SPC Guiding Case No. 89: “Beiyan Yunyi” v. the Yanshan Police Station of the Lixia District Branch of Jinan Municipal Public Security Bureau (Public Security Administrative Registration)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Administrative / public security administrative registration / right to name / public order and good morals / justifiable reasons

Holding

A citizen’s choice or creation of a surname shall conform to traditional Chinese culture and ethical concepts. Choosing a surname other than the father’s surname or mother’s surname, or creating a new surname, solely based on personal preference and wishes does not fall within “other justifiable reasons that do not violate public order and good morals” as prescribed in Item (3) of Paragraph 2 of the Interpretation of the Standing Committee of the National People’s Congress on Paragraph 1 of Article 99 of the General Principles of the Civil Law of the People’s Republic of China and Article 22 of the Marriage Law of the People’s Republic of China.

Basic Facts

The statutory agent of the plaintiff “Beiyan Yunyi,” Lü Xiaofeng, alleged: His wife Zhang Ruizheng gave birth to a daughter in a hospital and named her “Beiyan Yunyi,” and completed the birth certificate and the record-filing registration for the newborn’s residence in the family planning service manual. When registering the household registration for the daughter, the defendant, the Yanshan Police Station of the Lixia District Branch of the Jinan Municipal Public Security Bureau (the “Yanshan Police Station”), refused to register the household. The reason given was that the child’s surname must follow the father’s surname or the mother’s surname, that is, the surname “Lü” or “Zhang.” Pursuant to the provisions on the right to name in the Marriage Law of the People’s Republic of China (the “Marriage Law”) and the General Principles of the Civil Law of the People’s Republic of China (the “General Principles of the Civil Law”), he requested that the court order confirmation that the defendant’s act of refusing to register the household under the name “Beiyan Yunyi” was unlawful.

The defendant Yanshan Police Station argued that it was correct to refuse to register the household under “Beiyan Yunyi” in accordance with the law and the provisions of superior documents. The General Principles of the Civil Law provides that citizens enjoy the right to name, but does not specify details. At a press conference held by the Supreme People’s Court on December 23, 2009, in the reply concerning the issue of changing the surname of children after divorce, it was stated that Article 22 of the Marriage Law is a special provision of the law of our country on the issue of children’s surnames, providing that a child may take the father’s surname or the mother’s surname, and does not provide that the child may take a third surname. Administrative organs shall administer in accordance with the law; where the law does not clearly provide for an act, an administrative organ may not implement it, and neither the plaintiff nor the administrative organ has the authority to make an expansive interpretation of the law. This means that a child has only two choices: taking the father’s surname or taking the mother’s surname. From another perspective, the law confirms the right to name in order to enable citizens to clearly distinguish themselves from others through a written symbol, namely the name, and to realize their personality and rights. The right to name, like other

rights, is subject to the limitations of the law and may not be abused. It is a traditional custom of the Chinese nation for newborn infants to take the father's surname or the mother's surname. This custom marks consanguinity. Taking the father's surname or the mother's surname both involve consanguinity and can, to a large extent, avoid marriages between close relatives, whereas taking a third surname contradicts this traditional custom and the original meaning of the surname. Public security organs throughout the country are consistent in their standard in implementing Article 22 of the Marriage Law on the issue of children's surnames, namely that a child shall take the father's surname or the mother's surname. In summary, the defendant's act of refusing the application of the plaintiff's statutory agent to register the plaintiff's household under the name "Beiyan Yunyi" was correct, and it earnestly requested that the people's court dismiss the plaintiff's claims in accordance with the law.

The court found upon trial: The plaintiff "Beiyan Yunyi" was born on January 25, 2009. Her father was named Lü Xiaofeng and her mother was named Zhang Ruizheng. Because of a great love for poetry and traditional Chinese culture, Lü Xiaofeng and Zhang Ruizheng decided to name their beloved daughter "Beiyan Yunyi," and completed the newborn's birth certificate and the record-filing registration for the newborn's residence in the family planning service manual under the name "Beiyan Yunyi." In February 2009, Lü Xiaofeng went to the Yanshan Police Station to apply for household registration for his daughter, and was informed by the police officer that the surname of the person to be registered should follow the father's surname or the mother's surname, that is, the surname "Lü" or "Zhang," otherwise the conditions for birth registration would not be met. Because Lü Xiaofeng insisted on applying for household registration for his daughter under the name "Beiyan Yunyi," the defendant Yanshan Police Station, pursuant to Article 22 of the Marriage Law, made on that day the specific administrative act of refusing to register the household.

The case was heard in two public hearings. At trial, the statutory agent of the plaintiff "Beiyan Yunyi," Lü Xiaofeng, stated that in the name "Beiyan Yunyi" chosen for his daughter, "Beiyan" was the surname and "Yunyi" was the given name.

Because the case involved an issue of the application of law that needed to be submitted to a competent authority for interpretation or confirmation, the trial was suspended by ruling on March 11, 2010, and resumed on April 21, 2015, after the cause for suspension was eliminated.

Judgment

On April 25, 2015, the People's Court of Lixia District, Jinan City, rendered Administrative Judgment (2010) Li Xing Chu Zi No. 4: the claim of the plaintiff "Beiyan Yunyi" to confirm that the defendant Yanshan Police Station's act of refusing to register the household under the name "Beiyan Yunyi" was unlawful was dismissed.

After the first-instance judgment was pronounced and served, neither party appealed, and the judgment took legal effect.

Reasoning

The court's effective judgment held that on November 1, 2014, the Eleventh Session of the Standing Committee of the Twelfth National People's Congress adopted the Interpretation of the Standing Committee of the National People's Congress on Paragraph 1 of Article 99 of the General Principles of the Civil Law of the People's Republic of China and Article 22 of the Marriage Law of the People's Republic of China. That legislative interpretation provides: "Citizens enjoy the right to name in accordance with the law. In exercising the right to name, citizens shall also respect social morals and shall not harm the public interest. In principle, citizens shall take the father's surname or the mother's surname. Under any of the following circumstances, a surname other than the father's surname or mother's surname may be chosen: (1) choosing the surname of another lineal blood relative of an elder generation; (2) choosing the surname of the supporter because the person is being raised by a person other than the statutory supporter; or (3) there being other justifiable reasons that do not violate public order and good morals. Citizens of ethnic minorities may take surnames in

accordance with their own ethnic cultural traditions and customs."

In this case, there was no circumstance of choosing the surname of another lineal blood relative of an elder generation or choosing the surname of a supporter other than the statutory supporter, and the focal point of the case lay in whether the reasons raised by the plaintiff's statutory agent Lü Xiaofeng conformed to "other justifiable reasons that do not violate public order and good morals" as prescribed in Item (3) of Paragraph 2 of the above legislative interpretation. First, from the perspective of social management and development, children inheriting the surname of their parents is conducive to improving the efficiency of social management and facilitating a preliminary judgment by administrative organs and other members of society on the main social relationships of the surname holder. If the arbitrary choice of surnames, or even the arbitrary creation of surnames, were permitted, it would increase the cost of social management, be detrimental to society and others, be detrimental to maintaining social order and achieving sound social control, and would very easily cause chaos in social management and increase the risks and uncertainties of social management. Second, a citizen's choice of a surname involves public order and good morals. In traditional Chinese culture, the "xing" (surname) in a name mainly originates from objective inheritance, being passed down from the ancestors, and carries respect for the ancestors and love for the family, embodying consanguineous inheritance, ethical order, and cultural tradition. The "ming" (given name), by contrast, originates from subjective creation, being bestowed by the parents, and carries personal preferences, personality traits, and the wishes of the elders. Citizens' emphasis on and reverence for the inheritance of surnames not only reflects consanguineous and kinship relationships but also carries rich cultural tradition, ethical concepts, and humanistic sentiments, conforms to mainstream values, and is a vehicle and mirror of the cohesion and centripetal force of the Chinese nation. Citizens in principle taking the father's surname or the mother's surname conforms to traditional Chinese culture and ethical concepts and to the wishes and actual practice of the vast majority of citizens. Conversely, if citizens were allowed to arbitrarily choose surnames or even create surnames solely based on personal wishes and preferences, it would cause an impact on cultural tradition and ethical concepts and violate the good customs of society and general moral requirements. Third, citizens enjoy the right to name in accordance with the law, and the exercise of the right to name by a citizen is a civil activity, which shall be carried out not only in accordance with Paragraph 1 of Article 99 of the General Principles of the Civil Law and Article 22 of the Marriage Law but also in compliance with Article 7 of the General Principles of the Civil Law, namely that social morals shall be respected and the public interest shall not be harmed. Under ordinary circumstances, the act of choosing a surname other than the father's surname or the mother's surname mainly exists in situations such as a change in the actual dependency relationship, benefit to the physical and mental health of a minor, and the protection of personal dignity. In this case, the reason given by the parents of the plaintiff "Beiyan Yunyi" for creating "Beiyan" as a surname and choosing "Beiyan Yunyi" as the name for their daughter's household registration was that "the four characters of my daughter's name 'Beiyan Yunyi' are taken from four famous classical Chinese poems, signifying the parents' good wishes for their daughter." This reason created a surname solely based on personal preference and wishes and was clearly arbitrary, not conforming to the circumstances of Item (3) of Paragraph 2 of the legislative interpretation, and should not be supported.

Relevant Legal Provisions

Paragraph 1 of Article 99 of the General Principles of the Civil Law of the People's Republic of China.

Article 22 of the Marriage Law of the People's Republic of China.

The Interpretation of the Standing Committee of the National People's Congress on Paragraph 1 of Article 99 of the General Principles of the Civil Law of the People's Republic of China and Article 22 of the Marriage Law of the People's Republic of China.

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