation was self-created by Pottie. The court ruled them inadmissible, however, on grounds they were not relevant.

New Hampshire has long employed a broad concept of relevance. *Welch v. Bergeron*, 115 N.H. 179, 182 (1975) ("To be admissible into evidence testimony must have some tendency to establish a fact of consequence to the determination of the action.").

> Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence that is not relevant is inadmissible.

State v. Walsh, 139 N.H. 435, 436 (1995) (quotations and citations omitted); *see* N.H. R. Ev. 401 ("Evidence is relevant if … it has any tendency to make a fact more or less probable than it would be without the evidence [and] the fact is of consequence in determining the action.")

Where a plaintiff or the State seeks to refute a consequential assertion by the opposing party, the refutation evidence is admissible. *Attorney General, Director of Charitable Trusts v. Loreto Publications, Inc.*, 169 N.H. 68, 72 (2016) (testimony of absence of relationship admissible to refute defendant's claim that it was "integrated auxiliary" of church); *State v. Sulloway*, 166 N.H. 155, 162 (2014) (testimony regarding victim's demeanor admissible to refute defendant's claim that victim fabricated incident); *State v. Sonthikoummane*, 145

N.H. 316, 323-24 (2000) (cash showing unexplained wealth admissible to refute defendant's claim that he was not a party to conspiracy); *Rodriguez v. Webb*, 141 N.H. 177, 179-80 (1996) (testimony that defendant destroyed machine that was involved in plaintiff's injury admissible to refute defendant's claim that lawsuit was not a motive for the destruction); *State v. Lesnick*, 141 N.H. 121, 125-26 (1996) (evidence that defendant knew victim admissible to refute defendant's claim that attack was in self-defense).

In *State v. Fandozzi*, 159 N.H. 773, 779-80 (2010), the defendant was charged with assaulting a child. The defense was that he did not commit the acts, and that his wife and in-laws would corroborate his story. The State sought to introduce the record of an abuse-and-neglect case in the family court, which would show that the wife and in-laws had a motive to lie in the criminal case, and thereby refute the defendant's defense. This court found evidence regarding the family court proceeding admissible in the criminal trial.

"The determination of the relevance of evidence is a matter within the trial court's sound discretion." *State v. Pelkey*, 145 N.H. 133, 135 (2000). "To demonstrate … an abuse [of discretion] the defendant must show that the evidentiary ruling was clearly untenable or unreasonable to the prejudice of his case." *State v. Smith*, 135 N.H. 524, 525 (1992) (quotation omitted).

Here, the court prevented Pate from refuting the most significant argument Pottie made. Its decision focuses on the timing of, and motivation for, the name change petition, and whether Pate's timing and motivations were in the children's interest. It is apparent that the associated cases – divorce, domestic violence, and criminal – undermine Pottie's claim that alienation is a result of *her* actions rather than *his.* Pate's inability to refute Pottie's position was thus prejudicial, and the evidentiary ruling should be reversed.

II. Court Should Have Allowed O and N to Testify About Changing Their Surnames to End Teasing and Bullying

At the time of the hearing, O was about 13½, and available at the courthouse to testify. Before the hearing, Pate filed a motion requesting that O be allowed to testify. Although the motion was not filed a full 10 days before the hearing, Pottie had an opportunity to object, and he did.

Minors routinely testify in criminal prosecutions. *See, e.g., State v. Racette*, 175 N.H. 132 (2022); *State v. Girard*, 173 N.H. 619, 629 (2020). In civil causes, there is no prohibition against testimony by minors, *see Miller v. Basbas*, 131 N.H. 332 (1988), and there are two cases in New Hampshire regarding testimony of minors in family matters.

In *Morrill*, the children were 15 and 16 years old, and were witnesses to a domestic violence incident between their parents. *In the Matter of Morrill*, 147 N.H. 116 (2001). Father wanted them to testify because he alleged they would provide particulars that differed from Mother's rendition. The lower court "read the lengthy, handwritten statements that both children gave the police," which "described in detail the incident," and found that their testimony would be "largely cumulative." *Id.* at 118. This court held that the decision was within the trial court's discretion and that Father did not have any constitutional right to have the minors testify.

In *G.G.*, the 11-year-old child was the victim of alleged abuse and neglect by her father. *In re G.G.*, 166 N.H. 193 (2014). DCYF sought to introduce a video in which the child described the abuse and neglect, and Father wanted to cross-examine her. The trial court reviewed the video and found it reliable. This court held that "trial courts have the discretion in abuse and neglect proceedings to determine whether any witness, including the child, should be compelled to testify," and thus Father had no right to issue a subpoena. *Id.* at 197. This court also "set forth [a] non-exhaustive list of factors

for courts to consider when deciding whether to compel such testimony." *Id.* at 197-98.

> In those circumstances, we encourage trial courts to consider: (1) the child's age; (2) the specific potential harm to the child from testifying; (3) the indicia of reliability surrounding any admitted out-of-court statements describing the child's allegations; (4) evidence that may lend credibility to the allegations of abuse or neglect, such as consistency of the child's and responding parent's accounts, or evidence of prior injury; (5) the incremental probative value of the child's potential in-court testimony; and (6) whether there are alternatives to in-court testimony that would enable meaningful examination of the child without jeopardizing the child's well-being.

In re G.G., 166 N.H. at 198. This court cautioned that:

> Although we encourage trial courts to consider these enumerated factors, we stress that [the] list is not exhaustive and that trial courts are not required to consider all of the factors or to give them equal weight. We also encourage trial courts to make express findings of fact with regard to the factors upon which they rely so as to facilitate appellate review.

Id. This court remanded the matter for fact-finding in light of the factors it suggested.

While a name change case is not an abuse and neglect proceeding, the *G.G.* factors are useful. Here, the child was a young teen. She is not the victim of any abuse, neglect, or crime, as in *G.G.*; nor betwixt her parents, as in *Merrill*. There is thus little potential for harm to O from testifying, and the letters from teachers and counselors suggest that O's experience with bullying and teasing as a result of her name is likely to be reliable. Because no one can express the harm her name has caused better than O herself, and because there

is no video or "lengthy, handwritten statement" as a substitute, *Morrill*, 147 N.H. at 118, there is likely great probative value to her testimony. Given O's age and self interest, there is little prospect of jeopardizing her well-being. The same factors apply to N.

The court's focus on the tardiness of Pate's motion seems superficial and misguided, given that O was eager and available to testify, and that Pottie had time and was able to object. Moreover, contrary to *G.G.*, the probate court did not make express findings, and it is thus unclear what motivated the court to reject O's and N's testimony.

The court should thus reverse, to give the probate court an opportunity to evaluate the minors' ability to testify, and to consider that O and N want to change their names because of hectoring by society and not to further alienate them from their father.

III. Court Should Have Changed the Children's Surnames From Pottie to Pate

A. It is in the Children's Best Interest to Change Their Name

O and N want to change their last name from Pottie to Pate. It is apparent that the name "Pottie" has subjected the children to bullying and teasing among their peers and by adults. O and N experience it often enough that they are self-conscious about their name whenever they meet a new person. The harm it has caused is manifest; a teacher saw O's behavioral changes when she became aware of the social meaning of her name.

Courts have used bullying and teasing as a basis for determining whether a name change is in the best interest of a child. *See, e.g.*, *Petition of Christjohn*, 428 A.2d 597 (Pa. Super. 1981) (name change allowed because child's last name was that of his father, who murdered his stepfather, causing child to be teased); *In re Kobra*, 961 N.Y.S.2d 358 (N.Y. Civ. Ct. 2012), *rev'd on other grounds*, 2 N.Y.S.3d 313 (N.Y. App. Term 2014) ("This court can only imagine the confusion and hardship that these children would have as they grow older and interact with other children and others if this petition were granted. In the current climate in this state and the nation where children harass each other, both physically and mentally, and bully each other in person and in cyberspace, it is the view of this court that this proposed name change will make the lives of these young girls absolutely miserable and unreasonably venerable [sic] to all kinds of probing questions, embarrassment, ridicule, and humiliation."); *see also* RSA 193-F (protecting students "from physical, emotional, and psychological violence … motivated by a pupil's … distinguishing personal characteristics.").

It is a lesser burden for O and N to live with a name different from their father than it is for them to live with their current last name. They are autonomous and unique people, and should have a name that does not become an issue every time they say it or write it.

While Pottie claims that having an unfortunate name is useful to build character, given his record of crime and domestic violence, his example is not positive. Moreover, an attitude that the name was good enough for him, and therefore good enough for his children, represents a cribbed view of parenting unlikely to result in social or economic aspiration.

Although the matter has become a dispute between Pate and Pottie, the name concerns O and N themselves. There is nothing odd about children having a name different from a parent; that is the situation now with Pate, and has been since they were born.

It is in the best interest of O and N to change their name, and this court should reverse.

B. Any Alienation Was Self-Created by James Pottie

Pottie's primary argument below was that the name change petition was merely an effort to promote alienation of him from the children.

Alienation is a serious allegation. This court has found, for instance, that "unfounded allegations of sexual abuse" or "the obstruction by a custodial parent of visitation between a child and the noncustodial parent" constitute alienation. *In the Matter of Miller & Todd*, 161 N.H. 630, 641 (2011).

Insofar as the court was compelled to consider alienation, it heard only one side of the story. The court prevented Pate from refuting Pottie's alienation allegation, but nonetheless ruled with regard to it. The court therefore acted beyond its discretion, and decided based on insufficient evidence.

Pottie did not prove that Pate has engaged in any action intended to estrange the children from him. Any alienation is of his own doing, as it was he who committed assault in the presence of the children, and he who has demonstrated little understanding of the trauma the surname causes.

C. There is no Better Time to Change One's Name

Why now? In part, the question is specious. No matter when it is done, someone so motivated will always ask the question, and – as Pottie has – likely criticize the answer and offer an nefarious explanation. In reality, there is never a better time.

The probate court indicated that the age of majority would be a better time for the children to change their names. But that requires four more years of bullying and teasing for O, and nine more years for N. Moreover, by the age of majority, presumably O and N will have driver's licences, and their nomenclatural identities will be more embedded in governmental and private entities such as schools, banks, and employers.

The better question is: Why not now? The harm is being caused now and will continue, while the remedy is obvious, simple, and immediately effective. Both O and N have made clear to Pate, to Pottie, and to other adults that their name is humiliating, causes anxiety, and is an impediment to social interaction. They have repeatedly requested it be changed.

CONCLUSION

The surname Pottie causes O and N distress, and they want it changed to Pate. They are old enough and experienced enough to have valid opinions, and it is *their* name. They have made their preferences clear to Pate, to Pottie, to teachers, and to counselors, and it is in their best interest to have it changed.

Alienation is a serious allegation. To the extent it is an appropriate factor to consider, any estrangement the children have from Pottie is self-created. He committed crimes against O and N's family in their presence, creating the necessity for reunification counseling. The court avoided hearing all sides of the alienation allegation, yet still ruled on the matter.

While there may be no perfect time to change one's name, the suggestion that O and N wait until the age of majority ignores the bullying and teasing they will endure from now until then, and merely delays a simple and effective solution that can immediately alleviate teasing and bullying.

This court should thus reverse, and direct the probate court to grant the name change petition.

Respectfully submitted,

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CERTIFICATIONS & REQUEST FOR ORAL ARGUMENT

A full oral argument is requested.

I hereby certify that the decision being appealed is addended to this brief. I further certify that this brief contains no more than 9,500 words, exclusive of those portions which are exempted.

I further certify that on June 22, 2023, copies of the foregoing will be forwarded to Leif A. Becker, Esq., through this court's e-filing system.

Dated: June 22, 2023

Joshua L. Gordon, Esq.

ADDENDUM