

I.

PARTIES TO THE APPEAL

The parties to this appeal are the appellant, David L. Porter (hereinafter "Porter"), and the Appellee, the State of Utah.

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IV.

JURISDICTION

Original jurisdiction in this matter was vested in the Utah Supreme Court pursuant to 78-2-2(3)(j) Utah Code Ann. 1953 (Supp. 2000). Jurisdiction is now properly vested in the Supreme Court of Utah pursuant to the provisions of Utah Code Annotated 1953 as amended § 78-2-4(1) (Supp. 2000).

V.

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

The sole issue on appeal is whether the trial court committed reversible error in denying Porter's petition for name change and should this court grant such name change.

VI.

DETERMINATIVE STATUTES

Utah Code Ann. § 42-1-1 (Supp. 2000) and Utah Code Ann. § 42-1-2 (Supp. 2000) are the sole determinative statutes on appeal.

Utah Code Ann. § 42-1-1 (Supp. 2000), provides in pertinent parts;

“Any natural person, desiring to change his name , may file a petition therefore in the district court of the county where he resides, setting forth:

- (1) The cause for which the change of name sought.
- (2) The name proposed.
- (3) That he has been a bona fide resident of the county for the year immediately prior to the filing of the petition.”

Utah Code Ann. § 42-1-2 (Supp. 2000), provides:

“The court shall order what, if any, notice shall be given of the hearing, and after the giving of such notice, if any, may order the change of name as requested, upon proof in open court of the allegations of the petition and that there exists proper cause for granting the same.”

VII.

STATEMENT OF THE CASE

A. FACTS.

David Lynn Porter (hereinafter “Porter”), a 42 year old bus driver petitioned the trial court that he be allowed to change his name to “Santa Claus.” (Record (hereinafter “R.”) 1-3, addendum (hereinafter “add.”)). Porter is the essence of Santa Claus. He has the twinkling eyes, rosy cheeks, the full white beard and the jolly laugh that causes his belly to roll like a bowl full of jelly. Children continually ask Porter if he is Santa Claus. Porter’s desire to keep the Christmas spirit alive and to answer the children in the affirmative has fueled his desire to change his name to “Santa Claus.” Porter’s wife of eleven years is also in favor of the name change, as are his children. (R. 6-7, 32-33, add.). But to Porter’s dismay Judge Timothy Hanson of the Third District Court denied this jolly old elf’s request. Judge Hanson stated that this could allow for “substantial mischief.” Judge Hanson never articulated what that mischief was or how the court came to that conclusion. He even stated that Porter had met the jurisdictional requirements and there was no...“legal reason...” that his request should be denied. Judge Hanson further articulated that he believed that the name change was not being sought for an improper purpose. Thereafter, with no hearings held, no affidavits entered against the name change and no testimony

given by anyone who would be harmed if the name change were to be granted, Judge Hanson summarily denied Porter's request. (R. 9-12, add.).

B. PROCEDURAL HISTORY.

Porter filed a petition for a name change under Utah Code Ann. § 42-1-1, 2 on July 20, 2000. (R. 1-3, add.). Porter was denied his request for a name change on August 16, 2000 by Judge Hanson in a Memorandum Decision and Order. (R. 9-12, add.). Judge Hanson stated that there was the possibility of substantial mischief, confusion and misunderstanding. This decision was made without holding any hearings or offering any affidavits against the proposed name change as is required by Utah Code Ann. §42-1-2. Porter requested a Motion for Reconsideration of Order and Alternative Pleadings on August 30, 2000. (R. 18-33, add.). Judge Hanson again denied Porter's request to change his name to "Santa Claus" or alternatively "Kris Kringle," and a Minute Entry was signed on October 4, 2000 relying upon the August 16, 2000 Memorandum and Decision. (R. 35-35, add.).

SUMMARY OF ARGUMENT

Porter is entitled to have his petition granted thereby allowing him to have his name changed to "Santa Claus" under Utah Code Ann. §42-1-1. There is no potential for substantial mischief. Also, there would be no harm placed upon the public, creditors or business owners. These entities would be better served and legally protected by granting the petition for Porter's name change. Furthermore, the name change requested is not bizarre, ridiculous, offensive to common decency, or unduly lengthy. Neither is it going to create a chilling effect throughout the courts. There would be no confusion in granting Porter his petition to change his name to Santa Claus. The trial court admitted that there was no legal ground not to grant Porter's petition.

Furthermore, under Utah Code §42-1-2, the trial court failed to provide an open hearing and offer evidence or testimony that granting the name change could cause substantial mischief. Therefore, this Court should grant Porter's humble request to change his name to "Santa Claus."

ARGUMENT I

NAME CHANGES ARE ENCOURAGED BY THE UTAH SUPREME COURT AND THE PUBLIC.

The Utah Legislature in its infinite wisdom enacted a statute to encourage individuals who wish to change their names to do so. Utah Code Ann. § 42-1-1 (Supp. 2000), provides;

"Any natural person, desiring to change his name, may file a petition therefor in the district court of the county where he resides, setting forth:

- (1) The cause for which the change of name sought.
- (2) The name proposed.
- (3) That he has been a bona fide resident of the county for the year immediately prior to the filing of the petition."

This statute has been on the record since 1898, when the state of Utah adopted the common law. The common law has a long history of allowing and encouraging those who wish to change their names to do so legally. "The common law recognized the right to change one's personal name without the necessity of legal proceedings, and the purpose of the statutory procedure is simply to have, wherever possible, a record of the change." Ray v. American Photo Player Co., 46 Cal. App. 311 (1920); Smith v. United States Casualty Co., 197 N. Y. 420, 90 N. E. 947 (Ct. App. N.Y. 1910).

This follows a historical desire to allow name changes all the way back to English Common law. The history of name changes was well articulated in Matter of Natale, 527 S.W. 2d. 402 (Mo. Ct. App. 1975). Missouri, as did Utah, adopted the common laws of England in

existence prior to the fourth year of the reign of James the First which are of a general nature and which have not been invalidated, expressly or impliedly, by the United States Constitution, Utah Constitution or Utah Statute. A survey of the common law of England is, therefore, useful.

“Surnames arose as descriptive terms applied to individuals to differentiate between parties with the same baptismal name, eventually becoming a required part of a person's legal name. Even so, names could be adopted and abandoned at will, and all members of a family, including the husband and wife, were not necessarily known by the same surname. Gradually, the custom that all members of the family bear the same, fixed surname developed as surnames lost their character as descriptions of particular individuals. Since the husband and wife customarily adopted the name of the spouse with the most property and since men typically held more property than women, most women took the husband's name. However, the custom never became law. The English common law view was that a woman's surname was not bound to her marital status and arose only through her use of a name.

The law of England adopted by Section 1.010, supra, recognized the right to change name by the nonfraudulent use of another. The right was never limited to males; indeed, it was through this common law method that a woman changed her surname to that of her husband after marriage. *Cowley v. Cowley*, (1901) A.C. 450, 460; 19 HALSBURY, LAWS OF ENGLAND (3d. ed.), p. 829; 32 MD.L.REV. 409 (1972); Lamber, A Married Woman's Surname: Is Custom Law?, 1973 WAS H.U.L.Q. 779.

This court is unaware of any constitutional or statutory provision which abrogates the English common law right to change names through usage, Section 417.200 (RSMo. 1969) notwithstanding. This statute provides that the transaction of business under a fictitious name not previously registered with the secretary of state is a misdemeanor. The construction given the statute comports with the common law right to change names. Contracts entered under a fictitious name are valid in themselves, but the act of contracting without registration constitutes a misdemeanor. State v. Euge, 400 S.W.2d 119 (Mo. 1966). No holding in Missouri directly confirms the common law right to change names through usage, but the courts have indicated that a person's name is the designation given to the individual by himself or herself and others and that an individual may change his or her

name." Matter of Natale, 527 S.W.2d 402 (Mo. Ct. App. 1975)
Citing State ex rel. Kansas City Public Service Co. v. Cowan, 356
Mo. 674, 203 S.W.2d 407, 408 (Mo. banc 1947); State v. Deppe,
286 S.W.2d 776, 781 (Mo. 1956); State ex rel. Rainey v. Crowe,
382 S.W.2d 38, 42 (Mo. App. 1964).

The Utah legislature has a strong preference for granting name changes. The Utah Code makes it a misdemeanor to conduct business under a fictitious name. Utah Code Ann. § 42-2-10, Utah Code Ann. § 42-2-11. This statute provides that the transaction of business under a fictitious name not previously registered with the Division of Corporations and Commercial Code are subject to financial penalties and possible misdemeanor charges.

And in fact, Porter has filed the name "Santa Claus" with the Utah Department of Commerce as Santa Claus, d/b/a - sole proprietor. (R. 29, add.).

The construction given these statutes comports with the common law right to change names. Just as in Missouri and the majority of jurisdictions, Utah contracts entered under a fictitious name are valid in themselves, but the act of contracting without registration constitutes a misdemeanor. This demonstrates a strong desire by the public and the courts to support an individual's desire to legally change their name.

Porter, recognizing this strong desire by the legislature to have individuals and businesses contract with a registered legal name, attempted to meet these requirements. But, the trial court denied his request stating that it could cause "substantial mischief," but the court failed to explain how. This denial is contrary to what this court has previously stated.

The Utah Supreme Court has held that it is in the public interest to encourage and allow individuals to change their names. This court articulated "Consequently, since the statutory process provides protection for both the applicant and the general public by producing a public

record to document the change, applications under such a statute should be encouraged. In most circumstances, a petition under such a statute "should generally" be granted unless sought for a wrongful or fraudulent purpose." In re Cruchelow, 926 P. 2d 833 (Utah 1996) citing In re Knight, 537 P. 2d 1085 (Colo. App. 1975).

The trial court found that the jurisdictional requirements had been met and there were no legal reasons that the court should prohibit the requested name change, and that there was no indication that name change was being sought for any improper purpose. Therefore, Porter should have been granted his petition.

Furthermore, Porter articulated legitimate reasons why he should be allowed to change his name. This name change has garnered support from both Porter's wife and children. (R. 6-7, 32-33, add.). With a public interest in supporting name changes coupled with the public need to be protected by legal knowledge and records of individuals who change their names, it would be in the public's best interest for this Court to grant Porter's appeal and allow him to legally change his name.

ARGUMENT II

THE DISTRICT COURT FAILED TO ARTICULATE

AND PROVE A REASON FOR DENIAL.

The District Court failed under Utah Code Ann. §42-1-2 to hold any hearings or accept any testimony or evidence in denying Porter's request. Under Utah law the court was required to do so. As this court has distinctly pointed out. "Although a trial court normally has wide discretion in matters of this type, the court must show some substantial reason before it is justified in denying a petition for a name change." In re Knight, 537 P.2d 1085 at 1086 (Colo. App.

1975); see Moskowitz v. Moskowitz, 118 N.H. 199, 385 A.2d 120, 122 (N.H. 1978) (holding that trial court must show special circumstances or facts such as "possibility of fraud on the public, or the choice of a name that is bizarre, unduly lengthy, ridiculous, or offensive to common decency and good taste"). Furthermore, for this court to conduct a meaningful review, the trial record must contain factual support for the trial court's denial of a petition for a name change. See Knight, 537 P.2d at 1086 (court "should conduct an evidentiary hearing to determine if good and sufficient cause exists to deny the application"); see also 57 Am. Jur. 2d Name § 22 (1988) ("Unsupported generalizations and speculation do not constitute a cause shown to deny a change of name.").

In this case, the district court judge failed to hold any hearings or accept any affidavits from any party that may have been harmed by allowing Porter to change his name. This court has generally disfavored a lower court denial of a name change without holding proper hearings in open court. In this Court's decision in In re Cruchelow, this Court clearly stated "the judge's denial of Cruchelow's petition was not based on the testimony or affidavits of correction officials or police authorities concerning any detrimental impact that his name change might have on the Department of Corrections or on the criminal system. The court merely relied on its own "policy" of denying name change requests by incarcerated persons because of a general concern for the Department's operations. Without any evidentiary support, however, we cannot consider a court's "policy" as a substantial reason to conclude that a change in Cruchelow's name." 926 P.2d 833 (Utah 1996).

This court concluded "that the trial court's decision was based purely on "unsupported generalizations and speculation" and thus constituted an arbitrary denial of appellant's request to

change his name.” This Court further found “If the court was truly concerned that the change would cause problems for the Department of Corrections, it had the statutory authority to give notice of the proceedings to the Department and give it an opportunity to be heard.” In re Cruchelow, 926 P.2d 833 (Utah 1996).

In the present case, if the district court was truly concerned that the change could cause “substantial mischief”, the court had a statutory responsibility to give notice of the proceedings and give those that may be harmed an opportunity to be heard. The district court failed to do this and as in Cruchelow, this Court should grant Porter his petition for legally changing his name.

Other jurisdictions have agreed with Cruchelow when the trial court failed to hold hearings or articulate a valid reason for denial. In Missouri, an inmate was granted his name change when it was found that the trial court failed to hold hearings. The petitioner’s requested surname of “Sunshine” was not particularly bizarre, obscene or offensive, and no prima facie evidence of harm to third party was presented. “The scope of discretion to deny a petition for change of name is narrow.” Natale at 405. “Mr. Reed's requested name is not particularly bizarre, obscene or offensive, and no prima facie evidence of harm to a third party was presented at the hearing. The lower court's general concern for the possible detriment to society occasioned by petitioner and others who seek to use the law to add a cognomen to their legal name is simply not a sufficient reason to deny the petition, particularly in light of the obvious legislative intent that such a procedure be available and by reason of the precept of Natale.” In re Reed, 584 S.W. 2d 103 (Mo. Ct. App. 1979).

Closer to home in Colorado, the Colorado Supreme Court agreed with the Cruchelow line of thinking and found a prison inmate had a right to change his name. The court found this in

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light of the impact it may have had on the prison and police officials. The court remanded the case back for hearings to determine if there would be an actual public harm in allowing the name change. The court articulated in rebuttal to the lower courts failure to hold any hearings, “[H]owever, there was no evidence before the court as to how the name change would be prejudicial to prison or police authorities. Therefore, we do not consider any of these reasons, without additional proof, as sufficient basis for the court to conclude that the change of name would be improper. In re Knight, 537 P. 2d 1085 (Colo. 1975). The court further pointed out “[I]n this day when a Lew Alcindor elects to be known as Kareem Abdul-Jabbar, and Cassius Clay opts for Muhammad Ali, the desire of Walter Knight to reflect his African heritage by adopting the name Sundiata Simba should not be dismissed lightly.” Id.

In this case, Porter should be allowed to change his name to reflect his desire to carry the spirit of love and joy, known as Christmas, with him all year long. Porter merely wishes to allow his name to reflect his kind nature and cheerful disposition. Allowing Porter to change his name would only help further his desire to comply with the law, protect the public at large and bring a touch of joy to those around him.

This court has stated a standard for a trial court to properly deny a name change. In In re Cruchelow, “Without any evidentiary support, however, we cannot consider a court's "policy" as a substantial reason to conclude that a change in Cruchelow's name would be improper.” 926 P.2d 833 (Utah 1996).

This line of thinking has been followed nationwide. “While a trial court has wide discretion in matters of this type, it should not deny the application for a change of name as being improper unless special circumstances or facts are found to exist. Included in these would be

"unworthy motive, the possibility of fraud on the public, or the choice of a name that is bizarre, unduly lengthy, ridiculous or offensive to common decency and good taste." In re M, 91 N.J. Super. 296, 219 A.2d 906 (N.Y. County 1966); see Petition of Rusconi, supra. (authority to deny the change if the interests of a wife or child of the applicant would be adversely affected thereby.) In the present case, there are no individuals who would be adversely affected by the name change. Porter's wife and children are in full support of his desire to change his name. Other courts as well as this one have fleshed out what is needed to validate a trial courts denial of a petition for a name change.

"We do not suggest that a court must grant every petition for change of name; rather, we hold that some substantial reason must exist for denying such petition, and that none appears in the record before us." See In re Ross, 67 P.2d 94 (Ca. 1937). Before a court denies a request for a change of name under the statute, it should conduct an evidentiary hearing to determine if good and sufficient cause exists to deny the application. Henderson v. Industrial Commission, 529 P.2d 651 (Colo. App. 1974). id. Cruchelow.

Following the reasoning as set out by this Court and others who have faced similar problems it is only just that under the circumstances this court should grant Porter's petition and allow him to change his name, to reflect his cheerful disposition, to "Santa Claus"

ARGUMENT III

GRANTING PORTER'S NAME CHANGE WILL NOT CREATE

A CHILLING EFFECT.

In our litigious society it is suggested that an individual or corporation would be "chilled" from bringing a lawsuit against "Santa Claus." This argument has no real foundation as the State

of Utah has already seen a lawsuit with "Santa Claus" as one of the principal parties. There has been a Santa Claus that resided in Park City, Utah, and he was subsequently sued by "The Resort Group Inc." with Judge Roger Livingston presiding. The Resort Group, Inc. v. Santa Claus, (No. 943000079, Third Dist. Ct., Park City Dept., UT). There was no chilling effect in defending or bringing a lawsuit against "Santa Claus." There was no public outcry, or refusal by a court to continue the proceedings. Therefore, to argue that granting Porter his name change will stop those who need to sue him from doing so is unfounded.

Furthermore, our society and courts are replete with lawsuits against "Santa Claus," or "Christmas Town." Out of California, Mckee v. Santa Claus of California, Inc., 230 Cal. App. 2d 359 (Ca. App. 1964) dealt with the purchase of stocks and the court discussed without being "chilled" who owned 17,348 shares of the stock of Santa Claus of California, Inc., a California corporation.

In Indiana there is a town of Santa Claus. In Santa Claus, Inc. v. Santa Claus of Santa Claus, Inc., 2 N.E.2d 354 7; 1940 (Ind. 1940), the court heard arguments against Santa Claus, Inc., and others, for an injunction to protect the rights of Santa Claus, Inc., under a lease and for damage preventing possession of the real estate involved. The courts were not reluctant to hear these cases as was neither party afraid to bring a lawsuit. Finally, in another case out of Indiana Kostuck, v. Town of Santa Claus, v. Christmas Lake Properties Association, Inc., 729 N.E.2d 183; (Ind. App. 2000), the court heard an argument concerning a lease on a lot in "Christmas Lake Village."

Furthermore, in California, Winfred Eugene Holley was granted the legal name of "Santa Claus." "Upon his driver's license, right next to the picture of a guy with a white beard and red

suspenders: his legal name, "Santa Claus." Armstrong, *Santa Lives, Virginia, and this St. Nick has the Papers to Prove It*, Time, December 20, 1982. In explaining why they allowed the name change, court Commissioner Bertrand D. Mouron, Jr. stated, "He's the essence of Santa Claus." This is the same Santa Claus that temporarily resided in Park City, Utah. This same Santa Claus has demonstrated that there would be no "chilling effect" upon the courts and society as evidenced by The Resort Group filing suit against him.

Porter has that same essence and wishes to enjoy and spread the spirit of Christmas spirit around him all year long. Allowing Porter to change his name would allow individuals and others to bring legal action against the correct party and granting the name change would only protect society and not create a chilling effect.

ARGUMENT IV

SOCIETY IS PROTECTED BY GRANTING THE NAME CHANGE

Porter's name change would only protect society and not create any "substantial mischief." The California Supreme Court in *In re Ross*, 67 P.2d 94 (Ca. 1937) said that society would best be served by allowing individuals to change their names. The Court found that a stage and motion picture actor was entitled to change his name to that which he used on stage and in motion picture work. This was a name by which he was universally known. The court found that although he had been adjudged bankrupt under his natural name Ross, and had not paid debts discharged in the bankruptcy proceeding, that in declaring bankruptcy "he made use of a legal right to which no stigma nor disability attached." *Id.*

The California court found, as this court has, that "[T]he common law recognizes the right to change one's personal name without the necessity of legal proceedings, and the purpose of the

statutory procedure is simply to have, wherever possible, a record of the change.” In re Ross, 67 P.2d 94 (Ca. 1937). The trial court argued that since he became bankrupt under the name of Ross, if the court granted the petition to change his name to Keith, it would be assisting him to deceive persons who in future dealings might give him credit, which they would not do if they were aware of the fact of bankruptcy.” Id.

The court found no substance in this argument. The court expressed “[P]etitioner may now, without the aid of any court, deal with persons and secure credit under the name of Keith, if he chooses to assume that name. Creditors who investigate will be unable to find in the public records any indication of the bankruptcy of Keith. But if the decree is given, and a record appears of the change of name from Ross to Keith, creditors will be better enabled through the usual channels to discover the prior bankruptcy of Keith. Hence, the granting of the present petition would probably operate to the benefit of future creditors, rather than to their detriment.” Id.

The California court clearly and correctly articulated the essence of the argument before this court. By disallowing the name change creditors may be harmed. By granting the name change this court is protecting creditors and any other party Porter may contract with. Therefore, this court should grant the name change requested and further protect society.

There is an argument made by the Ohio Probate Court that found the name “Santa Claus” was in the public domain and the public had a proprietary interest in the name “Santa Claus.” The Ohio court found that there is an economic value to the name of Santa Claus. The court found that the “petitioner is seeking more than a name change, he was seeking the identity of an individual that this culture has recognized throughout the world, for well over one hundred years. Thus, the public has a proprietary interest, a proprietary right in the identity of Santa Claus, both

in the name and the persona. Santa Claus is really an icon of our culture; he exists in the minds of millions of children as well as adults." In re Handley, 736 N.E.2d 125 (Ohio Probate, 2000).

This analogy lacks foundation. The name of Santa Claus has been issued before. The icon nature of Santa Claus is bought and sold by different corporations attempting to make a profit on that iconic image everyday. The public, if it did have a proprietary interest, relinquished that right long ago.

There is no economic value in the name "Santa Claus" that has not already been exposed to private industry. Santa Claus, Inc., and Santa Claus of Santa Claus, Inc., are both corporations that make financial gain purely off of the name and iconic nature of Santa Claus. This state has also previously allowed "Santa Claus" to come to town (Park City) and garner financial gain off of the public by portraying "Santa Claus." Therefore, this court should grant Porter's petition for name change.

CONCLUSION

The following reasons demonstrate strong arguments that this court should grant David L. Porter his name change. The name requested is not bizarre, unduly lengthy, ridiculous, or offensive to common decency and good taste. The trial court admitted that there was no legal reason not to grant the name change and that Porter was not seeking to commit fraud on the public. The trial court in denying Porter's motion failed to offer any substantial reason for denial. The trial court denied Porter's petition without holding any hearings or listening to any opinions submitted by those who would be harmed by the name change. The name change is also in the public's best interest, as it would protect anyone wishing to contract with Porter in the future.

Therefore, this Court should reverse the holding of the trial court and grant Porter his name change to "Santa Claus." In the alternative, this court should grant his request of change of name to "Kris Kringle."

DATED this 19 day of March, 2001.

HADLEY & HADLEY, L.C.



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