

Judgment 39/2005

In re F (an infant) – Magistrate’s Court – 7 July, 2005

Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988 – father’s application that the mother be not permitted to change the infant’s surname.

Advocate A N Brown - for the Father
Advocate D G Le Marquand - for the Mother

Assistant Magistrate McMillen set out the law as follows in paragraphs 41 to 49 of her judgment.

The Law

41. This application is made under section 12(1) of the Domestic Proceedings and Magistrates (Guernsey) Law 1988 which states “*Where an order under section 7(1)(i) in respect of the custody of a child gives rights and duties to two persons jointly, and they disagree on any matter affecting the welfare of the child, either of them may apply to the court which may make such order regarding the matter in disagreement as it thinks fit*”
42. I have been referred to the relevant case law namely the case of Dawson v. Wearmouth – [1999] 1FLR 1167. Both of the parents Advocates have included a copy of the said judgment in their bundles (the Father at tab 7 and the Mother at tab 8).
43. This case was subsequently followed in the cases of Re W, ReA and Re B (change of name) [1999] 2 FLR 930 CA which dealt with similar points in relation to the applications to change the surname of children. Those cases assist in understanding the law in England (and Wales) as it currently stands. The Advocate for the Mother has provided copies of further case law but they mostly pre-date the inception of the Children Act 1989 and I have formed the view that whilst those cases were helpful I must have regard to the cases of Dawson v. Wearmouth and Re W, A and B as above.
44. The law in England does not automatically apply in Guernsey. Guernsey legislation and case law takes precedence. However, I have not been referred to any Guernsey case law, which deals with this issue of the changing of a child’s surname. The only case law that I have been referred to is the English case law under the Children Act 1989.
45. In the absence of any Guernsey case law this court will have reference to English case law and the principles set out in section 1 of the Children Act 1989 as guidance in assisting this court in coming to a decision in such an application.
46. On that basis referring to the case law I would confirm that the present position in summary relating to applications as to changing a child’s name are as follows: -
 - (i) If the parents are married they both have the power and the duty to register their child’s names.
 - (ii) If the parents are not married, the mother has the sole duty and power to do so.

- (iii) If either parent wishes to change the child's surname from the name registered at birth, then either the other parent must give relevant written consent or the leave of the court must be sought to such an application.
 - (iv) On any application the welfare of the child is paramount and the court will have regard to as guidance the criteria in section 1(3) Children Act 1989.
 - (v) Among the factors to which the court should have regard is the registered surname of the child and the reasons for registration. Registration is always a relevant and important consideration but it is not in itself decisive. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.
 - (vi) The relevant consideration should include factors, which may arise in the future as well as in the present situation.
 - (vii) Reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent with care of the child do not generally carry much weight.
 - (viii) The reasons for any earlier unilateral decision to change a child's name may be relevant
 - (ix) Any changes of circumstances of the child since the original registration may be relevant
 - (x) In the case of a child, where the parents had been or are married to each other, the fact of the marriage is important and there would have to be strong reasons to change the name from the father's surname if the child was so registered
 - (xi) Where the child's parents were not married to each other, the mother has control of registration. Consequently on an application to change the surname of the child, the degree of commitment of the father to the child, the quality of contact, if it occurs, between child and father, are all relevant factors to take into account.
 - (xii) In Guernsey, there is no legal concept as parental responsibility. There is, however, the legal concept of custody and in this instant case, the parents have joint custody and the situation in relation to custody and care and control will also be factored into the courts consideration.
47. In relation to the above guidelines I have utilised those as set out by Lady Justice Butler-Sloss in the cases of Re W, Re A and ReB (change of name).
48. The list of considerations that the court will consider and determine such an application is not exhaustive. *"Each case has to be decided on its own facts with the welfare of the child the paramount consideration and all the relevant factors weighed in the balance by the Court at the time of the hearing."*
49. It is relevance that most of the cases that I have been referred to did not have similar or identical facts as the instant case. Many of the cases that have been before the English courts have dealt with examples where the child or children had been registered in the birth father's name and the mother either seeks to change the child or children's surname to another surname or to have the child/children registered in a name unconnected to the birth father.