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IN THE FAMILY COURT AT OXFORD

Case No: OX20P00391

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF CHILD X
AND CHILD Y**

Date: 19 April 2021

Before: HHJ Vincent

Between:

A mother

Applicant

and

A father

Respondent

Paul Froud instructed by Brethertons for the Applicant mother
The Respondent father represented himself

Hearing date: 22 March 2021

JUDGMENT

Introduction

1. This judgment is about two sisters, X aged seven and Y aged two.
2. Their father has parental responsibility for both girls as he is named on their birth certificates.
3. I will call them the mother and the father in this judgment.
4. The father is currently serving a term of life imprisonment for the attempted murder of the mother, stalking involving putting fear of violence and possession of an offensive weapon in a public place. In March 2019 he stabbed the mother fifteen times, as she was walking home from school with X who was five at the time. X was holding her mother's hand and at one point was struck in the face by her father's elbow as he violently attacked her mother. The father has been set a minimum term of thirteen and a half years before he may be considered eligible for release.
5. The father had previously served a prison term in 2016 for assault on the mother.
6. The mother has sustained long-term physical injuries as a result of the attack in 2019 and both she and X continue to receive professional therapeutic support for the emotional harm caused by the attack and the impact of years of domestic abuse perpetrated by the father upon the mother, and to which X and (to a lesser extent) Y was exposed.
7. On 4 April 2020 the police received a report from Crimestoppers of an anonymous phone call made to them stating that the mother was going to be murdered that day. In the previous week the mother had received (and declined) Instagram friend requests from two relatives of the father.
8. The police supported the mother and the children to be rehomed and additional security measures were put in place.
9. Prison phone call logs identified that the father had called the Crimestoppers 0800 line on 4 April 2020. He later confirmed to the Cafcass officer that he made the call. It was noted that he had also made contact with one of the relatives who had made the friend request to the mother.
10. The prison provided recordings to the police of the father's phone calls and the police report notes *'he wants to ascertain whether [the mother] has got a new partner in her life through getting [name redacted] to look at her social media. There is a still a level of obsession on [the father's] part and he cannot accept that [the mother] might have moved on with her life.'*
11. The mother now brings two applications to the Court. The first is for termination of the father's parental responsibility for both children (he is named on each of their birth certificates as their father). The second is to change the girls' surname from their father's name.

The law

12. Orders that deprive the father of his parental responsibility and which replace his surname for another should plainly only be made by a court if there is a solid and secure evidential and factual basis for doing so, and where the orders are in the best interests of the children concerned.
13. Mr Justice Cobb considered the approach the Court should take to both applications for parental responsibility and to name changes in *B and C (Change of Names - Parental Responsibility – Evidence)* [2017] EWHC 3250 (Fam).

Parental responsibility

14. Section 4(2A) of the Children Act 1989 provides that only the Court may make an order bringing an end to a person's parental responsibility.
15. Parental responsibility describes an adult's responsibility to secure the welfare of the child, which is to be exercised for the benefit of the child, not the adult.
16. Both the question of parental responsibility and a child's names are questions about the upbringing of a child, so in deciding the applications the children's welfare must be the Court's paramount consideration (*Children Act 1989* section 1(1)).
17. There is no requirement to consider the section 1(3) welfare checklist factors but it may provide a helpful analytical framework.
18. The factors relevant to the court's consideration of the grant of parental responsibility (the degree of commitment which the father has shown to the child, the degree of attachment which exists between the father and the child and the reasons of the father for applying for the order) may be relevant at the point of considering whether to revoke or limit the exercise of parental responsibility.
19. Article 8 of the European Convention is engaged here in respect of all of the family members, and interference with these rights needs to be justified.

Change of name

20. With regard to applications for changing names, Cobb J referred to the case of *Dawson v Wearmouth* in which Lord Jauncey said:

"... the changing of a child's surname is a matter of importance and that in determining whether or not a change should take place the court must first and foremost have regard to the welfare of the child. There are many factors which must be taken into account, not only those pertaining to the present situation but also those which are likely to affect the child in the future."

21. Cobb J also referred to the case of *Re W, Re A, Re B (Change of Name)* [1999] 3 FCR 337, [1999] 2 FLR 930. At paragraph 9 of that judgment Butler-Sloss LJ set out a list of factors that would be relevant to consider on an application for change of surname, as follows:

- i) on any application the welfare of the child is paramount, and the judge must have regard to the section 1(3) criteria;
- ii) among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration, but it is not in itself decisive;
- iii) the relevant considerations should include factors which may arise in the future as well as the present situation;
- iv) 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 making the application do not generally carry much weight;
- v) the reasons for an earlier unilateral decision to change a child's name may be relevant;
- vi) any changes of circumstances of the child since the original registration may be relevant;
- vii) in the case of a child whose parents were married to each other, the fact of the marriage is important; there would have to be strong reasons to change the name from the father's surname if the child was so registered;
- viii) where the child's parents were not married to each other, the mother has control over 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 father and child, the existence or absence of parental responsibility

Criminal convictions are evidence of the underlying facts

22. In the case of *CW v SG* [2013] EWHC 854 (Fam) (Baker J) directed himself at paragraph 47:

Where a person has been convicted of criminal offences arising from facts which are subsequently in issue in a children's case, the doctrine of res judicata applies so that the conviction is accepted as evidence of the underlying facts. In practice, save in exceptional circumstances, a court in family proceedings will proceed on the basis that a criminal conviction is correct. In this case, I have listened to the father's evidence carefully but have no doubt as to the genuineness of the convictions. I have found the father's account of the circumstances in which he made what he said was a false confession to be wholly unconvincing. Accordingly, I proceed on the basis that, first, he was properly convicted and, secondly, that in his persistent denial of the allegations he has lied about those matters to professionals and to this court.

23. I have explained to the father that in the same way the fact of his criminal convictions is taken as evidence of their underlying facts in this Court.

The hearing

24. Given the fact of the father's convictions which is the factual basis for the applications, I decided that it would be disproportionate and unnecessary to hear evidence from the mother, and that there was a risk of exposing her to emotional harm if I were to permit cross-examination even indirectly by the father.
25. Having regard to the contents of the father's statement, which took issue with much of the substance of matters which were the subject of his previous convictions, and which did not contain any factual information that was relevant to determination of the applications, I judged that it was not necessary or proportionate to hear evidence from him.
26. I heard evidence from Ms Rose Joseph, the Cafcass officer who had prepared a section 7 report. She had spoken with both parents, to the children and their school/nursery, to the family GP. She has spoken to the father's probation officer. She had reviewed all relevant documents including recent police disclosure. Both parties had the opportunity to put questions to her about her welfare assessment, and the evidence that she had obtained to inform it.
27. The father asked her a number of questions and she explained clearly the reasons for her conclusions. She had spoken to him on the phone on two separate occasions - for around two hours the first time and then a follow-up call of an hour the next day.
28. Ms Joseph's report is clear, she sets out the source of the information she obtained and provides a clear analysis of the impact of the events which led to the father's conviction on mother and the children. Her recommendation that the applications should be granted is well-reasoned and justified by the evidence base.
29. X has made it clear that she wished her second name to be changed. She does not want any remnant of her father, his friends or his name in her life. She wrote a letter to me in which she said that she did not want to see him ever again, and that she wished to change her surname so that it was not possible for him to find her.
30. Y is too young to give any view of events and was a very small baby at the time of the most recent offence and the father's trial and conviction. It can be assumed that like her sister she would wish to grow up in an environment where she can be kept safe and where she feels safe and secure, and she has confidence that her mother is safe from harm.
31. I have read the father's handwritten statement and I listened carefully to his submissions to me. Much of what he said was focused on his view that he was a victim of a miscarriage of justice and he intended to appeal his conviction. He was relentlessly negative about the mother, called her a liar, accused her of being a bad parent, of being controlling and of manipulating the children and alienating them against him. He took no responsibility for his actions and denied that he had ever been abusive. He said that he had been discriminated against because he had autism and additional needs, and this had not been taken into account. He described himself as a victim of the system.

32. At no point was he able to reflect upon the impact on his ex-partner or his children of the events that had led to his conviction and imprisonment.
33. He said that he was not getting people to watch the mother. He said if you listened to the conversations that had been recorded, it was the people he was speaking to telling him that they had looked the mother up on Facebook or that they were going to message her, and he had said words to the effect that well that's for you to decide whether to message her or not.
34. I accept Ms Joseph's analysis that, the father's *'convictions of violent behaviour towards [the mother], his minimisation of the concerns/his actions, his lack of insight into the impact of his behaviour on the children as well as [the mother], his lack of understanding of the concerns raised by children's services in the past about the children are all indicators that suggest a high risk of future harm and suggests a low likelihood of him being able to modify his behaviour.'*
35. That assessment is shared by probation services who have assessed the father as posing a high risk of harm to the mother and the children, and that the risk is ongoing. The evidence from the police disclosure is that the police took a similar view following events on 4 April 2020 and their subsequent investigation. Protective measures remain in place to safeguard the mother and children.

My decision

36. I have had regard to all the circumstances and considered the case law and the welfare checklist factors.
37. I have decided that the mother should succeed on both her applications. The father should be discharged of his parental responsibility for both girls and the mother shall be permitted to change their names.
38. The reasons for my decisions are as follows:
 - (i) The father will be in prison until at least March 2033, by which time X will be an adult and Y a teenager. The father will not be able to exercise his parental responsibility in any meaningful way until then;
 - (ii) The girls' physical, emotional and educational welfare can only be met by them having no contact with their father, direct or indirect – there is no need for him to exercise parental responsibility;
 - (iii) Further than that, there is a risk of harm to the girls if he were to exercise his parental responsibility for them. He played only a limited role in the girls' life previously, he holds strongly negative views about the mother, her parenting capacity and the wider maternal family. He has shown no insight into the impact of his actions on the children and continues to represent a high risk to them and their mother. In the circumstances, the Court can have no confidence that he would exercise his parental responsibility for the benefit of his children;

- (iv) There is a real risk that he could use his parental responsibility to undermine the mother as a parent, or for the purpose of causing her or the children harm, for example by contacting schools or doctors to obtain information about them or their whereabouts;
- (v) The father's relentless negativity about the mother as a parent makes it clear that there is no prospect of him being able to co-parent with her and she should not have to consult with him before making significant decisions about the children;
- (vi) If the father had not been registered on the girls' birth certificates there is no prospect that any application he should make now for parental responsibility would be granted;
- (vii) The fact that the father was registered on the girls' birth certificates in the first place does not carry significant weight (a) in circumstances where the mother alleges she was subject to the father's control and (b) where the law provides that an application to the Court may be made for both the discharge of parental responsibility and a name change in appropriate circumstances;
- (viii) The father continues to be assessed as a high risk to both mother and the girls. To permit the mother to change their names would be consistent with their welfare and enable her to act protectively;
- (ix) X is traumatised by her memories and experiences of her father. A change of name is consistent with her strongly expressed wishes and feelings;
- (x) Y has no memory of her father and no established relationship with him. The name she holds is nonetheless a continued reminder for all the family of the experiences her mother and sister have had as a consequence of the father's actions and it is in all their welfare interests for that name to be changed;
- (xi) The girls have no relationship with their extended paternal family and no positive associations with the second name they have been given. The applications do not represent a significant interference with theirs or their father's right to a family life.

47. For all these reasons the mother succeeds in both her applications.

48. I shall give permission for her to disclose the order to the girls' schools and relevant agencies.

HHJ Vincent
Family Court, Oxford

Draft judgment sent to parties by email on 1 April 2021
Approved judgment handed down in absence of the parties on 19 April 2021