

FAMILY Flyer



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No. 262

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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 considering whether a child's surname should be changed the court has set out various factors including;

- (i) The welfare of the child;
- (ii) The short and long-term effects of any change in the child's surname;
- (iii) Any embarrassment likely to be experienced by the child if their name is different from that of the parent with day-to-day care;
- (iv) Any confusion of identity for the child if his or her name is changed or not changed;
- (v) The effect any change in surname may have on the relationship between the child and parent whose name the child bore during the marriage;
- (vi) The effect of frequent or random changes.

The court is prepared to alter children's surnames and to employ the use of hyphenated surnames. This becomes a matter of balancing relevant factors however.

For a detailed discussion of this, see our article – "[Changing a Child's Surname](#)".

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CLAIMING CHILD BIRTH EXPENSES – WHAT'S IN AND WHAT'S OUT?

Beyond child support, the Family Law Act (FLA) provides for another financial support cost that a father may need to contribute to, it's "Child birth expenses".

A recent case considered a mother's claim for "child birth expenses' from the father for a period of the pregnancy and a short period after the birth of the child.

The facts:

- The parties lived together for a few months prior to separation;

- The father claimed that he made financial contributions to the mother during her pregnancy, and that he could not afford to pay anything further. The father was receiving government benefits at the time of the trial and had no substantial assets, but was intending to obtain employment shortly after the trial;

The law:

The FLA provides that the father of a child who is not married to the mother is liable to make contributions towards the maintenance of the mother. The court will consider the financial circumstances of both parents and any special circumstances.

Court order:

The court drew a distinction between maintenance of the mother and child maintenance. The judge found that outlays such as nappies, clothing, a bassinet and baby wipes came under child support and not maintenance of the mother.

The father was liable to pay half the mother's maintenance expenses within six months.

DEALING WITH TAX DEBT

The Family Court holds that parties to a marriage (or defacto relationship) should share in the good economic times as well as the bad that occur in their relationship, even if the losses have been caused by the actions of one party. Only where there are 'good and substantial reasons' should there be a departure from this general principle and in those cases the greater share of the loss will be retained by the party who incurred the loss. The court recently considered whether the husband's unpaid (ATO) debt and penalties should be included in the pool of property to be divided between the parties.

Facts:

Following the sudden death of his father, the husband developed a significant gambling problem. The wife was

unaware of the husband's gambling and by the time the husband agreed to cease all gambling he had a significant ATO debt. The parties then secured an overdraft of \$50,000.00 to discharge the husband's unpaid tax liabilities. The husband continued to struggle with his finances and accumulated over \$170,000.00 in unpaid taxation, interest and penalties.

The husband was found to be suffering severe depression and a post-traumatic stress disorder (PTSD).

Court Found:

The court concluded that despite suffering PTSD, the husband's psychological functioning was not so compromised that he was unable to manage his financial affairs. The husband was found by the court to be "negligent or recklessly indifferent" towards his taxation responsibilities and he alone should bear the penalties and interest to the ATO.

Accordingly, the court found that it would be unjust to include the ATO debt as a joint matrimonial debt and the husband should bear the greater responsibility. The ATO debt was treated separately from the remainder of the pool of property.

It was ordered that the parties should bear half of the unpaid tax as a joint matrimonial debt and the husband be solely responsible for the remaining 50% and penalties.

HAPPY CHRISTMAS !

On behalf of the team at Michael Lynch Family Lawyers, we thank you for your support and feedback throughout 2015 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 Wednesday, 23 December until 8.30am on Monday, 4 January 2016.



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