

NEBRASKA SUPREME COURT

In re Change of Name of Whilde

298 Neb. 510 (2017) · No. No. S-17-299 · Decided December 22, 2017

SUMMARY

The Nebraska Supreme Court affirmed the denial of a motion to vacate an order changing a minor child's name. The court held that the appellant, who was a non-parent possessory conservator whose custody and visitation rights had been terminated, was not a "noncustodial parent" entitled to certified-mail notice under Neb. Rev. Stat. § 25-21,271(2). The court also held that the motion to vacate did not toll the time to appeal the original name-change order.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Riedmann, Judge
JURISDICTION	Nebraska
DECIDED	December 22, 2017
DOCKET	No. S-17-299
DISPOSITION	affirmed
PROCEDURAL POSTURE	Margaret Whilde appealed the Otoe County District Court's order overruling her motion to vacate an earlier order changing a minor child's name.
STANDARD OF REVIEW	The denial of a motion to vacate a judgment entered during the same court term is reviewed for abuse of discretion. The meaning of "noncustodial parent" under Neb. Rev. Stat. § 25-21,271(2) is reviewed independently as a question of law.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Margaret Whilde v. Lillias Delong Dulles Whilde, a minor, by and through her mother and next friend, Hannah Whilde

TOPICS

family law procedure

statutory interpretation

appellate procedure

motion for reconsideration

parental rights

PRACTICE AREAS

family law

civil procedure

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Margaret Whilde timely appealed the January 24, 2017, name-change order.
2. Whether a motion invoking the court's inherent power to vacate or modify a judgment tolled the time for appealing the underlying judgment.
3. Whether Margaret Whilde was a "noncustodial parent" entitled to certified-mail notice under Neb. Rev. Stat. § 25-21,271(2).
4. Whether the district court abused its discretion by overruling Margaret's motion to vacate the name-change order.

HOLDINGS

1. Absent an applicable rule to the contrary, a motion asking a court to exercise its inherent power to vacate or modify its own judgment does not toll the time for appealing that judgment.
2. A person who is neither a biological nor adoptive parent and who has no legal rights to custody, visitation, or otherwise concerning the child is not a "noncustodial parent" entitled to certified-mail notice under Neb. Rev. Stat. § 25-21,271(2).
3. The district court did not abuse its discretion in overruling Margaret Whilde's motion to vacate the name-change order.

KEY QUOTATIONS

"We conclude that at the time notice was required to be given in this name change action, Margaret was not a "noncustodial parent" within the meaning of § 25-21,271(2), and we therefore conclude that the district court did not err when it overruled her motion to vacate the January 24 name change order." (298 Neb. 518)

"We conclude that the district court did not abuse its discretion when it overruled Margaret's motion to vacate the January 24 name change order based on the alleged failure to provide certified mail notice." (298 Neb. 521)

FACTUAL BACKGROUND

Hannah Whilde petitioned to change her minor child's two middle names and last name. The district court found that statutory publication notice had been given and granted the petition. Margaret Whilde had previously received temporary nonparent possessory-conservator status under a Texas order, but a later Nebraska custody order awarded Hannah sole legal and physical custody and granted Margaret no custody or visitation rights; Margaret appealed that order without obtaining a stay or posting a supersedeas bond. Margaret then sought to vacate the name-change order, asserting that she was a noncustodial parent entitled to certified-mail notice.

PROCEDURAL HISTORY

The district court granted Hannah Whilde's petition to change the minor child's middle and last names after publication of notice. Margaret moved to vacate the order, arguing that she was a noncustodial parent entitled to certified-mail notice under Neb. Rev. Stat. § 25-21,271(2). The district court denied the motion. The Nebraska Court of Appeals permitted the appeal to proceed after a signed order was entered, and the case was moved to the Nebraska Supreme Court's docket.

DISPOSITION

affirmed

CASES CITED

- Kibler v. Kibler, 287 Neb. 1027, 845 N.W.2d 585 (2014)
- State v. Hausmann, 277 Neb. 819, 765 N.W.2d 219 (2009)
- Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017)
- Windham v. Griffin, 295 Neb. 279, 286, 887 N.W.2d 710, 715-16 (2016)
- Hall v. Hall, 176 Neb. 555, 126 N.W.2d 839 (1964)
- Kula v. Kula, 180 Neb. 893, 146 N.W.2d 384 (1966)
- Kricsfeld v. Kricsfeld, 8 Neb. App. 1, 588 N.W.2d 210 (1999)
- Whilde v. Whilde, ante p. 473, ___ N.W.2d ___ (2017)