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CHANGING A CHILD'S SURNAME

There is no impediment for a former wife to change her married name back to her maiden name, after separating. However, changing a child's surname is very different.

In a recent case, the mother wanted to change the last name of her 4 year old daughter, from the father's surname to a hyphenated surname, including the mother's maiden name. The father opposed the change and argued that the daughter was known by his surname at her child care centre. The mother held the view that a surname which reflected each parent's name would be "useful" in establishing the child's identity.

The court took into account that the mother was the primary carer of the child and that to change the child's last name would not cause the child any confusion due to her young age. The court found it was likely to be in the "best interests" of the child to change her surname to a hyphenated name.

Q & A

Q: I have been ordered to attend an appointment with a family consultant. Who are family consultants?

A: Family consultants are qualified social workers or psychologists with skill and experience in working with children and families. They are appointed by the court to help parents and judges achieve the best outcomes for children. Family consultants are recognised as court experts in children's matters.

CAN YOU GET LUMP SUM CHILD MAINTENANCE?

A claim by a parent for financial support (from the other parent) for a child over 18 years occurs under the *Family Law Act*, not the Child Support Agency. As these claims are based on income levels, they are usually paid periodically, eg fortnightly, however the court has a discretion.

In a recent case, the mother sought (in addition to a property adjustment order) that the father pay child maintenance for their daughter who was 18 years old. The child suffered from chronic depression throughout her life and had been hospitalised on a number of occasions. The child lived with the mother and the mother had continued to pay for the health care needs of the child following separation with no support from the father.

The father conceded that the child's health had been "difficult". The mother also produced evidence confirming that the child was not currently employed and would have difficulty finding employment.

The mother sought an order that the father be responsible for 50% of all medical costs for the child.

The court accepted that the mother had made out a valid child maintenance claim, however, the court felt that the order she sought was open ended. The court preferred that the mother receive a lump sum payment by way of an increased property settlement adjustment. The Judge awarded the mother a 7.5% adjustment (of the property) for



the ongoing care and maintenance of the child. The option was available to the Judge because the parties were also seeking a property settlement.

ARE YOU IN A DEFACTO RELATIONSHIP?

Under the *Family Law Act*, defacto couples have the same rights as married couples to seek a property settlement or spouse maintenance when they separate. So the question is, how do you know if you are in a defacto relationship?

Firstly, the couple needs to have been in a “genuine domestic relationship”. There are various indicators as to whether that is the case, some of these indicators include:

- The duration of the relationship;
- The nature and extent of their common residence;
- Whether a sexual relationship exists;
- The degree of financial dependence or interdependence and any arrangements for financial support between them;
- The ownership, use and acquisition of their property;
- The degree of mutual commitment to a shared life;
- The care and support of children (if there are any); and
- The reputation and public aspects of the relationship.

If there is a “genuine domestic relationship”, then one of the following needs to exist, i.e:

- The couple had been in the relationship for at least 2 years; or

- There is a child of the relationship (in which case there is no time requirement); or
- It would be unjust not to recognise a defacto spouse's financial or non-financial contribution.

The definition is not straight-forward. If you are unsure of your position, get specialist family law advice. For a fixed cost initial consultation, call us on (07) 3221 4300.

CAN I APPLY FOR CHILD SUPPORT?

An application to the Child Support Agency can only be made if both parents are residents of Australia, or if one parent is a resident of Australia and the other parent is a resident of another country that is a “reciprocating jurisdiction” (i.e a country that has an agreement for collection with the Australian Child Support Agency).

Parents who are unable to apply for a child support assessment may be able to apply to the Family Court for a court order for child maintenance.

HAPPY CHRISTMAS

On behalf of the team at Michael Lynch Family Lawyers, we thank you for your support and feedback throughout 2014 and we wish you a Merry Christmas and a safe and prosperous New Year.

We will be closed over the Christmas period from 5.00pm on Tuesday, 23 December until 8.30am on Monday, 5 January 2015.



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