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[SQUARE BRACKETS]

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**IN THE FAMILY COURT
AT NEW PLYMOUTH**

**I TE KŌTI WHĀNAU
KI NGĀMOTU**

**FAM-2020-043-000240
[2022] NZFC 4024**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[NICOLE FOSTER] Applicant
AND	[MORRIS RUSCOE] Respondent

Hearing: (On the papers)

Counsel: A Vickers for the Applicant
B Dawkins for the Respondent
L Manning as Lawyer for the Child

Judgment: 5 May 2022

JUDGMENT OF JUDGE A S GREIG

[1] [Ged Ruscoe] born on [date deleted] 2018. His mother is [Nicole Foster], his father is [Morris Ruscoe].

[2] [Ged]'s name, as it appears above, was registered shortly after he was born. Ms [Foster] now seeks to change [Ged]'s surname to "[Foster-Ruscoe]". Mr [Ruscoe] opposes that change.

[3] At the time [Ged] was born the family were living in [location A]. It was not long after his birth that Mr [Ruscoe] left the family home, taking up a job in the South Island. The parties were not separated at that point, but became separated not many months later when Ms [Foster] was visiting Mr [Ruscoe] in the South Island and formed the view that Mr [Ruscoe] was in a relationship with another woman. She returned to her home in [location A] with [Ged] and they have remained ever since. There is some dispute as to when the parties actually separated, but it is not relevant to this dispute.

[4] Issues of care and contact have arisen, but have now been settled.

[5] Mr [Ruscoe]'s reasons for opposing the name change are:

- (a) That is the name in which [Ged] was registered, with the consent of both parents.
- (b) The [Ruscoe] name has a long association with [location B] and there are few males left to carry that name on.
- (c) Ms [Foster] has already unilaterally changed [Ged]'s name to [Foster-Ruscoe] by registering him under that name with a number of entities.
- (d) The parents live far apart from each other, Mr [Ruscoe] in [location B], Ms [Foster] in [location A]; Mr [Ruscoe] feels that a change of name, coupled with the distance between the parents, will dilute his importance in [Ged]'s eyes.
- (e) Mr [Ruscoe] has already struggled to get the degree of contact between him and [Ged], his parents and [Ged] and, as with the above point, consequently he fears being marginalised in [Ged]'s life.

[6] Ms [Foster] for her part believes that it will be confusing for [Ged] to bear a surname which is different to the majority of family who will be with him for the majority of his time. She submits that it will not be embarrassing or confusing for [Ged] to change his name now at age three and a half.

[7] Ms [Foster] maintains that her name has as strong a link with [location A] as does the [Ruscoe] name with [location B]. She and [Ged] live on the [Foster] family farm, they live in a house that three generations of [Foster]s have lived in and [Ged] is now the sixth generation of [Foster]s to live in [location A].

[8] Ms [Foster] deposes that if she married and/or had further children that she and they too would bear the [Foster] surname.

The law

[9] This decision must be made with [Ged]'s welfare and best interests in mind. That is an obligation set out in the principles found in ss 4 and 5 of the Care of Children Act.

[10] The principles pertinent to this particular issue are those of continuity in [Ged]'s care, development and upbringing and the importance of maintaining a child's relationship with both parents.¹

[11] Counsel have referred a number of decisions to me. They were all helpful and informative. The decision of Judge Russell in *HPV v AJB & DJS*² was particularly helpful.

[12] In that decision his Honour summarised a number of factors to which the Court should have regard, namely:

- (a) The welfare of the child being of paramount consideration.
- (b) The short- and long-term effects of any change in the child's name.
- (c) Any embarrassment likely to be experienced by the child if its name is different from that of the parent with custody or care and control.

¹ Care of Children Act 2004, ss 5(d) and 5(e).

² *HPV v AJB & DJS* FC Blenheim 2010-006-000212 18 March 2011.

- (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.

[13] The last two points are not relevant here, given the circumstances.

[14] It is certainly true that Ms [Foster] has overridden Mr [Ruscoe]'s guardianship rights in making the unilateral changes to [Ged]'s name on some occasions. Whilst it was not right that she did that, it is somewhat understandable given that she has the day-to-day care of him for the vast majority of the time. She is raising him alone.

[15] It is important however for Ms [Foster] to understand that Mr [Ruscoe], no matter how far away he lives, is [Ged]'s guardian and must be consulted about all significant matters. That is, matters that affect [Ged]'s health, his education, his religious upbringing (or lack of), significant geographical relocations and his surname, amongst other matters.

[16] The position is that [Ged] is going to grow up living with the [Foster] family in [location A]. He will see his father during school holidays and occasional weekends.

[17] It will be neither embarrassing nor confusing to [Ged] if his name is changed at this stage of his life. To not change his name however could engender confusion.

[18] [Ged]'s relationship with his father will not be changed by a variation.

[19] [Ged]'s lawyer supports a change to his surname to incorporate the name [Foster], although [Ged]'s lawyer left it open as to whether that should be by the addition of [Foster] as a middle name or as a hyphenated surname.

[20] Surnames are important. They are part of a person's identity. We have moved away from the days when a child automatically bore his father's name. It is particularly important in this case that [Ged] is being raised in the sole care of his mother as part of the [Foster] family.

[21] Incorporating [Ged]'s mother's surname into his name accords with the relevant principles of the legislation and is, accordingly, in his welfare and best interests. There is nothing inimical to his welfare and best interests by such an incorporation.

Conclusion

[22] [Ged]'s name shall be [Ged Foster-Ruscoe].

Judge AS Greig
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 05/05/2022