

TABLE OF CONTENTS

	<u>Page(s)</u>
Table of Authorities.....	ii
Arguments.....	1
I. <u>THE COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE ADDITION OF THE MOTHER’S NAME TO THE CHILD’S NAME IN A HYPHENATED FASHION OVER THE OBJECTION OF THE FATHER.</u>	
A. It is in Nathan Marion Foster-Soliday’s best interest to have his name remain the same as it is legally known pursuant to the District Court Order dated August 11, 2010.	
II. <u>THE COURT FOUND THAT RESPONDENT PRESENTED CLEAR AND COMPELLING EVIDENCE THAT ADDING THE MOTHER’S MAIDEN NAME TO THE CHILD’S NAME WAS IN THE CHILD’S BEST INTEREST</u>	
Conclusion.....	7

TABLE OF AUTHORITIES

CASES

PAGES

LaChapelle v. Mitten, 607 N.W. 2d 151 (Minn. Ct. App. 2000).....4

Robinson v. Hansel, 302 Minn. 34, 223 N.W. 2d 138 (Minn. 1974).....2,3

In Re Application of Saxton, 309 N.W.2d 298 (Minn. 1981), cert denied,
455 U.S. 1034, 102 S. Ct. 1737, 72 L.Ed.2d 152 (1982).....2,3,4

MINNESOTA STATUTES

Minn. Stat. § 259(10).....1

Minn. Stat. § 259(11).....1

Minn. Stat. § 259(13).....1

LEGAL ARGUMENT

I. THE COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE ADDITION OF THE MOTHER'S NAME TO THE CHILD'S NAME IN A HYPHENATED FASHION OVER THE OBJECTION OF THE FATHER

The District Court found that Respondent met the procedural requirements of Minn. Stat. sec. 259.10. for requesting a name change for the minor child. If the procedural requirements are met, the Court shall grant an application to change the minor child's name change unless, "(1) it finds that there is an intent to defraud or mislead; (2) section 259.13 [regarding persons with felony convictions seeking a name change] prohibits granting the name change; or (3) in the case of the change of a minor child's name, the court finds that such name change is not in the best interests of the child." Minn. Stat. sec. 259.11 (emphasis added). Thus, the burden is on the party opposing the name change to show the proposed name is not in the child's best interest.

Appellant argues that the District Court erred in not honoring his wishes in regards to opposing the minor child's name change. He also argues that the court did not have clear and compelling evidence to support a change in the surname of the child. Although Appellant disagrees with the Court's decision, Appellant fails to show that the Court abused its wide discretion in these types of matters, given the fact that the proper legal standard was applied and there were express findings about each and every factor outlined in the controlling law. Respondent was not asking the Court to change the child's surname, leaving out his natural tie to his father's name, Foster. Rather, she was

seeking to change the minor child's name to a hyphenated name that would include both his given surname as well as her maiden name, Soliday, by which she is now known.

A. It is not in Nathan Marion Foster's best interest to retain solely the surname of his natural father. Rather, it is in his best interest to have a hyphenated name that reflects both his mother and his father's surnames.

The controlling law on this issue is outlined in In Re Application of Saxton, 209 N.W. 2d 298, 301 (Minn. 1981). To determine the child's best interests as they relate to a proposed name change, the Court weighs several factors and must set forth specific reasons based on these factors for granting or denying the application to change the minor child's surname. Id. at 301.

The *Saxton* case involved a mother desiring to change her children's surname to include her maiden name. Saxton, supra 300. In a divided opinion, the supreme court referred to the clear and compelling standard from Robinson v. Hansel, 302 Minn. 34, 223 N.W.2d 138 (1974) and held that the district court properly relied on *Robinson* to deny the mother's petition. But, the supreme court went on to state that *Saxton* presented an opportunity to elucidate its decision in *Robinson*. Id. at 301. The court then held that a petition to change a child's surname should be granted only when the name change served the child's best interests and listed the five factors to be considered in making this decision. Id. The court said that in weighing these factors, the district court should make findings explaining its decisions. Id. The District Court in this case made specific

findings as to each and every factor outlined in the *Saxton* case and thereby satisfied the clear and compelling evidence standard as defined in *Robinson*.

In the instant case, the minor child was given the surname Foster because that is the name of the family unit that he was born into. There was a marriage and both of his parents shared in his given surname. Shortly after Nathan's birth, under circumstances that were never contemplated by Respondent, Appellant filed for dissolution of marriage. Thereafter, Respondent requested that her maiden name, the name she is legally known by now, Soliday, be added to Nathan's name to reflect his dual parentage. Whatever "tradition" may lie in a child carrying on his father's name rather than his mother's is related to "tradition" of marriage which traditionally involves the entire family sharing a name. The traditional family unit was dissolved shortly after Nathan's birth and the District Court agreed with Respondent that Nathan's name should reflect his dual parentage.

Appellant argues that the parties agreed at birth to have their child bear the Foster surname. The District Court found that though they decided this at birth, it does not negate the right to apply for a name change thereafter. See Order filed August 11, 2010 at Finding 24. The circumstances of their marital relationship dissolving were not contemplated at the time of Nathan's birth or there would not have been an agreement for Nathan to bear the surname Foster. (App. 61-62) The District Court found that the evidence presented by Appellant at trial was not enough to overcome the burden of

opposing the name change of the minor child and Appellant did not establish that it was not in the child's best interest to change his name to Nathan Marion Soliday-Foster.

II. THE COURT FOUND THAT RESPONDENT PRESENTED CLEAR AND COMPELLING EVIDENCE THAT ADDING THE MOTHER'S MAIDEN NAME TO THE CHILD'S NAME WAS IN THE CHILD'S BEST INTEREST

In determining the child's best interests in such a dispute, the Court is guided by the following factors: (1) how long the child has had the current name; (2) any potential harassment or embarrassment the change might cause; (3) the child's preference; (4) the effect of the change on the child's relationship with each parent; (5) the degree of community respect associated with the child's present and proposed names. LaChapelle v. Mitten, 607 N.W.2d 151, 166 (Minn. App. 2000). *In re Saxton*, at 301. The court addressed each of these issues directly.

1. How long the child has had the current name:

Nathan has not had his current name a sufficient amount of time such that any change would affect him. As an infant, he is not cognizant of such matters. At the time the Order was issued, Nathan was seventeen months of age.

2. Any potential harassment or embarrassment the change might cause;

There is not a preponderance of evidence that Nathan will suffer harassment or embarrassment later in life whether his surname is Foster or Soliday-Foster. Although it has been traditional in this country for a child to carry his father's surname, there is no longer a "typical" American family and thus, one's surname

cannot be regarded as a presumptive indication of paternal heritage. The high incidence of divorce and women resuming use of their maiden names has resulted in many children having names that differ from one parent or the other. The prevalence of blended families has made the cohabitation of children with different surnames unremarkable. The Court found at Finding 12 that “a hyphenated surname does not carry the “baggage” Mr. Foster envisions.”

3. The child’s preference;

The District Court noted in Finding 17 that the child was too young to express a preference. Further, in Finding 25, the Court specifically noted that Nathan has every right to change his name to whatever he would like when he has reached the age of majority.

4. The effect of the change on the child’s relationship with each parent;

Petitioner has not asserted that his establishing a positive relationship with the child is in any way affected by the child’s name. The child is not yet old enough to know what his surname is, so making this change now will not affect the relationship between either parent and the child.

With the last name “Soliday-Foster”, Nathan may continue to enjoy the sense of belonging in the nuclear family in which he is reared as well as the family consisting of his maternal grandparents and his maternal family with whom he is very bonded. The Soliday family has consistently been involved in Nathan’s life from birth and will continue to be. Respondent testified that she will keep her

maiden name even should she choose to remarry (App. 61), so that she and the minor child will share a common surname.

There was no evidence presented that changing Nathan's name will affect his relationship with Petitioner. Petitioner will have almost equal parenting time as Respondent and be the child's father regardless of Nathan's surname. Considering that Nathan is still an infant/toddler, each parent is in the process of establishing their respective bonds with him. Nathan's very young age differentiates this case from situations where parents seek to change a child's name after the child has awareness of his surname, comprehension of its implications and established parental relationships or lack thereof.

Appellant argues that he presented evidence that it was not in his son's best interest to have his name changed. Rather, at trial, he came up with notions about embarrassment and harassment that he may potentially suffer from without any solid basis for making those arguments. He stated that he did not have the opportunity to know children with hyphenated names. (App. 22-23) Appellant stated himself that both he and Respondent have a significant bond with Nathan and that neither of their relationships would change with him if his last name were changed, as it was decided in this case. (App. 15-16)

5. The degree of community respect associated with the child's present and proposed names.

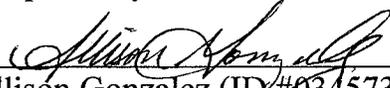
As evidenced by the trial court transcript, there are no extended Foster family members in Minnesota. (Order at Finding 21). On the contrary, Respondent presented evidence that the Soliday family name is widely recognized in the south metro, where Nathan spends a lot of time with the extended Soliday family. There are uncles and aunts and cousins and grandparents that are very bonded with Nathan and he will benefit from having Soliday as part of his name as it is well known in the community where he spends much of his time. (App. 63-64).

CONCLUSION

Considering all the requisite best interest factors, it was the decision of the District Court that the minor child's name should be changed to Nathan Marion Soliday-Foster. Nathan has an established relationship with each of his parents, Todd Allen Foster and Jennifer Elizabeth Soliday, as they are legally known today. Nathans best interests will be served if he is able to identify with both of the households that he is being raised in. Respondent respectfully requests that the Judgment of the District Court be affirmed.

Dated: January 10, 2011

Respectfully submitted:


Allison Gonzalez (ID #0345738)
ATTORNEY FOR RESPONDENT
1660 Highway 100 South, Suite 318
Minneapolis, MN 55416
Telephone: 763-746-4045