

STATE OF MICHIGAN
COURT OF APPEALS

In re NAME CHANGE OF ALLAN SQ PEARSON.

ALLAN SQ PEARSON,

Petitioner-Appellant.

UNPUBLISHED
March 25, 2021

No. 352377
Wayne Circuit Court
LC No. 19-104031-NC

Before: LETICA, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Petitioner appeals by leave granted¹ the trial court’s order denying his petition to change his legal name, as well as the trial court’s denial of his motion for reconsideration. We conclude that the trial court abused its discretion in its initial handling of the petition and reverse on that ground.

I. FACTUAL BACKGROUND

On April 4, 2019, petitioner filed a petition requesting the trial court issue an order changing his legal name from “Allan SQ Pearson” to “Allan SQ White.” Petitioner stated in his petition that he wanted to change his legal name to the name that he had actually used for the majority of his life. Notably, the petition required petitioner to make a number of affirmations to the trial court. One of these affirmations stated, “[t]he following person(s) seeking a name change has/have a criminal record.” Petitioner left this affirmation blank.

A hearing was held on the petition on July 11, 2019. At the hearing, the trial court noted that petitioner had a criminal record; as such, the trial court explained, “a person with a criminal record is presumed to be requesting a name change for a fraudulent purpose, and that’s the reason why the Court has the questions on the petition for a name change.” When asked why he failed to

¹ *In re Pearson*, unpublished order of the Court of Appeals, entered July 8, 2020 (Docket No. 352377).

note his criminal record in the petition, petitioner explained that he thought he completed the petition correctly, and noted “if I need to do some additional [sic] I’m willing to do so.” The trial court responded that if it thought amending the petition would make a difference, it would allow petitioner to do so, but that it was not in a position to grant petitioner a name change on the basis of his criminal record. The following exchange then occurred:

[Petitioner]: Your Honor, may I speak?

The Court: Yes.

[Petitioner]: I’m trying to get my [commercial driver’s license (CDL)]. Secretary of State said my birth certificate must match my driver’s license. You know it’s just a matter of I’m trying to get employment.

The trial court responded that it understood, but that petitioner could not overcome the presumption of fraudulent intent created by the statute on the basis of his criminal record. The trial court thereafter issued an order denying the petition.

II. ANALYSIS

Petitioner argues the trial court abused its discretion when it denied his petition to change his legal name because he did, in fact, overcome the presumption of a fraudulent purpose. We agree.

We review a trial court’s decision on a petition for a legal name change under MCL 711.1 for an abuse of discretion. *In re Warshefski*, 331 Mich App 83, 90; 951 NW2d 90 (2020) (citation omitted). “An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes.” *Rettig v Rettig*, 322 Mich App 750, 754; 912 NW2d 877 (2018) (citation and quotation omitted). The trial court also abuses its discretion when it makes a decision on the basis of an error of law. See *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016). We review de novo issues of statutory interpretation. *Nason v State Employees’ Retirement Sys*, 290 Mich App 416, 424; 801 NW2d 889 (2010).

“In Michigan, as in most states, a statute authorizes procedures by which a court can, upon petition, change the name of any person.” *In re Warshefski*, 331 Mich App 83, 93; 951 NW2d 90 (2020) (quotation marks and citation omitted). The statute provides:

(1) The family division of the circuit court for a county may enter an order to change the name of an individual who has been a resident of the county for not less than 1 year and who in accordance with subsection (2) petitions in writing to the court for that purpose showing a sufficient reason for the proposed change and that the change is not sought with a fraudulent intent. If the individual who petitions for a name change has a criminal record, the individual is presumed to be seeking a name change with a fraudulent intent. The burden of proof is on a petitioner who has a criminal record to rebut the presumption. [MCL 711.1(1).]

The statute further provides, individuals 22 years of age or older² who petition to change their name “shall have 2 complete sets of his or her fingerprints taken at a local police agency.” MCL 711.1(2).

The fingerprints, along with a copy of the petition and the required processing fees, must be forwarded to the department of state police. The department of state police shall compare those fingerprints with its records and shall forward a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the petition is filed the information contained in the department's records with respect to any pending charges against the petitioner or a record of conviction of the petitioner and shall report to the court similar information obtained from the Federal Bureau of Investigation. . . . The court shall not act upon the petition for a name change until the department of state police reports the information required by this subsection to the court. [MCL 711.1(2).]

In this case, the trial court was correct in applying the statutory presumption of fraudulent intent to petitioner on the basis of his criminal record. See MCL 711.1(1). However, we note that petitioner—unrepresented by counsel—at the very least attempted to rebut the presumption at the hearing on his petition when he clarified that the purpose for his petition was that he wanted to get his CDL in order to gain employment, and that he could not do so without changing his name because the name on his birth certificate—Allan SQ Pearson—did not match the name on his driver's license—Allan SQ White.³ This seems like a particularly valid reason to request a name change and a sufficient rebuttal of the presumption of fraudulent intent.⁴

As noted, the presumption certainly existed in this case, but the presumption may be rebutted. The trial court seems to have ignored that idea. Without further explanation or inquiry into petitioner's rebuttal of the presumption, the court appears to have simply concluded that the nature and length of appellant's criminal history was an absolute bar to his petition. We note, however, that while the trial court specifically referenced the length of petitioner's criminal record and the fact that some crimes appeared to involve elements of dishonesty in reaching its conclusion, the relevant statute does not indicate that an individual with certain types of

² Petitioner was approximately 74 years old at the time of his petition.

³ For clarity, we note that petitioner explained in his subsequent motion for reconsideration that he was born Allan SQ Pearson, but that his mother formally changed his last name to White when he was four years old. Petitioner avers that he has gone by that name since that time, which is corroborated by both the statements in his petition and his criminal record.

⁴ Noting that the burden of proof is on petitioner to overcome the presumption, MCL 711.1(1), one might argue that petitioner failed to produce evidence to support his claim concerning the CDL. However, we think it at least worth considering that petitioner was not represented by counsel, and that he was neither asked to present nor otherwise afforded an opportunity to present such evidence. The trial court did not inquire into petitioner's claim whatsoever.

convictions or with a certain number of convictions are absolutely barred from changing their name. See MCL 711.1.

Perhaps most importantly, however, we note that the trial court explicitly acknowledged that petitioner's entire criminal history was linked to the name he sought to legally assume.⁵ That is, it would appear that petitioner's proposed name change would make it more difficult—not easier—for petitioner's criminal history to be concealed. In light of that fact, as well as the genuinely reasonable explanation petitioner provided as a basis for his petition, we are left wondering what fraud the trial court thought that petitioner might have been attempting to perpetrate.⁶

In light of all of the above, we conclude that petitioner properly rebutted the presumption that his petition was filed with fraudulent intent, and that it was outside the range of principled outcomes for the trial court to—in essence—ignore that rebuttal and conclude that it was nonetheless bound by the presumption to deny petitioner's request. We note that this is particularly true under the specific facts of this case because the very name petitioner sought to assume was more closely associated with his criminal record than the name on his birth certificate, which is a fact the trial court should have known upon review of petitioner's criminal record, and which further dispensed with any reasonable concerns the court may have had about the possibility of fraud.⁷

⁵ Admittedly, the trial court noted that petitioner's criminal record was linked to a number of aliases. However, the overwhelming majority of these aliases appear to be varied spellings of the same name: Allan White.

⁶ On reconsideration, it became evident that the trial court believed that petitioner attempted to defraud the court by (1) failing to acknowledge his criminal record in his petition, and (2) thereafter submitting a "false copy" of the petition that did acknowledge his record as an attachment to his motion for reconsideration. First, we see nothing in the record to suggest that petitioner was being dishonest at the hearing on the petition when he stated that he believed he had filled out the petition correctly. We think this to be particularly true in light of the fact that petitioner was required, and did, submit to fingerprinting with the local police for the very purpose of investigating his record in the context of his petition. Additionally, the trial court did not explain what appeared to be fraudulent about the additional petition filed with the motion for reconsideration, and we think it equally likely that petitioner's submission of the same might have been petitioner's attempt as a lay person to correct his initial error. Finally, and as noted above, it seems illogical to conclude that petitioner was attempting to defraud the court or conceal his criminal history when the very name he sought to assume was so closely associated with that history.

⁷ In light of our conclusion that the trial court's initial determination on the petition constituted an abuse of discretion, we need not address petitioner's alternative argument related to his motion for reconsideration.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood