

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

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**IN THE FAMILY COURT
AT TAUPO**

**I TE KŌTI WHĀNAU
KI TAUPŌ-NUI-A-TIA**

**FAM-2019-069-000137
[2022] NZFC 767**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ANITA ROWE] Applicant
AND	[DAVID EASTON] Respondent

Hearing: 27 January 2022

Appearances: L Edwards for the Applicant (via AVL)
R Simon for the Respondent (via AVL)
A Tisch as Lawyer for the Children (via AVL)

Judgment: 27 January 2022

ORAL JUDGMENT OF JUDGE A C WILLS

[1] These proceedings between [Anita Rowe] and [David Easton] are about the name of [Benjamin David Blair Easton], born [date deleted] 2018.

[2] There have been proceedings before the Court for a significant period but this most recent issue is a dispute between the guardians over [Benjamin]'s name. That has come about because Ms [Rowe] is seeking a direction that [Benjamin]'s surname

be legally changed from [Easton] to [Rowe]. That was because largely Mr [Easton] has an extensive criminal history which has included community detention and intensive supervision for assault on an ex-partner. In particular, Ms [Rowe] was concerned that when [Benjamin]'s full name was typed into Google there were two news articles about Mr [Easton], one about him assaulting Ms [Rowe] and the other about him assaulting his mother. Those search results appear because [Benjamin] has the same names as Mr [Easton], ([David Blair]), as his middle names, and the names are therefore similar.

[3] There have been a number of other matters of concern associated with the surname [Easton] but those are more particularly about the identification of [Benjamin] with Mr [Easton] on social media.

[4] Ms [Rowe] was concerned that those will never be lost and that there was potential for [Benjamin] to be bullied and embarrassed and shamed at some time in the future.

[5] There has been very limited contact between Mr [Easton] and [Benjamin] over the years since the original proceedings in September 2020 and prior to that time, there had been no contact since [Benjamin] was 10 months old.

[6] Ms [Rowe]'s submissions identified her concern for [Benjamin]'s welfare and best interests in the longer term. In the short-term of course, there is no issue. [Benjamin] at present is of an age where he is not even clear about his surname, but that of course will change.

[7] Mr [Easton] had proposed a compromise position to provide for [Benjamin]'s surname to be changed to either [Easton-Rowe] or [Rowe-Easton]. Both counsel have agreed as to the legal position.

[8] Mr Tisch was appointed by the Court to represent [Benjamin]'s position and it is his submission that the likely bullying and reputational issues that could impact on [Benjamin] as he grows warrant a change of name and he did raise as an option the consideration of [Benjamin]'s surname being hyphenated to [Easton-Rowe].

[9] Mr [Easton] is not attending this hearing today but his counsel is appearing by telephone.

[10] I have proposed a compromise position for [Benjamin] as it is the combination of the names [David Blair Easton] that is generating the social media responses when [Benjamin]'s name is inserted into Google. That may well be resolved by removing the names [David] and [Blair]. It is the surname which carries the identity issue which is of significance in terms of the s 5 principles. Resolution of the reputational concerns via social media is possible.

[11] Ms Simon cannot take instructions, but Ms Edwards accepts that this is a good resolution for the position and Ms [Rowe] supports what is proposed.

[12] The law as set out in both counsels' submissions is very limited but there is a helpful decision of Judge Ullrich QC, in the Porirua decision in *M v J*, a decision from 21 April 2008.¹ In that decision her Honour noted the following:

[19] The name the child is to use is a matter affecting the exercise of guardianship which includes determining questions about important matters affecting the child, the child's name is included as an important matter.

[13] She goes on to consider the relevant principles and in particular notes that s 4 of the Act requires that the welfare and best interests of a child are the first and paramount consideration. It is this particular child in his particular circumstances that must be considered. The s 5 principles provide for continuity of arrangements, facilitation of consultation and cooperation and the principle that a child's identity should be preserved and strengthened and that a child's relationship with his or her family group should also be preserved and strengthened. That is important in conjunction with the identity principle.

[14] In the decision of *L v C* (a decision of Judge Robinson's in the Family Court) there was a useful list of criteria that could be applied when assessing when a child's surname should be changed.² Although that is an old case from 1988, the matters that are raised in the criteria remain applicable. They are as follows:

¹ *M v J* FC Porirua FAM-2003-091-369, 21 April 2008.

² *L v C* (1988) 5 NZFLR 193, (1988) 4 FRNZ 68 (FC).

- (a) The welfare of the child is the paramount consideration.
- (b) Must consider the short and long-term effects of any change of a child's surname.
- (c) Any embarrassment likely to be experienced by a child if its name is different from that of the parent in whose care she is.
- (d) Any confusion of identity which may arise for the child if his or her name is changed or is not changed.
- (e) The effect which any change in surname may have on the relationship between the child and the parent whose name the child bore during the marriage.
- (f) The effect of frequent or random changes of name.

[15] When I look at the reasons for the change of [Benjamin]'s surname, in particular the reputational issue on social media, it is clear to me it is in [Benjamin]'s long-term best interests that his name be changed. The question is as to what would give best effect to that welfare. There is benefit in [Benjamin] having a name that is the same as the person in whose care he is, that is his mother's name and that is often dealt with by way of hyphenation of names. There is also some benefit in terms of identity for [Benjamin] in having the name both of his father and his mother. It is not unusual for children to have hyphenated names reflecting the names that their parents carry.

[16] [Benjamin] is unlikely to be confused by a change in his surname because the evidence shows that he does not yet know his surname. There is therefore unlikely to be any effect on the relationship between [Benjamin] and Mr [Easton] and of course because there is no contact occurring that also has relevance in terms of any confusion that might arise.

[17] There have not been frequent or random changes of name for [Benjamin] at any point. This change of name is prompted by well-founded concerns held by Ms [Rowe]. That is supported by Mr Tisch.

[18] Mr [Easton] opposes the change of name but does agree to a hyphenated surname. The primary issue raised for him is the identity issue and the ability of [Benjamin] to understand his biological parentage and to know from where he comes.

[19] In my view a change of name for a hyphenated surname will address the identity issue and the other criteria that are referred to in *L v C*. It will not however address the reputational issues as the name continues to be closely aligned with Mr [Easton]'s name. A hyphenated name on top of three names is also rather cumbersome for [Benjamin] to carry. A name [Benjamin David Blair Easton-Rowe] is a very big name for a small boy. It is the addition of the names [David] and [Blair] that is causing the social media concerns. That can be best addressed by enabling the identity notifier (that is the surname) to remain, adding Ms [Rowe]'s name to promote certainty and understanding for [Benjamin] about his parentage and removing the names [David] and [Blair] as [Benjamin]'s middle name.

[20] I therefore make an order that [Benjamin]'s name will be [Benjamin Easton-Rowe] and his birth registration guide may be changed accordingly.

Judge AC Wills

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 08/02/2022