Judgment 22/2010 **In re T (a minor) – Royal Court (Divorce File 6757)**
15 April 2010

Children (Guernsey and Alderney) Law, 2008 – application to change surname of a child of the marriage – Child Welfare checklist (s.4)

Before Sir de Vic Carey, Lieutenant-Bailiff on 15 April 2010. Advocate A N Brown appeared for the Applicant Mother; the Respondent Father did not appear.

After setting out the facts of the present application, the Lieutenant-Bailiff set out the law in paragraphs 19 to 22 of his judgment:-

19. [.....] I have to say that looking at the law there are two matters on which I should comment. First of all, this is an application filed in 2009 but on 1st January this year the Children (Guernsey and Alderney) Law 2008, came into force. That gave the facility in Section 17(1)(c) for a specific issue order to be made for the purposes of determining a specific question that has arisen or may arise in connection with any aspect of parental responsibility for a child and I treat this as precisely that kind of application.

20. Also, the law lays down in Section 4 the principle of the Child Welfare Checklist which has been imported from English legislation and that section provides that:-

"4. (1) When determining any issue concerning-

(a) the upbringing of a child under this law, or

(b) the application of the child welfare principles,

a public authority shall, in particular, have regard to the matters set out in subsection (2) (the 'Child welfare checklist').

(2) The matters for the purpose of subsection (1) are-

(a) the child's wishes and feelings (in the context of his age and understanding)."

The other issues are the child's physical, emotional and educational needs.

Then at (f) it continues:-

"(f) the importance and likely effect of contact between the child and his parents, siblings, relatives and any other people significant to the child."

21. However, as a matter of law, the change of surname has no effect on the relationship between father and [child] and whilst it is perhaps unfortunate in one way that events have developed as they have, I have got to look at the situation on the ground from [the child's] point of view taking into account its wishes and emotional needs. I take the view that the mother has discharged the burden on her to persuade me that I should change [the child's] name.

22. However, I have done that in full recognition that the authorities are against me to some extent, but no two cases are the same. I would in particular like to quote from the judgment of Lady Justice Hale, as she then was in the case of *Re: R (Surname: Using both Parents)[2001] 2 FLR*

1358; Mr. Brown referred me to paragraph 18 of the judgment but I would propose to read 18, 19 and 20:-

> *"[18] That having been said I return to the issue of names. It is also a matter of great sadness to me that it is so often assumed, and even sometimes argued, that fathers need that outward and visible link in order to retain their relationship with, and commitment to, their child. That should not be the case. It is a poor sort of parent whose interest in and commitment to his child depends on that child bearing his name. After all, that is a privilege which is not enjoyed by many mothers, even if they are not living with the child. They have to depend upon other more substantial things.*
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> *[19] The crucial point, however, is that it is important for a child for there to be transparency about his parentage and for it to be acknowledged that a child always has two parents; and if it turns out (as it often does) that children have both social parents and birth parents, it is important that that fact too is acknowledged. It can be even more important in cases where there is a risk of links fading or becoming less strong as the years go on, because in the future it can prompt a child to wish to re-establish links which have become weaker or have even disappeared. We all know of cases where it has prompted a search and a reunion later in life, with great benefit for the child. That factor may be of particular importance in cases where increased distance is coming into the equation. As I say, the reason for that is the importance of recognising that children have two parents.*
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> *[20] In my judgment, parents and courts should be much more prepared to contemplate the use of both surnames in an appropriate case, because that is to recognise the importance of both parents. As it happens, it is the common practice in Spain so to do. It is not unknown, for that matter, in the USA, where women in particular will often use both names. I therefore echo what has fallen from my Lord, Thorpe, LJ, in urging both parents to contemplate that course in this case."*