IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-CA-01379

S.M.-B., A MINOR, BY AND THROUGH MONICA LEE MCKAY, Natural Mother and Next Friend of Minor

Appellant

v.

MISSISSIPPI STATE BOARD OF HEALTH

Appellee

On Appeal from the Chancery Court

of Hinds County, Mississippi

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The following undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the Justices of the Supreme Court of Mississippi may evaluate possible disqualification or recusal:

1. S.M.-B., a minor, and parent Monica Lee McKay, Appellant;
2. McKenna Raney-Gray, Counsel for Appellant;
3. Mississippi Department of Health, Appellee; and
4. Robert Jamison Barefield, Counsel for Appellee Mississippi Department of Health.

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STATEMENT ON ORAL ARGUMENT

Appellant S.M.-B. respectfully requests oral argument for the benefit of clarification of the finer points of this principal brief.

STATEMENT OF THE ISSUES

Appellant, S.M.-B., a minor, by and through Monica Lee McKay, natural parent and next friend of minor, was denied an uncontested name change by the Hinds County Chancery Court. This appeal challenges the denial of that name change.

The issues on appeal are:

1. Did the Chancery Court err by denying S.M.-B.'s Petition to Change Name ("Petition") when S.M.-B. met the criteria for a name change, the Petition was uncontested, and both of S.M.-B.'s parents agreed with the Petition?
2. Alternatively, did the Chancery Court err by failing to make a determination of each *Albright* factor relating to whether the name change is in S.M.-B.'s best interest?
3. If an *Albright* determination was required, did the Chancery Court abuse its discretion (i) by resting its denial of the uncontested minor name change solely on the grounds that S.M.-B. was not mature, or (ii) by failing to make a determination of each *Albright* factor of whether the name change is in S.M.-B.'s best interest, or (iii) because there is no substantial evidence that the name change is against S.M.-B.'s best interest?

STATEMENT OF THE ASSIGNMENT

Pursuant to Rule 16 of the Mississippi Rules of Appellate Procedure ("M.R.A.P."), the Mississippi Supreme Court should retain this appeal for two reasons:

One, under M.R.A.P. 16(d)(1), it presents a major question of first impression about the standards for granting an uncontested name change of a minor. Though there is one Mississippi Supreme Court case describing a contested name change, there is no case which governs how courts should handle uncontested matters, and the Mississippi Supreme Court is necessary to make clear what the law is. The Benchbook for Chancellors is comprehensive but does not list a test for granting a contested or uncontested name change for either an adult or minor. Mississippi Judicial College, *Benchbook for Mississippi Chancery Court Judges*, Chapter 21 (2023). Most chancellors grant uncontested minor name changes as a matter of course. Some chancellors, as we have here, believe it is within their discretion to decide whether to grant or deny the name change. The Mississippi Supreme Court must make clear the legal standard for this issue.

Under M.R.A.P. 16(d)(2), this appeal involves a fundamental and urgent issue of public importance requiring prompt or ultimate determination by the Mississippi Supreme Court. Name changes are granted every day in courtrooms or chambers across Mississippi, and it is important for people to know under what circumstances they may change their name. There must be uniformity in the procedure and process to ensure appropriate administration of justice. Judges with vastly different legal interpretations sow disunity in the courts and damage public confidence in the rule of law.

STATEMENT OF THE CASE

Petitioner Files a Petition to Change Name for Minor, S.M.-B.

On July 26, 2023, Monica Lee McKay filed a petition to change name on behalf of her minor child, S.M.-B. (who has been identified in the Petition to Change Name). See Single Record on Appeal (hereinafter "R.") at 8. Attached to the Petition was S.M.-B.'s birth certificate, R. at 12, the civil case filing form, R. at 15, and the father Michael Booker's consent form, R. at 13-4. Additionally, there are exhibits containing the declarations of mother Monica McKay, R. at 34, the minor, S.M.-B., R. at 38, and father Michael Booker, R. at 42. Petitioner then filed a service return showing the summons of the Mississippi State Board of Health was executed on August 8, 2023. R. at 16.

The Answer filed by the Mississippi Department of Health ("MDH") on October 10, 2023 made no opposition to the Petition, identified that the court may grant relief, waived any further notice to MDH, and committed to update S.M.-B.'s birth certificate upon receipt of a court order. R. at 17; R. at 18. In effect, the Petition to Change Name was unopposed by MDH.

Requested Name Change of Minor was Orally Denied

On November 6, 2023, the chancellor held a hearing to determine the Petition to Change Name of S.M.-B. R. at 20. At this hearing, a portion was done off the record during a bench conference with the parents, Monica Lee McKay and Michael Booker, and their attorney. Supplemental Single Record on Appeal at 8. Within this off-the-record bench conference, the chancellor orally denied the requested name change.

Written Denial of Request to Change Name

On November 21, 2023, the chancellor entered an order denying the request to change S.M.-B.'s name, stating "Chancellor determined in her discretion that the Petitioner should mature before name change would be determined by the Court." R. at 22.

Appeal to the Mississippi Supreme Court

On December 21, 2023, S.M.-B. filed this appeal, R. at 26-7, of the November 21, 2023 Order denying the name change, R. at 22. On December 22, 2023, S.M.-B. also filed a motion in the Hinds County Chancery Court to reinstate the case and grant the requested relief. R. at 28. This appeal was stayed during the pendency of the determination of the motion to reinstate.

On February 9, 2024, the Chancery Court denied the petitioner's motion to reinstate the case. R. at 85. Soon after, this appeal resumed.

This is an appeal of an uncontested name change petition, including two legal parents, a 17-year-old (S.M.-B.), and the Mississippi Department of Health, Bureau of Vital Statistics. There is no adverse party. In fact, all parties agree that S.M.-B.'s name should be changed.

SUMMARY OF THE ARGUMENT

Name changes are simple matters that provide an avenue for thousands of people in our state every year to change their name. There are few justifications to deny a petition to change a name.

To deny an adult or minor name change in Mississippi, evidence must exist that the Petitioner desires the name change for fraudulent purposes or to interfere with someone's rights. These two are the only proper considerations. If no such evidence exists, a minor meeting these two name change criteria whose petition is uncontested is entitled to a name change without

judicial discretion to reject the request. If the name change request is contested, a judge weighs whether the change is in the child's best interest before making a determination.

In this case, the chancellor's decision to deny S.M.-B.'s name change should be overturned because: 1) S.M.-B. meets the threshold criteria to change his name, the matter was uncontested, and both of the parents agreed with the petition, and therefore the trial court lacked discretion to deny the Petition; 2) alternatively, the chancellor failed to determine the best interest factors as it relates to S.M.-B.'s name change; and 3) the chancellor abused her discretion because she did not consider the *Albright* factors, her decision was not supported by any evidence, and a single determination of "maturity" is insufficient.

The trial court denied the name change despite the Petitioner meeting the legal requirements, the matter being uncontested, the presence of fit parents, and the presumption parents act in the best interest of their child. This was reversible error.

STANDARD OF REVIEW

"This Court 'will not disturb the factual findings of a chancellor when supported by substantial evidence unless the Court can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard.' 'When reviewing questions of law, this Court employs a de novo standard of review and will only reverse for an erroneous interpretation or application of law.'" *Rice v. Merkich,* 34 So. 3d 555, 557 ¶7 (Miss. 2010) (quoting *Powers v. Tiebauer,* 939 So.2d 749, 752 ¶1 (Miss. 2005) (internal citations omitted).

ARGUMENT

Introduction: the importance and cultural meaning of names.

In our American cultural naming conventions, we expect a person to have three names, including a first name (given name, personal name, "Christian" or baptismal name, forename); one or more middle names; and a last name (family name, patronymic, surname). "It is a custom for persons to bear the surname of their parents, but it is not obligatory." *Coplin v. Woodmen of the World*, 62 So. 7, 9 (Miss. 1913) (internal citation omitted).

Names are an incredibly important part of our identity. A name is, at its simplest, an identifier of a unique person. *Coplin*, 62 So. at 9 ("A name is a word to designate a person or thing. That word by which a person is commonly designated in the community in which he lives is, for all practical purposes, his name. . . At common law the office of a name was merely to identify."). At its most complex, a name is also an individual[1] yet culturally bound[2] tool of communication and self-expression. "Thus, names are not merely in the business of reference; they are also communicating important social information–including information about one's ethnic heritage, gender, and familial relations." Austin A. Baker & J. Remy Green, *There Is No Such Thing as a "Legal Name,"* 53 Colum. Hum. Rts. L. Rev. 129, 168 (2021).

Names convey information. A family name may signal inclusion within a family, a lineage, a clan or tribe, sometimes a culture or ethnonational group. Given names communicate many sociocultural identifiers: religious affiliation, social status, language, ethnic or national background, age group, gender, values, self-expression and individual identity, family traditions,

[1] Teresa Scassa, *National Identity, Ethnic Surnames, and the State*, 11 CAN. J.L. & SOC. 167, 169 (1996) ("Names have been described as the simplest, most literal and most obvious of all symbols of identity.").
[2] Kif Augustine-Adams, *The Beginning of Wisdom Is to Call Things by Their Right Names*, 7 S. CAL. REV. L. & WOMEN'S STUD. 1, 32 (1997) ("[n]aming practices reflect conceptions of individuality, equality, family and community that are fundamental to identity"; discussing the problems that arise in day-to-day interactions between people from cultures with different naming traditions).

socioeconomic status, and regionality. There are as many reasons to change one's name as there are meanings derived from the names. The decision to change a minor's name is a personal, family decision.

A. The chancery court erred by denying S.M.-B.'s Petition to Change Name because it lacked discretion to do so when S.M.-B. meets the criteria for a name change, the Petition was uncontested, and both of the minor's parents agreed with the Petition.

1. Statutory and common law of name changes.

a. General name change statute amendment history. [3]

A statutory name change action for general purposes was passed in 1846 and is perhaps the first name change statute in the United States.[4] It read: "Hereafter the Circuit and Chancery Courts of the State shall have power, upon the application of any person within their respective jurisdictions, upon good reasons shown to alter or change the name of such person." Miss. Code Ann. Art. 2 §1 (1848). As of the filing of this Brief, the statute has been amended four times since its adoption over 178 years ago.

Within the next decade, the legislature rewrote the statute to eliminate concurrent chancery and circuit court jurisdiction in favor of exclusive circuit court jurisdiction and removed the "good reasons shown" requirement for name change: "[t]he circuit courts shall have power upon the petition of any person within their respective jurisdictions, to alter the name of such person." Miss. Code Ann. Art. 41 (1857). After enactment of the 1890 Mississippi Constitution, jurisdiction was switched again from circuit court to only chancery court. Miss. Code Ann. §492 (1892). In the 20th century, the text was amended to state either a chancellor "or the chancellor in vacation" had

[3] A summary of all of the changes to the name change statute from its inception to present, based on material available at the Mississippi State Law Library, is attached as Addendum A: Reproduction of the Mississippi Name Change Statute.

[4] Mississippi enacted its statute for name change in 1846, followed by New York in 1847 and Massachusetts in 1852.

jurisdiction to hear name change petitions. Miss. Code Ann. §1269 (1942). The phrase "of the county of the residence of the petitioners" was finally added to the statute, and it has not been changed since. 1955 Miss. Laws 118. The current statute says, "[t]he chancery court or the chancellor in vacation, of the county of the residence of the petitioners shall have jurisdiction upon the petition of any person to alter the names of such person." Miss. Code Ann. § 93-17-1(1).

b. The statutory general name change law provides no discretion.

Mississippi Code § 93-17-1(1) created an action for change of name through the courts. The language of the statute is the starting point of an inquiry into its meaning.

The statute outlines that "[a]ny person" may change their name, essentially creating an open-door policy for potential petitioners to gain entry to the courts for name change. Absent any limiting language, the legislative intent is clear in its preference for open access to this court process.

There is no language in the statute giving chancellors discretion in the granting of name changes, and therefore discretion cannot be inferred. There is nothing in the text to suggest that a chancellor has any discretion in denying a name change. In fact, the Legislature removed the discretionary standard requiring "good reasons shown" from the statute in 1857. Miss. Code. Ann. Art. 41 (1857). Explicitly eliminating a statutory requirement for a petitioner to show "good reasons" before they can change their name aligns with the position that a judge does not have discretion to deny a name change unless it is within the common law exceptions (fraud or interference with the rights of another).

c. The statutory and common law on name changes operate together.

Mississippi's name change statute works in conjunction with Mississippi common law to govern how name changes occur in the state. *See Carter v United States*, 530 U.S. 255, 266 (2000)

(stating that words can have a meaning in common law that are widely understood and accepted and in such cases, courts will adopt the common law meaning).[5] The statute was enacted to provide a procedure for changing one's name through issuance of a court order and provides the jurisdictional requirements, but does not provide a standard by which this decision may be reached. Miss. Code Ann. § 93-17-1(1). The common law provides the standard.

d. The name change standard from common law provides two reasons a name change can be denied.

While other countries have rigid naming systems (such as the Icelandic Naming Committee's official register of approved Icelandic names) there is a "uniquely American freedom to decide one's name" evidenced by an overview of worldwide naming laws. Cori Alonso-Yoder, *Making a Name for Themselves,* 74 Rutgers L. Rev. 911, 962-964 (Spring 2022). In fact, "U.S. law favors individual interests in naming. The emphasis on individual liberty is unique even among other modern liberal democracies," *Id.* at 914. Common law name changes are considerably liberal in their procedures for allowing a person to change their name at will through usage.

Historically, Mississippi has recognized the common law standard in favor of name changes, when done so in good faith and for honest purposes. *Coplin v. Woodmen of the World*, 62 So. 7, 9 (Miss. 1913) ("[a]t common law a man could change his name, in good faith, and for an honest purpose, and adopt a new one, by which he could be generally recognized."). The common law stands for broad protection of individual freedom in naming and liberally supports nonfraudulent name changes, effected through usage and passage of time. *Id.*; *see also Haywood*

[5] A statute will be construed to alter the common law only when the disposition is clear. *See* Scalia & Bryan A. Gardner, *Reading Law* (2012) at 318. Every state has a statutory name change, and, unless explicitly indicated in the statutory text, these statutes do not abrogate the common law right to name change. The Mississippi name change statute does not show any intention to abrogate the common law, and therefore it operates alongside the common law process.

v. State, 47 Miss. 1, 2 (Miss. 1872) ("But in this country a man may take any name he chooses, and may be proceeded against, either civilly or criminally, by that name, which he recognizes and is usually called by."); *Richmond v. Lamb*, 390 So. 2d 1003, 1005 (Miss. 1980) (service of process to potential heir was nonetheless proper when addressed to the name she had adopted and was generally known by).

The common law rule for name change, as recognized in Mississippi, is that any person can change their name if (1) it is not done for any fraudulent purposes; and (2) does not infringe on the rights of others. *Marshall v. Marshall*, 230 Miss. 719, 729 (1957) ("We fully realize and appreciate the fact that at common law any person of mature years can voluntarily change his name without the necessity of a statute such as we have in Mississippi, provided the change is not for a fraudulent purpose and does not interfere with the rights of others.").

Examples of interfering with the rights of another are nonexistent in Mississippi law and similarly hard to come by in other jurisdictions.[6] With such limited Mississippi case law, we must turn to common law interpretations in other jurisdictions for examples. Future financial dealings have been considered, and possible harm in future business dealings to a potential business partner or creditor must be sufficiently concrete to constitute interference with the rights of another.[7]

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[6] "The restriction based on interference with the rights of others is mentioned often in cases reciting the common law, but little in actual application. It appears to refer to the procedure whereby other persons may object to a petitioner's name change for interference with their rights, for example, duplication of a trademarked or corporate name." Julia Shear Kushner, *The Right to Control One's Name*, 57 UCLA L. Rev. 313, 364 (2009).

[7] *Application of Clark*, 85 N.Y.S.2d 667, 677 (N.Y. Sup. Ct. 1948) (to allow two actresses to adopt the same name prior to launching a television partnership so they may share "publicity and personal fame" equally "may veritably lead to a 'Comedy of Errors' and may tend to prejudice persons having business and commercial relations with petitioners" and was justly denied); *Application of Stempler*, 441 N.Y.S.2d 800, 801 (N.Y. Sup. Ct. 1981) (ruling that possible harm to future creditors was too conjectural and insufficient to constitute interference with the rights of another, therefore is not a basis to deny name change to man with prior bankruptcy adjudication who has satisfied his debts); *In re Ross*,67 P.2d 94, 95 (Cal. 1937) (ruling the lower court erred in judgment, and bankruptcy alone was insufficient to deny application to change name).

Outside of finance, a name change has been denied when there is evidence it would interfere with the rights of another specific individual who has raised objections to the change.[8]

The Mississippi Supreme Court has listed examples of fraudulent purposes for a name change: "Before the words 'assumed name' can import the sinister implication sought to be given them by appellant in this case, there must be some sinister purpose in using the alleged changed name, such as falsely pretending to be some other person and thereby fraudulently obtaining some unlawful objective, or changing one's name to an alias, as a fugitive from justice, or seeking to conceal one's identity in order to escape obligations to one's family or creditors." *Mississippi State Bd. of Dental Examiners v. Mandell*, 198 Miss. 49, 67 (1945). Though not a name change case, fraud was considered in *Mandell*, as it related to applying for a dental license under an assumed name. *Id.* (Jewish Romanian immigrant who used Anglicized name on his dentistry license application was not guilty of fraud because he did not seek to commit fraud or escape obligations and had no sinister purpose or implication of deceit by doing so). As described here, examples of fraudulent purposes to change a name include identity fraud, shirking criminal responsibility, and avoiding creditors. As a consideration of whether someone has fraudulent purposes for seeking a name change, the Court also posited, "There is no reason shown in the record that he could or would gain anything by the use of an assumed name." *Id.*

[8] *In re Serpentfoot*, 646 S.E.2d 267, 269 (Ga. Ct. App. 2007) (denying an application by a woman whose crimes had been reported in a local newspaper to change her surname to that of the publisher, so that if he continued to publish stories about her, his own surname would be tainted as well, finding she intended to defraud him by tainting his name, and her improper motives warranted denial of her name change request); *Weingand v. Lorre*, 231 Cal. App. 2d 289, 294 (Cal. Ct. App. 1964) (Petitioner was not acting in good faith when he sought to change his name to pass himself off as the son of a famous actor, which "would directly affect the commercial and professional value of the services and performances of [that actor] both present and future." The actor testified he was opposed to granting this name change. Petitioner's request was properly rejected).

Similarly to Mr. Mandell's application, earlier courts considered a type of "racial fraud" on the court as it relates to ethnic names and family names. However, not all types of "fraud" have survived into the modern jurisprudence of name change exceptions, particularly as it relates to petitions that "conceal" the petitioner's ethnic or national origin.[9] This breed of "fraud" has fallen out of favor, and nobody today would espouse that the public has a so-called right to know a stranger's racial background based on their surname.

Though adopting a surname does not create legal parentage, inheritance rights, or a spousal relationship, courts in the past have refused name changes for unrelated or unmarried people, because it could be "misleading" or a fraudulent holding out of a family bond.[10] More recently,

[9] *Cohen's Petition for Change of Name*, 4 Conn. Supp. 342, 343 (Conn. Super. Ct. 1936) (Jewish man who said it is easier to procure work under an Irish name was denied name change; the Supreme Court stated "[e]ach race has its virtues and faults and men consider these in their relations with one another. The applicant would be travelling under false color, so to speak, if his request were granted, nor does the Court believe the change would be advantageous in the end, either to the applicant or his fellows."); *Application of Filoramo*, 243 N.Y.S.2d 339, 340 (N.Y. Civ. Ct. 1963) (Denying Italian Americans to change surname, holding the Civil Court "will not grant its approval to change his name to one that will conceal his racial background"); *Application of Jama*, 272 N.Y.S.2d 677, 678 (N.Y. Civ. Ct. 1966) (Civil Court would not permit "a person of Slavic genealogy" to adopt Germanic name and strongly denounced the request as un-American and "puerile, if not pathetic"; "[t]he court is not persuaded that no ulterior motive is lurking in the background, for the petitioner to disavow his parental heritage and attempt to becloud his Americanism,"); *In re Green*, 283 N.Y.S.2d 242, 244 (N.Y. Civ. Ct. 1967) (denying Islamic convert's request to change name from change his name from Earl Green to Merwon Abdul Salaam, calling the Green surname his "birthright"); *Application of Middleton*, 304 N.Y.S.2d 145, 146 (N.Y. Civ. Ct. 1969) (African American was not permitted to adopt a name of African heritage because he "should be proud not only of his American citizenship but of his name, his forbears, and his American ancestry as well" and his name change is "subterfuge" which "would tend to mislead" others as to his heritage).

[10] *Matter of Linda Ann A*, 480 N.Y.S.2d 996, 997 (N.Y. Sup. Ct. 1984) (changing a woman's surname to that of her married paramour "would clearly infringe upon the rights of the real Mrs. M."); *see generally Application of B*, 366 N.Y.S.2d 98 (N.Y. Co. Ct. 1975) (New York County Court denied a woman's name change petition to assume her married lover's last name, saying if it granted the petition "the court would not only be fostering a misrepresentation . . . but the order would also in effect constitute a condonation of a Class B misdemeanor [adultery]").

however, trial courts that have denied unmarried partner surname changes have routinely been overturned for not meeting any valid exceptions to deny an adult name change.[11]

Similarly, some courts have denied name changes they disliked, governed merely by their personal opinion or baseless expectations of confusion.[12] These cases were either reversed or are legally unsound.

Here, there is no evidence in the record, or in fact, that would support denial of Petitioner's name change. Petitioner has requested a name change that will not interfere with the rights of others and is not for fraudulent purposes, and Petitioner is not currently incarcerated and has never been convicted of a crime.

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[11] *In re Daniels*, 773 N.Y.S.2d 220, 224 (N.Y. Civ. Ct. 2003) (ruling that absent evidence of intent to defraud or misrepresent, or interference with the rights of others, applicant was entitled to change her surname to that of her same-sex life partner, who consented to the change); *In re Bicknell*, 771 N.E.2d 846, 849 (Ohio 2002) (same-sex domestic partners had no criminal or fraudulent purposes for wanting a shared surname, so petition should have been granted; further, "[a]ny discussion, then, on the sanctity of marriage, the well-being of society, or the state's endorsement of nonmarital cohabitation is wholly inappropriate and without any basis in law or fact."); *In re Boardman*, 166 A.3d 106, 112 (Me. July 6, 2017) ("a person's potential misunderstanding of another person's marital status, without more, does not qualify as a fraud that precludes the otherwise liberal grant of name change petitions"), *as corrected*; *see generally Matter of Rohlik*, 233 N.E.3d 80 (Ohio App. 2023) (deciding unmarried partners wanting to share a last name were not effectively asking the Court to validate a common law marriage); *In re Application for Name Change by Bacharach*, 344 N.J.Super. 126, 134 (N.J. App. Div. 2001) (seeking same-sex partner's surname is not fraud on the public).

[12] *In re Cooperman*, reprinted in N.Y.L.J., Oct. 8, 1976, at 16 (judge denied feminist's request to change her surname to "Cooperperson" because it was, in the court's opinion, ridiculous); *In re Marriage of Banks*, 117 Cal. Rptr. 37, 42 (Cal. Ct. App. 1974) (denying a woman's requested restoration to maiden name as part of divorce because there were minor children of the marriage, without evidence of "substantial reason," was reversible); *In re Wurgler*, 844 N.E.2d 919, 920–22 (Ohio Com. Pl. 2005) (granting petitioner's request to change his first name to Sacco, after a famous anarchist, and his surname to Vandal, after, in the words of the magistrate judge who initially denied the application, "a Germanic tribe known for the destruction and sacking of Rome"); *In re Cesar*, 997 N.Y.S.2d 589, 589–90 (N.Y. App. Term 2014) (overturning lower court denial of undocumented immigrant's name change because of potential risk of "fraud and confusion," finding lawful immigration status was not a requirement for name change); *see also* Ellen Jean Dannin, *Note, Proposal for a Model Name Act*, 10 U. MICH. J.L. REFORM 153, 165 (1976) ("[i]n many cases in which a judge has denied a statutory name change, the decision seems to be based upon the judge's personal biases or lack of sensitivity to the petitioner's personal interests.").

e. Additional relevant name change laws.[13]

A separate Mississippi statute mandates that the State Board of Health shall be a respondent in all proceedings to change a surname when such person was born in Mississippi. Miss. Code Ann. § 41-57-23(1)(b). Because Appellant sought a name change, and because part of that name change included the surname, Appellant's Petition was brought under the dual authority of Miss. Code Ann. § 93-17-1(1) and Miss. Code Ann. § 41-57-23(1)(b).

2. The minor meets the criteria for a name change.

Since Mississippi's name change statute operates in conjunction with the common law standard for name change, for an adult to successfully change their name, the petitioner must meet the jurisdictional requirements of the statute and satisfy the common law requirements for a name change – (1) it is not done for any fraudulent purposes and (2) does not infringe on the rights of others. Given that at common law a person can name themselves any name, most name change actions brought pursuant to Miss. Code Ann. § 93-17-1(1) will be granted. Unless the petitioner fits one of these exceptions, there is no judicial discretion to reject a name change, and a judge must grant it.

Here, the Chancery Court's Order made clear S.M.-B. did not meet the exceptions by stating, "Petitioner has shown that he has not been convicted of a felony and the Petitioner has not filed this Petition to change his name for any unlawful purpose nor to commit fraud on any person. The Petitioner has never filed bankruptcy and there are no claims, demands, liabilities or obligations of any kind whatsoever against Petitioner that would be adversely affected [by] the

[13] Under Miss. Code Ann. § 47-5-145, no physically incarcerated person convicted of a crime has standing to file a change of name petition in Mississippi chancery court, which is irrelevant to this matter.

granting of this Petition." R. at 21-22. Petitioner would be entitled to a name change as an adult. Since Petitioner is a minor, we must review additional law.

3. The law on minor name changes.

a. Assigning and changing names occurs all the time without the Courts.

Though many states have rules for names on birth certificates, when parents in Mississippi pick a name for their child at birth, there are no such restrictions. The only Mississippi statutory provision on child names states,

> "If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father."

Miss. Code Ann. § 41-57-23(3) (2019).

Mississippi regulatory guidance is similarly limited to surnames, indicating:

> "This section details the conditions under which the father's name may be entered on the certificate, the specification of the child's name under each condition, and conditions under which the surname of the child may be different from either the father's surname or mother's surname if no father is listed. Traditionally a child assumes the legal surname of his or her father as listed on the birth certificate, or of the mother if no father is listed. When the surname given a child is not traditional, a notarized Name of Child form, witnessed by a hospital representative, signed by both parents or the mother if no father is listed, and filed with the birth certificate shall be required, but the certificate shall not be considered nor marked as having been amended."

15 Miss. Admin. Code Pt. 5, Subpt. 85, R. 3.3.1.

There is no similar statutory or regulatory language concerning the first or middle names given to a newborn. Mississippi has declined to enact *any* requirements for an infant's first or

middle name. The choice of the name to be given to the child is solely that of the parents without governmental input or interference.

Like naming a child at birth, there are other avenues to change a minor's name without court involvement. Though a parent may seek to change a child's name as part of a court-ordered paternity action, Miss. Code Ann. § 93-9-9(1), there is also a judicial bypass when parents are in agreement and the matter is uncontested: "upon application of both parents . . . of a sworn acknowledgement of paternity executed by both parents . . . upon the request of the parents for the legitimization of a child under this section, the surname of the child shall be changed on the certificate to that of the father." Miss. Code Ann. §93-9-9(3). In that uncontested fact pattern, the matter of the child's name never goes before a court. A joint request of both parents in a paternity action is processed through the Mississippi Department of Health ("MDH") and not the courts. Notably, this procedure is only utilized in an uncontested request to change the minor's surname.

Additionally, a minor may go through the administrative process for a surname change subsequent to marriage[14] through the Social Security Office. C.F.R. 20 §422.110 (2015); Soc. Sec. Program Operations Manual System, RM 10212.055. A person is not obligated to change their name after marriage, and there is no judicial review of whether a minor should elect to change their last name and adopt a married name. The Mississippi Driver Service Bureau will accept a marriage certificate to change a name on a driver's license or identification card.[15] The same is achieved through the same evidence with the Social Security Office. 8 U.S.C. § 1447(e). A person may change their name at naturalization and achievement of citizenship. *Id*. While naturalization

[14] The administrative process to change a name after marriage is a vestige of common law name change, and a court order changing a new spouse's name is not generally necessary to change government documents.

[15] *What Do I Need To Change My Name On My DL or I.D?*, available at www.driverservicebureau.dps.ms.gov/node/223.

law provides for a judicial grant of name change upon a "bona fide" request, there are no additional requirements for minors. Further, "case law reveals no record of a court denying an individual's name of choice in a naturalization proceeding." Cori Alonso-Yoder, *Making a Name for Themselves,* 74 Rutgers L. Rev. 911, 963 (Spring 2022).

In summary, minor name changes happen all the time without a court, including the name given at birth, a joint paternity action to change a surname through MDH, adopting a last name after marriage, and a name change via naturalization. Arguments that a chancellor always has discretion to weigh the child's best interests are undermined by the fact that names assigned at birth and many name changes for minors in Mississippi are not reviewed and have no court involvement. It would be consistent to only have judicial intervention in contested minor name change cases. These examples support a chancellor's lack of discretion in an uncontested minor name change.

b. The standard for a minor name change, when uncontested, does not consider the best interest of the child, and thus the name change should be granted in this uncontested matter.

The legislature did not choose to limit Miss. Code Ann. § 93-17-1(1) name change actions to only adult persons desiring to change their name. "Any person" clearly demonstrates the legislature's intent that the name change action be available to a minor child since a minor child is "any person." Since the statutory name change action supplements the common law, for a minor child to successfully change their name, the minor child must satisfy the statute and the common law requirements: (1) that it is not done for any fraudulent purposes; (2) does not infringe on the rights of others.

The minor name change case law in Mississippi almost exclusively relates to surnames and paternity. A single case on point describes the difference in treatment of a minor name change

when it is initially unopposed and later opposed. In the seminal case *Marshall,* a mother filed a name change petition for her minor child in the Chancery Court of Hinds County. *Marshall v. Marshall*, 230 Miss. 719 (1957). Seeing no opposition to this request, the judge granted the petition the same day, but ten days later rescinded his decree and directed the father be served by publication. *Id.* at 722. Once the father opposed the petition, the judge held a hearing to collect testimony regarding the petition and ultimately granted the name change again. *Id.* The Mississippi Supreme Court cited four cases from other states considering whether it was in a child's best interest to have their surname changed to that of their stepfather when their father opposed it. *Id.* at 725-729. Finding similar circumstances in the present case, the Court found that "the chancellor was not justified" in changing the minor's name and reversed the decision. *Id.* at 729.

To examine this case on a procedural level, a chancellor immediately granted a name change for a minor when it was unopposed; then when the petition was opposed, held a hearing to collect testimony and weigh the decision. The Supreme Court (not disagreeing with this process) did not agree with the chancellor's factual finding, identified it was not in the child's best interest for his name to be changed, and reversed.

As occurred in the *Marshall* case, an uncontested name change only proceeds to a best interest analysis if there is some contest or objection to the proceeding.

If there is no contest, the judicial authority to deny a minor name change remains limited to the two common law exceptions: (1) fraud and (2) interference with another's rights. That is, if the matter is uncontested, a minor name change is handled the same as an adult name change.

c. The standard for a minor name change, when contested, does consider the best interest of the child.

As for a contested minor name change, *Marshall* considered the best interest of the child to determine, in a contest between the mother's preferred surname and the father's preferred surname for the child, whether it was in the child's best interest to change from his biological and legal father's surname to his mother's and his stepfather's surname. *Marshall*, 93 So. 2d at 825. In this context of a contested minor surname change, the court predictably falls back on the best interest analysis as "the polestar consideration." *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983).

In a related minor surname law, the Mississippi Uniform Law on Paternity, it is appropriate to proceed to a best interest analysis in a contested surname change. Miss. Code § 93-9-9(1). Considering, the question of whether a best interest analysis must be conducted in all cases, the Mississippi Supreme Court stated: "[a]lthough the statute does not delineate those circumstances where the 'judgment specifies otherwise,' it is reasonable to conclude that those circumstances should be examined in light of the best interest of the child, if, and only if, this is a contested issue." *Rice v. Merkich*, 34 So. 3d 555, 557 (Miss. 2010). In *Rice*, Justice Lamar's dissent cited the *Marshall* case for the proposition "that a best-interest standard is applicable to a minor's name change when such a change is contested." *Id.* at 825, 827.

There are a few cases that demonstrate, as set forth in *Rice*, how the best-interest standard is only applied in contested paternity name change cases. *See generally Olson v. Bennett*, 271 So.3d 781 (Miss. Ct. App. 2018) (citing the best interest/preponderance of the evidence standard of *Rice* for a contested matter); *Powers v. Tiebauer*, 939 So.2d 749, 752 (Miss. 2005) (no best

interest consideration to change a child's surname in a paternity action when the challenger abandoned their claim, and mother's appeal was dismissed).

A single case examines a chancellor's denial of an uncontested minor name change under the paternity statute. The Mississippi Court of Appeals considered a denial of a name change to the father's surname in a custody contest with the maternal grandparents with physical custody of the child. *Flynn v. Bland*, 213 So. 3d 85, 87 (Miss. Ct. App. 2016). The Court of Appeals found "the record is clear the [grandparents] did not contest the change-of-name request" and overturned the denial of name change for the minor. *Flynn*, 213 So. 3d at 90. Because the matter was *uncontested*, it was appropriate to change the minor's surname to that of the father, and the judge's denial of that relief was reversible error. *Id.* at 85.

As for first and middle names, the case law is minimal. One appellate case considering a middle name was brought because a father petitioned to change his child's surname under the paternity statute and the trial court changed the child's surname while retaining the child's mother's surname as a middle name. The Mississippi Court of Appeals affirmed the judgment, including changing the middle name, in part because the father could not cite any authority addressing the circumstances under which a chancellor can change a child's middle name, and it was not found to be error. *Solangi v. Croney,* 118 So. 3d 173, 179 (Miss. Ct. App. 2013). Similarly, a chancellor retained the mother's surname as the child's middle name while changing a child's surname in a paternity action, though this was not challenged on appeal. *Powers*, 939 So.2d at 752.

There is no further Mississippi case law interpreting or providing any justification by which a court could overrule the parents' decision of what to name their child at birth, or what to change it to later in life.

The best interest factors are relevant when the trial court must decide, as between two parties, one of whom wants the child's surname to change and the other of whom seeks for the child's surname not to change, whether to change the child's name. Here, in an uncontested matter to change the child's surname, they are neither relevant nor necessary.

No Mississippi case law exists about an uncontested minor name change under the general name change statute Miss. Code § 93-17-1 (sometimes referred to herein as "general name change," "general name change statute," or simply "statutory name change") as we have here.

If a first or middle name is contested, a best interest analysis is appropriate. When there is no contest from any interested party, there is no opportunity for judicial discretion.

4. Related name change statutes confirm a court's lack of discretion in uncontested matters.

Statutes dealing with the same subject matter are to be interpreted together. Antonin Scalia & Bryan A. Gardner, *Reading Law* (2012) at 252. Statutory regimes for altering the names of minors in Mississippi fall into three categories: general name change, name change through adoption, and surname change through paternity suit.

In adoption proceedings, "[t]he court shall have the power to change the name of the child as a part of the adoption proceedings." Miss. Code Ann. § 93-17-3(4). There are no Mississippi cases examining the best interest of a chosen name for an adopted child, suggesting that chancellors do not exercise, or do not have, discretion to overrule one or two parents in an uncontested request to change their adopted child's name.[16] In fact, across the entire country there may be only one

[16] A finding that chancellors must have discretion to overrule parents in an uncontested general name change could logically lead to judges weighing whether a name change via adoption is in the child's best interest. Changing a first or last name after adoption is an ethically contested issue, which could lead to decisions based more on personal or social values about whether the specific name change is in the child's best interest, rather than deferring to parents. *See The Ethics of Renaming an Adopted Child*,

case considering this fact pattern. *In re the Adoption of Jon L.*, 218 W. Va. 489, 625 S.E.2d 251 (2005) (overturning denial of surname change in stepparent adoption).

Though they appear before the Court, names changed in an adoption proceeding are not subject to judicial discretion. A lack of discretion in adoption name changes further undermines any argument that chancellors always have discretion to determine the best interest of a minor's name change and supports a finding that judges do not have discretion to override parents for an uncontested, general minor name change.

Similarly, the Mississippi Uniform Law on Paternity is silent on standards for deciding a minor name change when the matter is contested or uncontested and states: "[i]n the event of court-determined paternity, the surname of the child shall be that of the father, unless the judgment specifies otherwise." Miss. Code Ann. § 93-9-9(1). "Although the statute does not delineate those circumstances where the 'judgment specifies otherwise,' it is reasonable to conclude that those circumstances should be examined in light of the best interest of the child, if, and only if, this is a contested issue." *Rice v. Merkich*, 34 So. 3d 555, 557 (Miss. 2010).

The same logic to filling in a gap in a paternity surname change statute applies to the general name change statute, i.e., a best interest analysis is used, if, and only if, this is a contested issue.

The chancery court erred by denying the minor's Petition to Change Name because it lacked discretion to do so when S.M.-B. meets the criteria for a name change, the Petition was uncontested, and both of S.M.-B.'s parents agreed with the Petition. That is reversible error.

Considering Adoption (June 14, 2024, 10:49 AM), available at https://consideringadoption.com/the-ethics-of-renaming-an-adopted-child/.

B. Even if it did have discretion over the minor name change, the chancery court nonetheless erred denying the minor's Petition to Change Name solely on the grounds that the minor was not mature while failing to make a determination of each *Albright* factor relating to whether the name change is in the minor's best interest.

In an uncontested name change matter the best interest of the child factors are not considered. However, even if the trial court engaged in a best interest analysis of whether the name change is in the minor's best interest, the factors all weigh towards granting the Petition.

1. The best interest factors.

The best-interest-of-the-child factors were created in the context of determining custody and are not all applicable in the contested name change context. The factors are: (1) age, health, and sex of the child; (2) which parent had "continuity of care prior to the separation"; (3) parenting skills; (4) willingness and capacity to provide primary child care; (5) both parents' employment responsibilities; (6) physical and mental health and age of the parents; (7) emotional ties between parent and child; (8) moral fitness; (9) "the home, school and community records of the child"; (10) the child's preference, if the child is at least twelve years old; (11) the stability of the home environment and employment of each parent; and (12) any "other factors relevant to the parent-child relationship" or the child's best interest. *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983).

2. The best interest factors all favor S.M.-B.'s name change.

The best interest of whether the name change is in S.M.-B.'s best interest was not weighed on the record or discussed off the record. To the extent this Court decides they may be relevant, we consider the factors in detail here.

(1) age, health, and sex of the child;

S.M.-B. is 17 years old, turning 18 in February of 2025, and especially mature for his age. S.M.-B. has scored a 28 on the ACT exam, taken under his current legal name. (M.-B. Decl. ¶ 5).[17] He currently lives away from his parents while attending the Mississippi School of the Arts, a residential high school in Brookhaven, Mississippi. (McKay Decl. ¶ 7); (M.-B. Decl. ¶ 1); (Booker Decl. ¶ 7). He is self-aware and knows who he is. S.M.-B. is seeking scholarships to begin college after he graduates. (M.-B. Decl. ¶ 5). He wants to learn to drive a car but has been waiting to get his driver's license until his name change is granted. (M.-B. Decl. ¶ 4). S.M.-B. is in excellent physical and mental health. (McKay Decl. ¶ 7); (M.-B. Decl. ¶ 10); (Booker Decl. ¶ 7). He and his family aver that he would be devastated and will continue to suffer emotional distress if his name change is denied. (M.-B. Decl. ¶ 13).

The Order denied S.M.-B.'s name change on this basis: "Chancellor determined in her discretion that the Petitioner should mature before name change would be determined by the Court." R. at 22. The sole finding used to deny the name change was maturity and considers only one third of one *Albright* factor. Moreover, age should not be elevated above all other factors. *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983) ("Age should carry no greater weight than other factors to be considered."); *see also S.S. v. S.H.*, 44 So.3d 1054, 1055 (Miss. App. 2010) (granting minor a surname change from her father's to her mother's surname, despite the father contesting the motion, and raising no issues on maturity). Here, the trial court's sole justification that the minor was not "mature" is therefore insufficient, in and of itself, to justify a denial of the minor's name change.

[17] As this appeal is proceeding pseudonymously, the declaration of the minor has been abbreviated to correspond to the initials used in the title of this case.

Furthermore, "maturity" is a vague and ill-defined standard which is impossible to meet, giving the parents no guidance or benchmark to know when the child has reached sufficient maturity to deserve a change to his name. "Maturity" also disregards the fact that Petitioner's parents agreed to and support the name change.

2-5: (2) which parent had "continuity of care prior to the separation"; (3) parenting skills; (4) willingness and capacity to provide primary child care; (5) both parents' employment responsibilities;

Factors two through five are all irrelevant to this name change inquiry.

6-7, 11: (6) physical and mental health and age of the parents; (7) emotional ties between parent and child; (11) the stability of the home environment and employment of each parent;

Monica and Michael are in good mental and physical health and emotionally stable. (McKay Decl. ¶ 4); (Booker Decl. ¶ 4). The parents share custody of S.M.-B. and coparent harmoniously. S.M.-B. has a loving, caring relationship with each of his parents. (Booker Decl. ¶ 4). He has strong emotional ties with his parents, who provide a stable home environment for him. (M.-B. Decl. ¶ 2). Monica, Michael, and S.M.-B.'s home lives are stable. (McKay Decl. ¶ 4); (M.-B. Decl. ¶ 2); (Booker Decl. ¶ 4).

The parents and S.M.-B. are in agreement as to what his first, middle, and last name should be. (Booker Decl. ¶ 5); (McKay Decl. ¶ 5).

(8) moral fitness;

The parents of the minor are morally fit and legally fit. There has been no judicial determination of unfitness which could countermand the parents' wishes as to the raising and naming of their child. (McKay Decl. ¶ 4); (Booker Decl. ¶ 4). The parents are united in their request

to change their child's name. Both parents believe it to be in their child's best interest to change his name, and as fit parents, they are within their rights to make that determination.

(9) "the home, school and community records of the child";

The minor is seeking to change his name to be the same as the name that he currently uses and is known by at home, school, and community. The minor has gone by the name R.B. since 8th grade and has now completed the 11th grade, being consistent in his name choice for the past three grades and three years. His name appeared on his school ID card as his chosen name, R.B. His friends, family, school, and community refer to him as R.B. (McKay Decl. ¶ 2, 5-7); (M.-B. Decl. ¶ 1, 6, 8-9); (Booker Decl. ¶ 2, 6-7).

Upon being called R.B., his parents Monica McKay and Michael Booker saw a big improvement in S.M.-B.'s schooling and social life. (McKay Decl. ¶ 6); (M.-B. Decl. ¶ 10-11); (Booker Decl. ¶ 6). S.M.-B. is excelling in academics.

(10) the child's preference, if the child is at least twelve years old;

The minor is 17 years old. He desires, with great fervor, to change his name to R.B. He does not want to delay any longer, and especially does not want to wait until he is 18 years old, until he is a senior in high school, or until he is sufficiently "mature" in the determination of the chancery court. (M.-B. Decl. ¶ 12).

S.M.-B. chose his first name because it is the name of a species of tree, and he loves nature. He chose it because it is a unique name, while also believing that it sounds traditional and humble. He felt that a more gender-neutral name than his name given at birth would fit him and his personality. (M.-B. Decl. ¶ 6).

S.M.-B. and his mother picked his middle name to be the same as his mother's. Especially since he requests removing his mother's maiden name from his hyphenated surname, he wanted to maintain a way to honor his mother and a connection to her in his name. (M.-B. Decl. ¶ 7).

S.M.-B.'s surname at birth was a hyphenate of his mother's maiden name and his father's surname. S.M.-B.'s mother does not use her maiden name or the hyphenated surname. He now prefers to use the same surname as his father, for simplicity. (M.-B. Decl. ¶ 7).

S.M.-B. wants to unify the name he uses in life with his legal name. He intends to keep the same name into adulthood. He requests the name change so that as a minor he may take standardized tests, get a driver's license, graduate and receive a high school diploma, apply for scholarships, and apply for and attend college, all using the name he uses in his day-to-day life. (M.-B. Decl. ¶ 4-5, 12-13).

(12) any "other factors relevant to the parent-child relationship" or the child's best interest;

The child and parents all seek to change the child's name, and Vital Records, the nominal "opposing" party is not opposed. There are simply no opposing parties or competing interests at stake.

As it relates to S.M.-B.'s first and middle name, there are no established criteria to consider in Mississippi case law. However, if we consider the same, best-interest factors above, the continued legal use of his current first and middle name adversely affects his physical and mental welfare. He so far manages the confusion and embarrassment of having a different name from his legal name but greatly wishes the dichotomy to end, and he will not be confused or embarrassed by the first and middle name he has chosen for himself with his parents' guidance. S.M.-B. and his family especially fear the potential for confusion and embarrassment the longer he retains this legal name separate from the name he uses in everyday life. The opportunity for confusion grows

as he takes standardized tests, gets a driver's license, graduates and receives a high school diploma, applies for scholarships, and applies for and attends college. The likelihood for embarrassment only grows the longer he is made to wait to change his name and until he can unify the name he uses and his legal name.

Even if the trial court may consider the best interest factors, they weighed exclusively towards granting the name change in the Petition. Petitioners win on every applicable *Albright* factor. If the best interest factors are determined to be legally relevant in this case, the Petition should be granted.

C. If the *Albright* factors should have been weighed in an uncontested minor name change, the chancellor abused her discretion by making a single determination of immaturity to justify the denial, failing to weigh the *Albright* factors, and the decision goes against all the evidence.

"'Abuse of discretion is found when the reviewing court has a "definite and firm" conviction that the below court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors.'" *Wayne County School District v. Quitman School District*, 346 So.3d 853, 857 (Miss. 2022) (internal citations omitted). "'[I]f the chancellors' findings are unsupported by substantial credible evidence, [the appellate court] must reverse.'" *Id.* (internal citations omitted).

The Chancery Court's Order stated, "Petitioner has shown that he has not been convicted of a felony and the Petitioner has not filed this Petition to change his name for any unlawful purpose nor to commit fraud on any person. The Petitioner has never filed bankruptcy and there are no claims, demands, liabilities or obligations of any kind whatsoever against Petitioner that would be adversely affected [by] the granting of this Petition." R. at 21-22. It further stated, "Chancellor determined in her discretion that the Petitioner should mature before name change would be determined by the Court." R. at 22.

Here, the chancellor abused her discretion by finding that the minor met the criteria for a name change, yet resting her denial of the uncontested minor name change solely upon on the grounds that the minor was not mature. If the basis of "maturity" is considered a finding, this is reversible because this finding of fact is not supported by any evidence, which indicated that the minor is mature for his age. There is nothing in the record to support a finding that the child is not mature or is not mature enough to merit a name change. To the extent that there were any other justifications considered, the trial court provided none to support its denial. Denying the name change on a single, unsupported determination of "maturity" was therefore an abuse of discretion.

Furthermore, parents are presumed to act in their child's best interest because "[t]he law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Brownlee v. Powell*, 368 So. 3d 1268, 1274 (Miss. 2023) (citing *Troxel v. Granville*, 530 U.S. 57, 69 (2000)). Courts at times may pierce this parental control when the parents disagree, and it is the job of the court to act in loco parentis to make a determination of what is in the child's best interest. Here there is no such disagreement.

The parents here, Monica McKay and Michael Booker, are unquestionably fit. (McKay Decl. ¶ 4); (Booker Decl. ¶ 4). Both of the parents here want to change their child's name. They overcome any maturity deficit of their child in decisions about him, and also benefit from a presumption that they act in the best interest of their child. In these circumstances, a chancellor has no legal authority to overturn the parents' and child's decision of the child's name.

If an *Albright* determination is required, the chancellor further abused her discretion by failing to make a determination of each *Albright* factor of whether the name change was in the

child's best interest. As described above, a weighing of the best interest factors for S.M.-B. show that every factor weighs in his favor. Denying the name change, without an on-the-record *Albright* determination, was an abuse of discretion and reversible error.

Where the decision of the trial court is a matter of discretion, it may nonetheless be overturned if the finding was an abuse of discretion. Even if the chancellor had discretion to deny the name change, such discretion is not unbridled, is not unassailable, and it must be justified. Here the chancellor's decision was an abuse of discretion because it was based on no evidence.

CONCLUSION

For all these reasons, Petitioner respectfully asks that this Court render a judgment in their favor and GRANT the Petition for Name Change.

Addendum A

Reproduction of Mississippi Name Change Statute

1. Miss. Code 1848, Art. 2 §1

"Hereafter the circuit and chancery courts of the state shall have power, upon the application of any person within their respective jurisdictions, upon good reasons shown, to alter or change the name of such person."

2. Miss. Code 1857, Art. 41

"The circuit courts shall have power upon the petition of any person within their respective jurisdictions, to alter the name of such person."

3. Miss. Code 1871, §525

Same as 1857

4. Miss. Code 1880, §1830

"The circuit courts shall have power, upon the petition of any person within their respective jurisdictions, to alter the name of such person."

5. Miss. Code 1892, §492

"The chancery court shall have jurisdiction, upon the petition of any person, to alter the name of such person, to make legitimate any of his offspring not born in wedlock, and to decree said offspring to be an heir of the petitioner."

6. Miss. Code 1906, §542

Same as 1892

7. Miss. Code 1917 §299

Same as 1892

8. Miss. Code 1927, §299

Same as 1892

9. Miss. Code 1930, Art. 7 §313

Same as 1892

10. Miss. Code 1942, §1269

"The chancery court, or the chancellor in vacation, shall have jurisdiction upon the petition of any person to alter the name of such person, to make legitimate any of his offspring not born in wedlock, and to decree said offspring to be an heir of the petitioner."

11. Miss. 1955 Session Law,

Repealed 1942 Code §1269.

"The chancery court or the chancellor in vacation, of the county of the residence of the petitioners shall have jurisdiction upon the petition of any person to alter the names of such person."

12. Miss. Code 1972, §93-17-1

"The chancery court or the chancellor in vacation, of the county of the residence of the petitioners shall have jurisdiction upon the petition of any person to alter the names of such person, to make legitimate any living offspring of the petitioner not born in wedlock, and to decree said offspring to be an heir of the petitioner.

THIS the 26th day of July, 2024.

Respectfully submitted,

/s:/ Joshua Tom
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Counsel for Appellant S.M.-B., A Minor, By and Through Monica Lee McKay, Natural Mother and Next Friend.

CERTIFICATE OF SERVICE

I, Joshua Tom, hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record on this 26th day of July 2024.

A true and correct copy has also been sent by U.S. Mail to the Honorable Judge Tametrice E. Hodges, P.O. Box 686, Jackson Mississippi 39205 on this 26th day of July, of 2024.

/s/ Joshua Tom
Joshua Tom, MSB No. 105392

Counsel for Appellant