Neutral Citation No: [2022] NIFam 7	*Ref:* **McF11755**
	Court ref. : DJ 2021/92
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **09/02/2022**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-v-

A MOTHER

-and-

A FATHER

Respondents

IN THE MATTER OF WP
(A MALE CHILD AGED 15 YEARS)

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Ms C MacKenzie BL (instructed by the Directorate of Legal Services) for the Health and Social Care Trust
Ms N Rountree BL (instructed by McGready Molloy Solicitors) for the Mother
Ms M McHugh BL (instructed by Quigley Grant & Kyle Solicitors) for the Father
Ms M Rice BL (instructed by the Official Solicitor) for the Guardian ad Litem representing the interests of the child

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McFARLAND J

Introduction

[1] This is an application by the Trust seeking the leave of the court under Article 52(7)(a) of the Children (NI) Order 1995 ("the 1995 Order") that the child can be known by a new surname, and further under the inherent jurisdiction of the court for a declaration that the surname can be formally changed and for the execution of all necessary documentation. The Mother supports the application but the Father

opposes it. The Official Solicitor, who was appointed by the court as guardian ad litem, is of the opinion that it is in the child's best interests that he be permitted to change his surname.

[2] This ruling has been anonymised to protect the identity of the child. I have used the cipher WP for the name of the child. These are not his initials and have been chosen randomly. Nothing can be published that would identify WP, without leave of the court.

Background

[3] WP was born in February 2007 and in a matter of days will be 15 years of age. For the purposes of this judgment I have described him as a 15 year old. His birth was registered by the Mother and the Father, an unmarried couple, on 5 March 2007. He was given the Father's surname. A family proceedings court made a care order on 1 March 2018 placing WP in the care of the Trust. The care order remains in place and parental responsibility is shared by the Trust, the Mother and the Father.

[4] It is not necessary to dwell on the history of WP's upbringing. Social services involvement started in November 2007 and eventually culminated in his removal from his parents' care in March 2017 with concerns relating to emotional and potential physical abuse, domestic violence within the home, parental drug and alcohol abuse, and lack of supervision. A kinship placement broke down and WP was placed with specialist foster carers in June 2017, and has remained with them since then.

[5] WP is extremely well settled in his foster home and is fully integrated into that family. There has been a usage of this family's surname and WP is known locally at school and community level with this surname. He has expressed a wish that he be able to change his surname to reflect his place in this family and the community and to reflect the fact that he has become totally estranged from the Father who has disengaged from contact with WP and the Trust. WP has a disassociation with his surname which is much more than a desire to acquire the new surname.

[6] When WP is addressed by officialdom using his Father's surname, he is uncomfortable and emotionally upset. The Trust's analysis is that this attitude is in no way driven by external factors including the foster carers or other family members, and is a result of WP's strongly held views.

[7] Social work analysis indicates that a surname change would secure permanency and would provide psychological permanence for WP in what has been a very difficult journey through his childhood.

[8] The Mother, who remains in contact with WP is supportive of the placement, she understands her son's perspective, and is consenting to the change of name.

[9] The Father opposes the application. At the time of the application to the court he had not really engaged with the Trust, although he did instruct solicitors and counsel, and has argued that the surname is an important part of WP's identity. His Christian name was shared by a deceased paternal uncle. The Father also objected to the informal use of the new surname and feels that the Trust should have prevented this. The Father takes no issue with the placement itself and feels that WP can change the surname when he is 18 years.

The Law

[10] Article 52(7)(a) of the 1995 Order provides that while a care order is in force with respect to a child, no person may cause the child to be known by a new surname without either the written consent of every person who has parental responsibility for the child or the leave of the court.

[11] Article 173(1)(d) of the 1995 Order provides that the court shall not exercise its inherent jurisdiction with respect to a child for the purpose of conferring on a Trust power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child. A Trust is required to apply to the court for leave to bring its application, and Article 173 subparagraphs (3) and (4) provide that the court may only grant leave if it is satisfied that the result which the Trust wishes to achieve could not be achieved through the making of any order under the provisions of the 1995 Order and there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

[12] The inherent jurisdiction is retained for situations when the provisions in the 1995 Order are unable to secure the best interests of a child (see *Re T (a minor)* [1993] 4 All ER 518, *Father v Mother* [2018] NIFam 10, and *Re OM* [2021] NIFam 16).

[13] Article 3 of the 1995 Order provides as follows:

> "*(1) Where a court determines any question with respect to –*
>
> *(a) the upbringing of a child; or*
>
> *(b) …*
>
> *the child's welfare shall be the court's paramount consideration.*
>
> *(2) …*
>
> *(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to –*
>
> *(a) the ascertainable wishes and feelings of the child*

concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that –

(a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

An Article 52(7) order from the court is a 'Part V' order so Article 3(3) applies to that application. Technically when a court is exercising its inherent jurisdiction it is not required to have regard to Article 3(3). However, when endeavouring to secure the best interests of a child and in promoting the paramountcy of the child's welfare as required by Article 3(1), the court can use Article 3(3) as a useful checklist.

[14] In *Re S (a minor)* [1998] All ER (D) 729, the English Court of Appeal determined that when considering a change of the use of a name, not only was the welfare principle paramount, but careful consideration had to be given to a *Gillick* competent child's wishes, feelings, needs and objectives (see *Gillick v West Norfolk and Wisbech Authority* [1986] AC 112). The House of Lords in *Dawson v Wearmouth* [1999] 1 FLR 1167 held that a court should not order the change of a child's surname

unless there was some evidence that this would lead to an improvement from the point of view of the child's welfare.

[15] The law recognises a surname as a name by which a person is known, and it may be changed by simple usage and by adopting a new surname. Children require the permission of their parents and a straightforward deed poll is sufficient to record the altered usage, although a deed poll is not technically required.

[16] Modern life does however place increasing reliance on formal identification documents such as a birth certificate, and to avoid confusion and difficulties the use of a deed poll is highly advisable. In WP's case this is not possible as the Father objects. Although Article 52(7) of the 1995 Order permits the court to allow a child to be known by a different surname, there is some doubt as to whether this alone includes the power formally to change the name. In *Re S* [2001] All ER (D) 30, Wilson J permitted a mother to use different names for her children, but refused to allow a formal change by deed, a recognition that he was dealing with two separate concepts.

Consideration

[17] WP is 15 years. The Official Solicitor has met him on two occasions, and has reported on his clear and settled view about the change of surname. Although the Trust and the Official Solicitor do not directly address the issue of WP's competence, the clear inference, taking into account his age and the reference to him in the reports, leaves little doubt that he is *Gillick* competent, and capable of coming to a view on this important matter concerning his present and future circumstances.

[18] There is therefore a very strong stated wish on the part of the child concerning this matter.

[19] The change of surname will impact on his emotional needs. The care provided to him by his parents resulted in him having to be taken into care. He now feels firmly established within his foster family, and wishes to copper-fasten this placement by assuming the foster family surname. This proposed change of circumstances would greatly enhance WP's emotional well-being and provide the security for which he yearns.

[20] Applying the welfare check-list, I consider that there is a compelling case to permit the change of name, notwithstanding the objections of the Father.

[21] I also consider that there is a gap in the 1995 Order and it is appropriate to look at the inherent jurisdiction to secure WP's best interests. Should the court not exercise its inherent jurisdiction there is a likelihood that WP would suffer significant emotional harm through his inability to have his desired surname recognised not merely through usage but also in a legal and formal basis.

[22] In the circumstances I will grant leave to permit WP to be known by the

surname of his foster carers and will grant leave to the Trust to apply to the court to exercise its inherent jurisdiction and grant the relief sought to ensure that the name change is officially formalised.

[23] The Trust should prepare a draft order for consideration by the court. Should the Father neglect to sign the appropriate forms within 14 days of them being presented to his solicitors, I direct, pursuant to section 33 of the Judicature (NI) Act 1978, that the Master should execute the form.

[24] There will be a taxation order in respect of legally assisted parties, but there will be no order as to costs between parties.

[25] At the conclusion of the registration of the change of surname, the Official solicitor will be discharged as the guardian ad litem.