UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2108

September Term, 2016

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ANNE MARIE PAUL

v.

PIERRE GERALD

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Reed,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: July 21, 2017

Appellant Anne Marie Paul, the biological mother of Christian Gabriel, a minor child, appealed an Order by the Honorable Toni E. Clarke of the Circuit Court for Prince George's County, dated November 2, 2016, which changed the minor child's legal name from "Christian Gabriel Paul" to "Christian Gabriel Paul-Gerald." The name change, requested by Appellee Pierre Gerald, the child's biological father, added the appellee's surname to the child's legal name. On appeal, the appellant raised a single question for our review, which we have separated into two and rephrased:[1]

1. Did the trial court err in granting a change of name of the minor child, where the notice and publication requirements of Maryland Rule 15-901 were never met?

2. Did the trial court abuse its discretion and fail to make factual findings concerning the best interests of the child when the trial court changed the minor's surname?

For the following reasons, we answer both questions in the affirmative. Therefore, we vacate the circuit court's order and remand the case for further proceedings not inconsistent with this opinion.

## FACTUAL AND PROCEDURAL BACKGROUND

The minor child of the parties, Christian Gabriel Paul, was born on October 25, 2011. His name appeared as such on the birth certificate. Appellee Pierre Gerald was not present at the minor child's birth, and the appellee's name was not included on the child's birth certificate. The parties were never married to each other. In December 2011,

[1] The appellant presented the following question: "Did the trial court err in granting a change of name of the minor child, where the publication requirement of Rule 15-901 was never met, and no factual findings concerning the best interests of the child were made?"

Appellant Anne Marie Paul filed a complaint for genetic testing to establish paternity, custody, visitation, and child support. Paternity was established on May 18, 2012. By June 2012, the parties were in conflict over custody and visitation. On June 14, 2014, a Pendente Lite Hearing was held before the Honorable Toni E. Clarke of the Circuit Court for Prince George's County. After a two day settlement conference before the Honorable Marvin S. Kaminetz, the circuit court signed a Consent Order for Custody, Child Support, and Visitation on August 27, 2012. Pursuant to the Order, the parties agreed to share legal and physical custody of the minor, and the appellee agreed to pay monthly child support payments to the appellant.

The appellant made several attempts to modify or strike the August 2012 Consent Order over the course of the following year, during which time the appellee was repeatedly denied access to the child. In response to the appellant's actions, the appellee filed a Motion to Modify the Consent Order based on denial of visitation. On October 15, 2013, and November 25, 2013, Judge Clarke heard testimony on the parties' cross motions to modify. The court took the matter under advisement and scheduled its oral ruling to be held on March 21, 2014.

On January 27, 2014, the appellee filed a Petition for Change of Name, seeking to change the minor child's name from "Christian Gabriel Paul" to "Christian Gabriel Gerald" to reflect that the appellee is the child's biological father. In his petition, which he stated was filed pursuant to Maryland Rule 15-901, the appellee contended that

> [t]he minor child is of tender years (2 years old) and has a relationship with the [appellee], his father. As such, [appellee]

> believes that it is in the best interest of the minor child that his name be changed to CHRISTIAN GABRIEL GERALD.
>
> That it is in the best interest of the minor child's mental and emotional health, self-esteem and self-worth for his name to be changed to reflect his biological father's surname of GERALD.

The appellant filed her Amended Motion Opposing Petition for Name Change on January 30, 2014. She noted that she had given the child her surname because the appellee originally denied paternity at the time of the child's birth. The appellant's answer also pointed to the fact that the minor child identified with the surname "Paul" at school, and that the child's relationship with the appellee had not been negatively affected because of his different surname. Further, the appellant contended that the appellee, in his Petition for Change of Name, brought forth "no credible evidence for the court to deduce that a name change would be in the best interests of the minor child."

On March 21, 2014, the trial court rendered its oral decision concerning the hearing that occurred on October 15, 2013, and November 25, 2013. Judge Clarke acknowledged that the appellee's Petition for Change of Name was filed after the close of evidence on November 25, 2013, and questioned whether the appellee had followed the proper filing procedures. Judge Clarke did not make a ruling on the name change petition, and the Order of Court based on the oral disposition, dated May 23, 2014, pertains exclusively to custody and visitation rights.

The case came again before the circuit court on October 25, 2016, for hearing on a motion brought by the appellee to modify the May 23, 2014, Order of Court. The appellee sought to extend the existing visitation schedule until the child entered kindergarten. The

majority of the hearing focused on whether the child was physically and mentally ready to enter kindergarten. At the close of the evidentiary stage of the hearing, the court ruled that it was changing the surname of the child. The trial court asked the appellee his preference for the child's name and accepted the proposal of "Christian Gabriel Paul-Gerald."

On November 2, 2016, the trial court signed an Order of Court concerning custody and visitation, which includes a line changing the minor child's name to "Christian Gabriel Paul-Gerald." On December 1, 2016, the appellant filed a timely Notice of Appeal. On December 30, 2016, the appellee filed a Motion to Alter or Amend, requesting that the trial court make findings of fact concerning the name change of the minor child.

## DISCUSSION

### Standard of Review

"Where the order of a trial court following a bench trial involves an interpretation and application of statutory and case law, the appellate court must determine whether the lower court's conclusions are legally correct under a de novo standard of review." *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535 (2008), *cert. denied*, 406 Md. 444.

Under Maryland Rule 8-131(c), in reviewing an appeal from a judgment entered following a bench trial,

> the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Where a trial court has failed to make findings of fact which support its ultimate decision to change the surname of the minor child, the trial court has abused its discretion. *Schroeder v. Broadfoot*, 142 Md. App. 569, 583 (2002).

### *i. The Notice and Publication Requirements of Maryland Rule 15-901*

#### A. The Parties' Contentions

The appellant argues that the notice and publication requirements of Maryland Rule 15-901, which governs change of name cases, were not complied with in the appellee's Petition for Change of Name of the minor child. Therefore, the appellant contends that the Order of Court signed November 2, 2016, changing the child's name, must be vacated. The appellant notes that Rule 15-901 requires not only a clerk of the court to issue notice of a name change action, but also for that notice to be published in a county newspaper. She asserts that neither of these actions were taken in the present case. The appellant points to the emphasis that the Court of Appeals put on the importance of publishing a child's name change in *Hardy v. Hardy*, 269 Md. 412 (1973).[2] She argues that "*Hardy* makes it clear that in the case of a five year old child, it was inappropriate to ignore or waive the

[2] [W]e find it difficult to imagine a case which has as its purpose the change of an infant's name under [Rule 15-901] . . . where it would be proper to waive publication. As the court's function here was to determine what is in the best interests of [the child], it was improper to waive publication and thereby create a roadblock to possible avenues that could provide useful information on this subject.

*Hardy*, 269 Md. at 416.

publication requirement because of the need for all information relevant to the trial court's consideration of whether the change of name would be in the best interest of the child."

The appellee responds that the appellant's reliance on *Hardy* for the proposition that the publication requirement is indispensable in the case of a name change concerning a minor is misguided because *Hardy* is distinguishable from the present case. First, the appellant notes that, while the appellant in *Hardy* did not get notice to place any evidence on the record before his child's name was changed, the parties in this case were served with the Petition for Change of Name and an Opposition Motion with a signed affidavit. Second, he contends that, unlike the appellant in *Hardy*, both parties in this case "were present for argument at the hearing on the petition before the Circuit Court." Therefore, the appellee asserts, *Hardy* is not the standard the court should use.

Instead, the appellee argues that, because the Petition for Change of Name arose during a hearing involving issues of modification of custody and visitation involving the same parties, the trial court acted properly and in accordance with the court's ruling in *Lassiter-Geers v. Reichenbach*, 303 Md. 88, 92-93 (1985). The appellee asserts that *Lassiter* compels a finding that the trial court was within its jurisdiction to receive the Petition for Change of Name and the Opposition thereto in January 2014 and to rule on the name change at the October 25, 2016, hearing, without the parties having to comply with Maryland Rule 15-901. Therefore, the appellee concludes that the trial court did not abuse its discretion in hearing and ruling on the appellee's Petition.

**B. Analysis**

As the appellant correctly notes, Maryland Rule 15-901 governs the procedure to be followed in change of name cases. The Rule applies to all actions for a change of name "other than in connection with an adoption or divorce." Md. Rule 15-901(a). The Rule requires the filing of a petition and specifies the minimum contents of the petition, including: "the change of name desired; and all reasons for the requested name change." Md. Rule 15-901(c)(1)(C)-(D). Once a clerk of the court files the petition, the clerk is required to sign and issue a notice that contains the caption of the action, "describes the substance of the petition and the relief sought," and states the date by which an objection to the petition must be filed. Md. Rule 15-901(e)(1)(A)(B)(C).

Subsection (e)(2) requires the publication of notice:

> Unless the court on motion of the petition orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was filed at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

The Rule further allows for an objection to the petition under subsection (f), and states that "[a] person desiring a hearing shall so request in the objection or response under the heading, 'Request for Hearing.'" Subsection (g) allows for the court to rule with or without a hearing, "except that the court shall not deny the petition without a hearing if one was requested by the petitioner."

For the following reasons, we shall hold that the trial court erred by granting the appellee's Petition for Change of Name when the notification and publication requirements

of Maryland Rule 15-901 were not met. As such, the Order of Court changing the child's name must be vacated.

That the notification and publication procedures required by Maryland Rule 15-901 were not followed is quite apparent from the record. The Petition for Change of Name filed by the appellee does not include a motion to waive the publication requirement, as required by Rule 15-901(e)(2), nor is there any order of the court granting such a waiver. Further, a thorough review of the court docket reveals that notice was never issued as required by (e)(1), and that publication and the filing of publication by the appellant pursuant to (e)(2) were never completed. This procedural error was brought to the court's attention and acknowledged by Judge Clarke at the circuit court proceedings that occurred on March 21, 2014:

> [THE COURT]: So there's a motion that was filed subsequent to us being together and finishing up the evidence in this case, requesting the name change and an opposition to the request for the name change.
>
> * * *
>
> That's what I -- I have that in my notes. That there seems to be some dispute about the name change, and so I guess before I ask you all if you want to tell me anything else about that, is that still an issue?
>
> [Plaintiff's Counsel]: Your Honor, I'm sorry. My client does not agree that -- she filed opposition that the child's name should be changed at this juncture. *Moreover, there's a fundamental problem with that motion. I mean, the motion -- when you file a petition to change a child's name or change anybody's name, you have to comply with rules and procedures.*
>
> *That petition doesn't comply with any of those rules and procedures, so that is even a -- more of a problem.*

> THE COURT*: Well, that thought crossed my mind.*
>
> [Plaintiff's Counsel]: Thank you.
>
> THE COURT: *And certainly, I'll take a look at that, and if I agree with you, then I'll issue something saying you need to follow the rules . . . .*
>
> *But if there is a dispute, then I will take a look at what's been done, and my initial thought was, I don't really think that this is the proper procedures*, but I did not spend any time looking at it[.]

Despite the trial court's recognition that the proper procedures were not followed, the record reflects that no action was taken on the appellee's petition or the appellant's objections. The Order of Court, based on the oral disposition of March 2, 2014, makes no mention of the petition or the objection, nor does it contain an order for the appellee to comply with Rule 15-901.

Furthermore, we reject the appellee's argument that *Hardy* is not the proper publication standard to apply to this case. That the appellant received notice of the appellee's petition and quickly responded with a motion opposing the minor child's name change does not indicate that the publication requirement's functions were fulfilled. As explained in *Hardy*, "[t]he purpose of requiring publication is to apprise as many people as possible of the pendency of the petition so that anyone who reasonably wishes to offer relevant information to aid the court in performing its functions can do so." 269 Md. at

415. By serving the appellant's counsel with a copy of the Petition for Change of Name, the appellee did not satisfy this objective, which is essential to the court's ruling.[3]

The appellee further attempts to distinguish the present case from *Hardy* by asserting that both parties in this case "were present for argument at the hearing on the petition before the circuit court." The appellee is mistaken on this point. A hearing actually was held in *Hardy*, but we vacated the lower court's decree granting the name change in that case because the proper publication of notice was not made. *Id.* at 416–18. In the present case, the circuit court never held a hearing on the petition for the name change, despite the fact that the appellee officially requested a hearing on the matter in his petition in accordance with Rule 15-901(2)(f). The court's failure to hold a hearing, however, did not violate subsection (2)(g) of the Rule because that subsection only applies to denials, not grants: "[T]he court shall not *deny* the petition without a hearing if one was requested by the petitioner." Md. Rule 15-901(2)(g) (emphasis added). While the name change dispute was discussed during the custody and visitation hearing held on March 21, 2014, that discussion was brief and did not render the notice and publication requirements

[3] *See Hardy*, 269 Md. at 418:

> On remand the court may reach the same conclusion, but at least it will be grounded upon evidence gained from any witnesses who, having obtained knowledge of the pendency of the petition through the notice contemplated by Rule [15-901], have come forward to provide the court with relevant information concerning what is in the best interests of the child.

meaningless. For these reasons, the appellee's attempts to distinguish this case from *Hardy* based on a hearing on the name change petition fail.

Lastly, we are unpersuaded by the appellee's argument that, under *Lassiter-Geers v. Reichenbach*, the parties did not have to comply with the notice requirements of Rule 15-901 and, therefore, that the circuit court did not abuse its discretion in ruling on the Petition for Change of Name. In *Lassiter-Geers*, the Court of Appeals held that, when a court has assumed jurisdiction over an equitable action, ordinarily it will retain it for all purposes, determining all rights of the parties to the proceeding and deciding all issues raised by the subject matter of the dispute. 303 Md. at 92-93. Based on this holding, the appellee contends that "the trial court [in this case], sitting as a court of equity, was hearing issues regarding the custody and access of the minor child pursuant to Maryland Annotated Code, Family Law Section 1-201 (a) (5) and (6)."[4] While the appellee is correct in his assertion that the circuit court had jurisdiction to hear evidence regarding the name change petition, this is not the appellant's complaint. Rather, the appellant argues that the proper procedures under Rule 15-901 were not followed. That is an issue the Court of Appeals did not address in its *Lassiter* holding.

[4] The subsection to which the appellee refers does not exist. We assume the appellee meant Md. Code Ann., Fam. Law § 1-201 (b) (5) and (6): "(b) An equity court has jurisdiction over: . . . (5) custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance; (6) visitation of a child[.]"

For the aforementioned reasons, we hold that the trial court erred in granting a change of name of the minor child where the notice and publication requirements of Maryland Rule 15-901 were never met.

### *ii. Factual Findings Concerning the Best Interest of the Child*

#### A. The Parties' Contentions

The appellant contends that there is no evidence to support the circuit court's decision that the child's best interests will be served by adding his father's surname. Therefore, she asserts that the court's decision was an abuse of discretion. The appellant cites to *Lassister-Geers*, supra, *Lawrence v. Lawrence*, 72 Md. App. 472 (1988), and *Schroeder v. Broadfoot*, supra, as support for her assertion that, "where there has been no agreement between the parents as to the surname to be placed on the child's birth certificate, the trial court must apply a best interest standard to a request for a change of the child's surname." Specifically, she lists the eight factors identified in *Schroeder*[5] that courts should consider in deciding what surname will serve the best interests of the child:

> 1) the child's reasonable preference, if the child is of the age and maturity to express a meaningful preference; 2) the length of time the child has used any of the surnames being considered; 3) the effect that having one name or the other may have on the preservation and development of the child's mother-child and father-child relationships; 4) the identification of the child as a part of a family unit; 5) the embarrassment, difficulties, or harassment that may result from the child's use of a particular surname; 6) misconduct by one of the child's parents disparaging of that parent's surname; 7) failure of one of the child's parents to contribute to the child's

[5] The court in Schroeder acknowledged that several cases across jurisdictional lines have addressed the factors courts should consider. *See, e.g.*, *Keegan v. Gudhal*, 525 N.W.2d 695 (S.D. 1994); *In re Pizziconi*, 868 P.2d 1003 (1993).

> support or to maintain contact with the child; and 8) the degree of community good will or respect associated with a particular surname.

142 Md. App. at 588. The appellant argues that the trial court did not make findings of fact that might satisfy the *Schroeder* factors and, therefore, that there is insufficient evidence in the record from which such findings could be made.

The appellee argues that the trial court's ruling was grounded in the evidence and based on a proper consideration of the relevant *Schroeder* factors. He rejects the appellant's contention that there is insufficient evidence in the record from which the *Schroeder* findings could have been made. Because the court had the opportunity to hear from both parties and review documents during Pendente Lite hearings and the parties' various motions regarding custody and visitation, the appellee asserts that the court "had sufficient evidence to rule on the issue of name change after hearing arguments from both sides."

**B. Analysis**

As noted above, the appellee argues that the trial court properly applied the best interests standard when it made its ruling to change the minor child's surname. While we recognize that the court's discretion to determine what is in a child's best interest is broad,[6] we find that the reasons (or lack thereof) that the trial court gave for its decision reveal that its ruling was an abuse of discretion.

It is widely recognized that neither parent "has a superior right to determine the initial surname their child should bear." *Lassiter-Geers*, 303 Md. at 94. Rather, parents

[6] *Schroeder v. Broadfoot*, Md. App. at 582.

share the right to adopt any surname for their child they wish to adopt, "just as they determine what shall be a child's given name." *Id.* at 95. When parents do not agree on a child's surname at the time of birth, the court adopts a "pure best interest standard" under which "the court decides the issue without either party bearing a burden of proof[.]" *Schroeder*, Md. App. at 586.

The appellee cites to hearing transcripts as evidence that the court addressed the best interests of the child factors in making its name change ruling. However, each of the court's "best interest findings" to which the appellee refers were made in the context of resolving the issues of custody and visitation, not changing the child's name, as demonstrated by the following excerpt from the March 21, 2014, oral ruling:

> This Court has considered all of the evidence, particularly, assessing credibility of the witnesses and finding dad's evidence to be more credible, concludes that it is not in the best interest of the minor child to modify legal custody. The Court also concludes that the parties should continue to share physical custody.
>
> This Court concludes, based on the evidence, that the access for physical custody scheduled does need to be modified. *In considering all of the best interest factors for custody in this case*, the factors that this Court finds to have the most impact on the decision is that dad is more willing to share custody than mom is willing to share custody.
>
> The potential for maintaining natural family relations, and that is a factor that the court must consider, the Court is persuaded that mom's conduct causes the Court to be concerned that if mom had sole physical custody and control, dad might not have unfettered access, thus, not allowing the minor child to develop relations with dad and his side of the family.
>
> Material opportunities affecting the future of the minor child and the age of the minor child, which at this point, he's roughly two-and-a-half years old, and the geographical

> proximity of the parental home or lack of proximity, as it exists in this case, and certainly all other factors. The Court finds that these have more impact on the decision, but certainly all of the other factors the Court did consider and finds that, basically, they are kind of relatively even as it relates to the parties in this case.

(Emphasis added). The appellee cites to the above discourse as confirmation of the court's consideration of *Schroeder* factors (3) and (4).[7] However, the trial court made no connection between its findings and the propriety of changing the minor child's name. In fact, the transcript from the October 25, 2016, hearing demonstrates just the opposite: that the trial court did not make specific findings of fact relevant to whether a name change would be in the best interest of the child. As the following indicates, the trial judge mistakenly recalled that she had already decided the issue, and the only consideration before the court was whether the child's name would be changed to "Paul-Gerald" or "Gerald-Paul":

> THE COURT: All right. *So during this break you all can work on what name on that, but I mean, he's the father. So his name needs to get on [the birth certificate] somehow, but in any event -- and on the child's name.*
>
> [Plaintiff's counsel]:[8] Your Honor, I think she's a little confused as to what's supposed to take place.
>
> THE COURT: *Dad's name is to go on as father and the child's name is to reflect the father's name as well somehow.*

[7] "(3) [T]he effect that having one name or the other may have on the preservation and development of the child's mother-child and father-child relationships; (4) the identification of the child as a part of a family unit." 142 Md. App. at 588.

[8] The appellant changed counsel between the March 21, 2014, hearing and the October 25, 2016, hearing.

[Plaintiff's counsel]: *So there is a name change?*

[Defense counsel 1]: *Yes.*

[Plaintiff's counsel]: *Because she doesn't know of this*. That's what she's --

THE COURT: Well, I just --

[Defense counsel 2]: It's been --

[Plaintiff's counsel]: Well, I don't --

THE COURT: That's what we discussed quite a while ago.

[Defense counsel 2]: A long time ago with the prior counsel.

[Plaintiff's counsel]: The prior counsel is not here.

THE COURT: Well, I'm telling you that's what was inten[ded] all along.

[Plaintiff's counsel]: Okay. Because she doesn't see -- *there's no order that says that the child's name was changed so I think that's why she's getting confused.*

THE COURT: Well, if that's what you want them I'm prepared to do that. *But the question was how was the name going to appear . . . Paul-Gerald, Gerald-Paul, that was my recollection . . . [that] the only question was how was it going to appear.*

[Plaintiff's counsel]: Okay. So for the record the child's name will be changed to Paul-Gerald?

THE COURT: Well, that was --

[Defense counsel 1]: That's -- let's talk about.

THE COURT*: The question was whether it was Paul-Gerald, Gerald-Paul. I think there was like which name in which order, whatever*, but you know I presume[d] everybody would take -- you all would talk about that and take care of that.

[Plaintiff's counsel]: Didn't know about it. Sorry.

THE COURT: Because you weren't the attorney. I'm not blaming you. I'm just saying.

(Recess)

[Defense counsel 1]: Okay. And I guess the final issue if the Court is finished with the oral ruling, I guess it's the birth certificate and the name change issue. We can --

THE COURT: Well, you know, in terms of a motion for a name change, I see I have a courtesy copy of it. I didn't look in the court file to see if it's in there, *but I'm thinking that there's some things that have to be done that -- I don't know if they've been done. I think it has to be advertised and all that stuff.*

But I really thought and I have to go back and look at all my notes because I have a fairly thick file just for this case, but I seem to recall having a discussion about that that was going to happen. It was just a matter of whether, you know, whether it was Paul-Gerald or Gerald-Paul in terms of how the name would be actually put on the birth certificate.

[Defense counsel 1]: Yes, Your Honor. I think that was Mr. Gerald's understanding, but that is not Ms. Paul's understanding. So if we can either […] I think Mr. Gerald has to leave, if we can, I guess reserve on that issue to January, but keep the name change. I mean, we keep putting it off. I mean, it --

THE COURT: No. I'm not going to -- I don't need to hear anymore [sic] about it. *I mean, he's the father. If he's the father then the only question is how is the child's name [to] appear on the birth certificate. I don't even really understand what the problem is. But if you want a court order, I'll do a court order.*

[Defense counsel 1]: Okay. Ms. Paul's position is that's the only way it's going to change.

THE COURT: What's the name you want, sir, since I'm not getting any response from the other side?

> THE DEFENDANT: I'm okay with Paul-Gerald. Christian Gabriel Paul-Gerald is fine by me.
>
> THE COURT: All right.
>
> [Defense counsel 1]: That's it, Your Honor.
>
> [Plaintiff's counsel]: Your Honor?
>
> (Plaintiff's counsel and client confer.)
>
> [Plaintiff's counsel]: Your Honor, we have nothing to add in regard to the child's name.
>
> THE COURT: Hyphenated or not hyphenated?
>
> THE DEFENDANT: Hyphenated is -- I'm okay with hyphenated.
>
> THE COURT: Well, I asked the question. Hyphenated or not. That's all I asked. So I mean, if dad doesn't have a preference one way or the other and you do, then say it.
>
> THE DEFENDANT: Make it hyphenated.
>
> THE COURT: Hyphenated?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay. Christian Gabriel Paul-Gerald, right?
>
> THE DEFENDANT: Correct.
>
> [Defense counsel 1]: Yes. Christian Gabriel Paul-Gerald. Yes, Your Honor.

(Emphasis added). The above colloquy reveals that the trial court based its ruling not on specific findings of fact regarding the child's best interests, but rather on its opinion that the child "should have the father's surname."[9] This type of ruling based on a finding not supported by the evidence was expressly rejected by the court in *Schroeder*:

[9] This appears to be conceded by the appellee, who filed a post judgement motion asking the trial court to state its reasons for its name change decision.

> A legal presumption that would operate to create a default circumstance in which[] . . . the child's best interests are deemed to be served by giving him his father's surname, is a gender-based and gender-biased preference that not only is outdated in the law but also would violate the Maryland Equal Rights Amendment.

142 Md. App. at 585–586. The present case is no different.

For the aforementioned reasons, we hold that the portion of the trial court's Order of Court changing the minor child's surname from Paul to Paul-Gerald must be vacated, and remand the case for an evidentiary hearing, should the appellee elect to pursue the matter.

**ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.**