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Case No: 20/74

IN THE FAMILY COURT AT BARNET

AND IN THE MATTER OF THE CHILDREN ACT 1989

Date : 14 July 2021

Before:

HHJ McKINNELL

Re S (change of surname : child in foster care)

William Dean (instructed by the local authority's solicitor) for the local authority

The mother did not appear and was not represented
Rima Baruah (instructed by All Family Matters) for the father
Amanjit Lalli (of A L Law) for the child

JUDGMENT

(Hearing date : 6 July 2021)

HHJ McKinnell :

The applications

1. There are two applications which I have to determine. The first is the father's application dated 7 June 2021 for a parental responsibility order. The second is the local authority's application dated 25 March 2021 for permission to change the child's name. I will refer to the child as "S".
2. There is no issue about the father's application. There is an issue about the local authority's application. Everyone agrees that S's surname should be changed but they do not agree about the surname to replace it.

3. These proceedings began with the local authority's application dated 4 August 2020 to revoke a placement order made on 20 January 2017.

The background

4. S is 9 years old. She previously lived with her mother and step-father ("SF"). She was removed from their care following evidence that they had abused and neglected her. Care and placement orders were made on 20 January 2017. S has the same surname as SF. DNA testing has proven that SF is not S's biological father. They are not related.
5. In the previous care proceedings, the Court identified the father in these proceedings as S's birth father (paragraph 3 of the fact-finding judgment dated 4 November 2016 at **I8**). That judgment records that the father was notified of the existence of the care proceedings and hearing dates but did not participate. In those proceedings, findings were made against the mother and SF, including findings that the mother or SF had inflicted injuries on S. After those proceedings concluded, S alleged that SF had sexually abused her. There have not been any findings about the sexual abuse allegations. S has not had contact with SF for many years. However, she continues to be linked to him by her surname. When S's birth was registered 9 years ago, SF was named as her father (and is named as her father on her birth certificate) and S was given his surname. Everyone agrees that S should no longer have SF's surname in the light of the findings and allegations made against him. SF's parental responsibility for S was terminated by an order dated 31 March 2021 in these proceedings. The recitals to the order dated 31 March 2021 record that SF was discharged as a party to these proceedings [**B79**] but the order does not include that direction. That is clearly an omission. For the sake of completeness, I record and direct that SF was discharged as a party on 31 March 2021. The placement order was also revoked on 31 March 2021.
6. For the last 5 years, S has lived with the same foster care family. The foster carer ("FC") is committed to caring for S. FC has not ruled out the possibility of applying in the future to adopt S or to be her special guardian (see the guardian's analysis dated 26 March 2021 at **E6**). However, for the time being FC wants to continue to have the support and services available to her and to S as S's foster carer. No-one doubts FC's commitment to S or the strong bond between S and FC. The father supports S remaining with FC. FC has applied to be approved as S's long-term foster carer. The local authority supports that application. The mother has not engaged with these proceedings since January 2021.

The hearing on 6 July 2021

7. The local authority was represented by Mr Dean. The mother did not attend and was not represented. The father was represented by Ms Baruah. S was

represented, through her guardian, by Ms Lalli.

8. At the hearing on 8 June 2021 (which the mother did not attend), I directed the local authority to serve the father's parental responsibility application and the updated bundle on the mother at her last known address [B92]. That was done on 22 June 2021.
9. I have read the bundle and practice direction documents prepared by the parties. The bundle includes the social worker's updating statement dated 18 May 2021 (including the clearly reasoned conclusions at paragraphs 30-33, C43), the guardian's analysis dated 26 March 2021 and position statement dated 30 March 2021, the guardian's updated analysis dated 4 June 2021 and the father's position statement dated 6 June 2021 and statement dated 28 May 2021.
10. I have taken all that I have read and heard into account. I cannot refer to it all in this judgment.

The father's application – parental responsibility order

11. The guardian supports the father's application. The local authority is neutral. The mother's position is unknown. The father made his application shortly before the last hearing on 8 June 2021, which the mother did not attend. At that hearing, the local authority was directed to serve the father's application and updated bundle on the mother at her last known address.
12. The Court can order that the father has parental responsibility for S under s.4(1)(c) of the Children Act 1989. The Court must consider the degree of commitment the father has shown towards S, the degree of attachment between the father and S and the reasons why the father is applying for the order. Section 1 of the Children Act 1989 applies and the welfare of S is the Court's paramount consideration.
13. The father has shown commitment towards S in these proceedings. He has attended hearings, he has made his application, he has shared a photograph of himself and written an initial letter to S and he is following the professionals' advice about taking things slowly because S has lived most of her life not knowing who her biological father is. The father has agreed that there should be indirect contact for six months before he meets S. Of course, S's wishes and feelings will have to be considered at all times and no one knows how S will respond to meeting her father. At this stage, the father's commitment is there but it is untested and, whilst everyone hopes that S will have a meaningful relationship with her father, these are early days. SF was a poor role model for, and harmed, S.
14. Granting the father parental responsibility will mean that he can be involved in decisions about S along with the mother and the local authority. The care

order remains in place.

15. I agree and find that it is in S's best interests that the father is given parental responsibility for S. The mother is no longer engaging. The father has shown commitment to S more recently and he wants to build up a father-daughter relationship with her. He supports S continuing to live with FC and he is listening to advice about how quickly contact with S should progress. He acknowledges that his commitment in the past has been poor but he wants to change that. He wants to be a father figure to S and he wants to be involved in S's life. He is S's biological father and he is at an early stage of building up a father-daughter relationship with S. There is no objection to the father's application. I consider that it is in S's best interests that the father has parental responsibility for S and I make the parental responsibility order sought by the father. He will share parental responsibility for S with the mother and with the local authority.

The local authority's application – change of name

16. Having considered the law summarised below, it is clear, and I find, that S should not continue to share SF's surname because SF is not S's father and he is one of two people who inflicted injuries on her. In addition, S has made allegations of sexual abuse against SF. For good reason, SF is no longer a part of S's life and he no longer has parental responsibility for S. The continued use of SF's surname for S is not in S's best interests. It is a constant reminder of a person who she is not related to and who caused her to suffer significant harm. The sooner S's surname is changed the better.
17. Each party puts forward different proposed surnames. The father puts two alternative surnames forward. Whilst it was said that the Court is not limited to the proposals put forward by the parties, sensibly no-one suggested that S should have a triple-barrelled surname. I set out below a summary of what each party says. This judgment is not intended to record or recite everything that I have read and heard.
18. The local authority originally said that S's surname should be the same as the mother's surname. It now says that S's surname should be double-barrelled, with FC's surname first, followed by the mother's surname. Essentially, the local authority says that even though the mother has been found to have been one of two people who inflicted injuries on S, that is not a reason to exclude the mother from S's surname. The local authority says that S's surname should reflect where S came from and the life she lived before she was removed, as well as the life she is now living with FC. The local authority says that as S gets older, she may want to start to have some sort of contact with her mother. Some children do return to their birth families despite experiencing abuse and neglect when they lived with them. Keeping the mother's surname will keep S's link with her birth family including her mother. It may help S with her sense of identity now and in the future. The local

authority also says that although S is currently settled with FC, it is possible that those living arrangements will not continue until S is 18. A foster care home (even if FC is matched and approved as a long-term foster carer for S as the local authority believes is likely) is not as permanent a home as an adoptive home or a home under a special guardianship order. Everyone hopes that S will continue to live with FC, where she remains happy, safe and settled. However, that cannot be guaranteed.

19. When the mother attended the hearing on 18 January 2021, she told the Court that she wanted S's surname to be changed to the same as the mother's. The mother has not engaged since that hearing. S has not seen her mother for some time. The time they spent together in October 2019 was difficult. On 17 November 2019 S said that she did not want to see her mother any more. Letterbox contact was offered to the mother but she did not take that up. S decided not to send her mother a Christmas card in December 2020. There is currently no contact at all between S and her mother. That may change in the future, as S gets older. It may not. For the purposes of this judgment, I assume that the mother continues to want S's surname to be changed to the mother's surname.
20. The father's primary position is that S's name should be changed to his surname. He feels that his importance has been diminished in this case. He says he has shown commitment to S and is committed to her. He wants to be actively involved in S's life. He says that S's wishes and feelings are likely to have been influenced by the abuse she suffered at the hands of SF, the only father figure S has known so far. He feels marginalised. He wants S to know that she should not be fearful of him as she was of SF. I hope that the father understands that it is S's welfare that is the Court's paramount consideration. That takes priority over what the father (or any other party) feels or wants.
21. The father's secondary position is that if the Court considers that S's surname should include FC's surname, it should be double-barrelled with FC's surname first and the father's surname second.
22. The guardian says that S's surname should be the same as FC's surname. The guardian says that the mother's surname should not be included because the mother was one of two people who inflicted injuries on S. The mother also neglected S. The guardian says that, like S's sisters who have been adopted, S needs to be able to look to the future rather than be linked to her past when she suffered significant harm and abuse in the mother's care. The guardian is confident that FC will continue to provide S with a loving and supportive home during her minority. No-one doubts FC's commitment towards S. FC has clearly provided S with a great deal of love and support. S is very happy living with FC. S feels, and is, safe, supported and loved with FC. The guardian reports that FC : *"is [S's] "mum" to all intents and purposes.*

She would love to give [S] her surname.” [E6]

23. The guardian says that the father’s commitment is recent and untested. She says that no one knows how the father’s contact with S will go. She points out that the father was not involved in S’s life for many years, including when S was abused and neglected by her mother and SF and during the previous care proceedings.
24. The guardian and the local authority’s argument that FC’s surname should be used is an unusual one. The parties have found one reported case in which a child took on the name of the foster carer : ***Re J (A Minor) (Change of Name) [1993] 1 FLR 699***. That case involved parents who had no contact whatsoever with their child. In that case there was expert psychological evidence that if the parents re-entered the child’s life, it would be “*exceedingly damaging*” for the child. There is no such evidence in this case.
25. Whilst the local authority recognises the role and importance of FC in S’s life, and has changed its position to supporting FC’s surname being part of S’s double-barrelled surname, the local authority is concerned about S being given another surname (the first one being SF’s) which, again, does not reflect either of S’s birth parents’ names or identities. If FC is not able to look after S in the future, s would be left with a surname of a family she does not live with and is not related to.
26. I make it clear that I have summarised the parties’ positions. I have not set out their arguments in full.
27. Applications for changes of surname following care proceedings are unusual. The fact that a parent has been found to have caused significant harm to a child does not usually lead to a change in surname. If S had been given the mother’s surname at birth, it is very unlikely that the local authority would be making this application to change S’s surname.

The law relating to a change of name under a care order

28. There is no dispute about the law that applies. Each party has set out the relevant legal principles in their written documents. I will set out the law as clearly as I can. I do that for the benefit of S (if she ever decides to read this judgment) and her parents. The mother did not attend the final hearing but she may want to read this judgment in the future.
29. The jurisdiction to make the order is contained in s.33(7) of the Children Act 1989. Whilst a care order is in force, the Court’s permission is required before a child can be known by a new surname unless there is the written consent of every person who has parental responsibility. There is no agreement or

written consent in this case.

30. The cases of ***Dawson v Wearmouth [1999] 2 AC 308 and Re W (a Child) (illegitimate child : change of surname) (also known as Re W, Re A, Re B) [2001] Fam 1*** establish the following relevant legal principles:
- (1) When considering a change of surname, the welfare of the child is the Court's paramount consideration.
 - (2) It is necessary to consider the welfare checklist in s.1(3) of the Children Act 1989.
 - (3) The registered surname and the reasons for the registration should be considered.
 - (4) Factors that may arise in the future as well as the present situation should be considered.
 - (5) Reasons given for changing 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.
 - (6) Any change of circumstance of the child since the original registration may be relevant.
 - (7) The degree of commitment of the father to the child, and the existence or absence of parental responsibility, should be taken into account.
31. In ***Re R (surname : using both parents') [2001] EWCA Civ 1344***, a double-barrelled surname was permitted to reflect the child's Spanish heritage and to recognise the importance of both parents. In that case, Hale LJ questioned whether the use of a father's surname was needed to retain a father-child relationship or commitment.
32. The test is welfare, pure and simple. That includes an analysis of the effect of change and of risk of harm : ***Re W (children) (change of name) [2013] EWCA Civ 1488***.
33. The Court is likely to benefit from the opinion of a CAFCASS officer on the question of a change of name : ***Re W (children) [2013] EWCA Civ 735***. The guardian has provided her opinion in this case.
34. The case of ***Re T (Abduction : Child's Objections to Return) [2000] 2 FLR 192*** sets out the approach the Court should take when considering a child's wishes and feelings.

Analysis

35. I repeat, and take into consideration, all that I have set out above.
36. S was given SF's surname because SF was in a relationship and living with the mother when S was born. SF was a father figure to S, but he was not a good one. He is not S's father. He and the mother are both in the pool of

perpetrators of physical abuse against S. S has made allegations that SF sexually abused her. S and SF have no contact with each other. SF is a clear risk to S's safety and SF no longer has parental responsibility for S. S does not want to keep SF's surname and it is absolutely clear that S's surname should now be changed from SF's.

37. S is a 9 year old child. She suffered significant harm and neglect when she was in the care of her mother and SF. She has experienced safe, loving and consistent care and support in FC's home. It is clear that S feels, and is, very much a part of FC's family. S wants to continue to live with FC and FC wants S to continue to live with her. S has made huge progress since she moved to live with FC (see paragraph 23 of the guardian's analysis dated 26 March 2021 at **E5**) and there is no doubt whatsoever that FC is committed to continuing to provide S with the warm, loving, nurturing and safe home that S needs. S's wishes and feelings have undoubtedly been influenced by the terrible experiences she had when she lived with her mother and SF, by the excellent care she has received from FC since S moved to live with FC and by the father's absence from her life so far.
38. When S was told in 2017 that that her sister was being adopted, S was initially happy for her sister but then became more withdrawn in school. When she was told in 2018 that she would be staying with FC, S's confidence and emotional wellbeing improved. When S was asked in the presence of FC on 15 April 2021 whether she would like to have FC's surname, S said she would *"because it's nice and because it is your name (pointing at [FC])."* In a subsequent discussion with the guardian on 25 May 2021, S was given a list of the different surnames being considered and out of that list S chose the FC's surname. The guardian reported that S pointed to the FC's name *"nodded vigorously and did not want to dwell on the discussion. She did not want her name to be double-barrelled with either [her mother's surname or her father's surname]."* **[A13]**
39. S is, however, only 9 years old and she cannot understand all the implications of a change of surname to FC's name only. For understandable reasons (age, maturity and the need to avoid upsetting S), S has not been spoken to about, or considered, how she would feel if she only had FC's surname and it later turned out that S was not able to continue to live with FC. The Court has to consider the position now and in the future. Part of that consideration has to include the possibility that S may not always live with FC. A foster care home/placement is a less permanent home than an adoptive home or a home under a special guardianship order.
40. There is an obvious benefit in FC's name being included in S's surname. It would reflect S's positive lived experience over the last five years with FC. It would recognise the reparative parenting and commitment that FC has shown towards S over the last five years. It would reflect the continuing commitment

that FC has to S and the close bond and attachment between S, FC and FC's family. S wants to have FC's surname. They are a cultural match. Having the same surname would send a clear message to everyone that S is part of FC's family. It is likely to increase S's sense of belonging to FC's family. Everyday events such as making doctor's appointments, dealing with the school and booking trips will see S having the same surname as FC. There will not be a need to explain why S's surname is not the same as the person who is looking after her. All of that could still happen if S's name was double-barrelled, including FC's name. S could choose to use part of her double-barrelled name if that is what she wants to do at any particular time.

41. The guardian said with some force that S, like her sister, needs to be able to put her history behind and no longer have an association, through her surname, with her mother and the abuse and neglect that she experienced and suffered when she lived with her mother. However, children's surnames are not routinely changed after the Court makes findings of significant harm, even findings of deliberate/inflicted injuries. Children's surnames are changed when they are adopted but S has not been adopted by FC. Whilst everyone hopes and expects that FC will be able to continue to care for S until S is 18, S's teenage years are ahead of her and there is an element of not knowing what the future may bring. As S moves into her teenage years, she may display more challenging behaviour, particularly after her early years' experiences. FC may struggle to look after S if that happens. Something unexpected may occur in FC's own life that results in FC being unable to continue to care for S. Whilst other members of FC's family may want to step in and care for S, they would have to be assessed by the local authority while a care order remains in place. Foster care provides less permanency than adoption or a home under a special guardianship order. No-one can say for certain that S will remain living with FC until she is 18 years old. If S is not able to continue to live with FC in the future, S may not want to have a surname that reflects a family (FC's) that she no longer lives with and is not related to. S has already been given a surname of a person she is not related to.

42. If S has a double-barrelled surname that includes FC's surname, S will be able to choose whether she uses both parts of her surname or just one part of it. A double-barrelled surname will provide S with more flexibility as she gets older and it would be more future-proof. If S decides that she wants to make contact with her mother in the future (as children sometimes do even after experiencing abuse and neglect at home), her continuing link with her mother through her surname will probably make that step easier. Although S currently does not want to see or communicate with her mother or take her mother's surname, S may not always feel that way. S's current response is not surprising considering her past experiences and her young age. S's wishes and feelings are important but they are not determinative. S should not feel the burden of responsibility for her new surname. The possibility of S

wanting to know more about her mother in the future cannot be ignored. If S has a double-barrelled surname which includes the mother's name, that does not mean that she has to see her mother or that she has to include her mother's surname when she tells people what her surname is. She can include it or not as she wishes now and as she gets older. In some circumstances in the future, S may have to provide a link to the name she uses and the name on her passport/birth certificate but that is no different to the experience of many married people who chose whether to take on their married name, make it double-barrelled or use their married surname for some purposes but not for all. Flexibility is retained.

43. Retaining the mother's surname as part of S's double-barrelled surname recognises that S did live with her mother for the first four years of her life. It will help S to know where she comes from, what her maternal birth family were called and is likely to help S with her sense of identity. If the mother had registered S with the mother's own surname, it is unlikely that anyone would be saying that S's surname should now be changed. The fact that the mother neglected and harmed S does not mean that the mother's surname should not be included in S's new surname. S lived with her mother for the first 4 years of her life as a whole. Whilst those were not happy or safe years for S, they are still a part of S's life. S will have to find a way to understand and manage her past experiences. The mother is a part of those experiences, whether S decides to have contact with her or not. S's past explains why she lives with FC and not with her birth mother, birth father or other members of her birth family. If children's surnames were changed to protect them from any harm in being connected to the parent(s) who caused them significant harm, there would be far more changes of surname. The continued use of SF's surname has triggered this application but that does not mean that S's link to her mother through her surname should be removed. I agree with the allocated social worker's evidence that a double-barrelled name *"is a balanced and proportionate way of maintaining [S's] identity and listening to her wishes and feelings. It is a realistic option that will allow [S] to use both parts of her name, or either, as she chooses and allows her to see her maternal family link as part of her identity, paving the way for her to see things differently in the future."* (see paragraph 33 of the allocated social worker's statement dated 18 May 2021 at **C43**).

44. Until relatively recently, the father has not been involved in S's life. He was told about the hearings in the previous care proceedings but he chose not to attend or take part. He was entitled to free legal representation but he did not take it up. He is showing commitment now but that commitment is untested. He does not know S and S does not know him. Whilst I have made a parental responsibility order, the father has a long way to go before he can say that he has an established relationship with his daughter. No-one knows how S will respond to spending time with her father. She has no attachment to him. She does not know him. It is not surprising that she did not choose his surname

from the list she was given. For most of her life, S has not known who her biological father is.

45. S's relationship with her father, and his relationship with her, is not dependent on sharing the same surname. The father can be part of S's life, whether she shares his surname or not. He will always be her father. The fact that he is her father does not mean that it is in S's best interests that she has the same surname as him. Being a father is more about commitment than a name. In his written statement dated 28 May 2021, the father said "*Ultimately, though I hold my own feelings about my daughter's surname, I believe that [S's] wishes should be respected first and foremost. If [S] expresses a wish to take my surname or that of her current foster carer, this is something that I would have to accept.*"
46. The arguments for including the mother's surname in a double-barrelled surname for S do not apply to the father because S has never lived with her father and she does not know him. He was not part of S's life for many years, including during the period when S was abused and neglected. Whilst it is right that the local authority did not seek findings against the father in the previous care proceedings, it also has to be recognised that the father did not take part in those proceedings even though the local authority's care plan was for S to be adopted. Although the father is now committed to being in S's life, he does not know her, she does not know him and no one knows how their relationship is going to progress. Whilst I understand that the father wants to be involved in S's life, wants to be recognised as her father and wants to be able to show her that she should not be fearful of him, S does not need to have the father's surname (whether on its own or double-barrelled) for that to happen. The father will need to show his commitment to S over time and through any difficult times. He will have to build up his relationship with S at a pace that S can manage. The father understands and accepts this and I commend him for that. At this stage, I do not consider that it would be in S's best interests to have the father's surname because she does not know him, she has not spent time with him, she is settled with FC and she does not want his surname. It would not be fair to S to delay the decision about her new surname to see how her relationship with her father progresses. An adjournment was not sought by the father. Again, I commend him for that. S's surname must now change and delaying the decision about what it should change to is likely to prejudice S's welfare. She should not have SF's surname for any longer than is necessary.
47. In making this decision I have interfered with S and her family's Article 8 rights to a private and family life. This interference is necessary, proportionate and in S's best interests. There was no agreement about the proposed name change, other than that it should be changed from SF's surname, and the Court was asked to make a decision about S's new surname.

Decision

48. Having considered this matter carefully, I find that it is in S's best interests that her surname is changed from SF's to a double-barrelled surname, with the first part being FC's surname and the second part being the mother's surname. The father should not see this as marginalising his role. His role will depend on his commitment. He has made a good start and I hope he will continue in the same way. He is part of a large family and S may benefit from knowing them in the future.
49. I wish the families, particularly S, the very best.
50. I have been very pleased to read and hear about the settled, loving, happy and secure home S now lives in. Every child deserves to be happy and safe. I am grateful to FC for making that happen and I hope that S will continue to live with FC in the future.
51. I am grateful to the professionals for their hard work and help in this unusual application.