1973 WL 26739 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 14, 1973

***1** Mr. Gerald A. Kaynard
Shimel, Ackerman, Theos, Spar and Kaynard
122 Church Street
Charleston, South Carolina 29402

Dear Mr. Kaynard:
Your letter of recent date addressed to the Attorney General has been referred to me for consideration and reply.

You have propounded several questions on the law with respect to a change of name for a woman and they will be answered verbatim as asked.

1. There is no statutory requirement that a woman change her maiden name upon marrying. In the absence of statutory authority, common law principles and immemorial custom hold that a woman upon marriage abandon her maiden name and assume the husband's surname. 57 Am. Jur. 2d Names § 9 (1971); 35 A.L.R. 417 (1925); 65 C.J.S. Names § 3(c) 1966.

2. There are two paths a married woman may follow in changing her name.

The first method is completing with the procedure outlined in S. C. Code Ann. § 48-51 (Supp. 1971). However, after an individual has elected to follow this procedure, it is within the discretion of the court to grant or refuse such a request. As a general rule, some substantial reason must exist before the court is justified in granting an application for a change of name. 57 Am. Jur. 2d Names § 12 (1971). The court is not subject to the whims of every petitioner for a change of name, i.d.

It has been held in South Carolina that a court, acting under a statute empowering it in its discretion to change a name, can change the name of a wife against the wishes of her husband where her true interest will thereby be protected. Such an application will be denied where its allowance would prevent a reconciliation between the parties. Converse v. Converse 30 S.C. Eq. 535 (1856).

The second path one may follow is under the common law principle that any individual may lawfully change their name, or by general usage or habit acquire another name than that originally borne by him, without the intervention of a court or legislature. Brayton v. Beall 73 S.C. 308, 53 S.E. 641 (1905). The statute that provides a method of changing ones name does not abrogate this common law rule, it merely affirms it, id. The only advantages one would realize by following the statutory method is that it is speedy, definite, and provides a record by which the change of name is definitely and specifically established. 57 Am. Jur. 2d Names § 11 (1971).

The restrictions imposed upon this common law principle are that a name may lawfully be changed as long as it is not done for a fraudulent purpose, and does not interfere with the rights of others. 85 C.J.S. Names § 11(1) (1960).

3. There is no South Carolina law prohibiting a woman from using two names at the same time; however, Brayton v. Beall 73 S.C. 306, 53 S.E. 641 (1905), states that when a name is changed under the method prescribed by statute, the time of the change is fixed with certainty, and thereafter the person so changing his name may be sued, plead and be impleaded by his new name and no other, S.C. Code Ann. § 48-54 (1962) adopts this view.

***2** When a name is changed through common law principles, the name assumed constitutes the legal name for all purposes just as much as though he had borne it from birth, or as though it had been provided for by a court order, 65 C.J.S. Names § 11(1) (1905). It is not certain if there is a mandatory requirement of consistency in using this assumed name, but in a recent federal court case it was held that a married woman's consistent nonfrauculent use of her maiden name was sufficient under Mars land common law to retain the name as a legal name following marriage. 41 U.S. L.W. 2215.

4. An individual would only be subject to S. C. Code Ann. § 48-51 (1962) if they chose to follow the statutory procedure within it.
Very truly yours,

Raymond G. Halfore
Assistant Attorney General

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