

CHANGING A CHILD'S SURNAME

A child's surname can be changed at any time when there is consent between the parties, this is done by lodging an Application with the Registry of Births, Deaths and Marriages. If however, there is no agreement, a parent needs to apply to the court to seek an Order for such a change.

HOW A COURT APPLICATION IS COMMENCED

An Application for changing a child's surname can be heard in either the Family Court or the State Magistrates Court. Prior to commencing any proceedings in the Family Court, parties must make a reasonable attempt to resolve the matter by participating in Family Dispute Resolution and obtaining a section 60I certificate. If a parent is seeking specific orders in relation to the children's parenting arrangements, in addition to a change of surname, the application can only be made in the Family Court, as the local State Magistrates Court does not have the jurisdiction to determine those matters.

CONSIDERATIONS FOR THE COURT IN DETERMINING AN APPLICATION FOR THE CHANGE OF A CHILD'S SURNAME

The case law is clear, that the welfare of the child is paramount in determining whether a court should intervene in changing a child's surname. A court however will also take into consideration the following factors: -

- Short and long term effects of a change;
- Any embarrassment to the child;
- Any confusion of identity for the child;
- Any effect which a change of surname may have on the relationship between the child and the parent whose surname the child had during the relationship;
- Advantages both short and long term in a change;
- Contact the other parent has with the child;
- The degree of identification the child has with the father and mother, and with any siblings;
- The effect of frequent or random changes of name.

Set out below are 2 examples of how the Court has dealt with such Applications.

CASE EXAMPLE #1

The parties were married for 18 months, during which time their child was born. During the marriage the Mother used the Father's surname and the child's birth was registered under that surname. Following separation the Mother reverted to her maiden name. The Father discovered that the Mother had enrolled the child in pre-school under the Mother's surname so he then made an Application to the Court seeking Orders to ensure that the child used his surname.

The Father argued that the child had used his surname for the majority of his life and closely identified with it. The Mother on the other hand argued that the child strongly identified with her surname and proposed that in the future the child have a hyphenated surname, comprising of both the Mother and Father's surnames.

The court held that the child did not have any particular attachment or identification with either parent's surname and therefore was persuaded that an order where the child's surname was hyphenated was in the child's best interests.

CASE EXAMPLE #2

The Mother and Father were married for 9 years. There were 3 children of the relationship, aged 10, 9 and 4 years. Following separation the parties entered into consent orders that provided for the children to live with the Mother and spend time with the Father as agreed.

Two years after the parties separation the Mother remarried and she started using her new husband's surname. The Father alleged that the Mother had told him that she proposed to encourage the children to use the new husband's surname. The Father had also observed that the library card of one of the children was in the new husband's surname. The Father applied to the court seeking an order that the Mother be restrained from permitting the children to use any surname other than his own surname.

The court found that the mother and her new husband, at least passively, had encouraged the children to progress towards and ultimately change their surname to that of the new husband.

The court found that the two oldest children wanted to be known by their step-father's surname. The court therefore found it appropriate to order that it was in the children's best interests to be known by the step-father's surname.

SUMMARY

Each case to change a child's surname is unique. It is therefore important that prior to commencing any Application you obtain specific advice from a Family Lawyer.