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(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA
(FAMILY DIVISION)

2025 MBKB 8 (CanLII)

BETWEEN:

D.V.A.,)	<u>Tanya Keller</u>
)	for the petitioner,
)	
)	petitioner,
)	
-and-)	
)	
)	<u>Chad H. Schaan,</u>
S.J.A.,)	for the respondent,
)	
)	respondent.
)	
)	<u>JUDGMENT DELIVERED:</u>
)	January 15, 2025

THOMSON J.

[1] This complex matter appeared before me at trial over a number of days in 2024, and at a third continuation culminated in a form of resolution between the parties and the pronouncement of a consent final order on January 10, 2025, disposing of all the issues raised in the pleadings, save one.

[2] That one remaining matter relates to the petitioner's request that the name of the child be changed, which is resisted by the respondent. These reasons for decision answer that request.

[3] In the usual course, a request to change a child's name is governed by the provisions of *The Change of Name Act*, C.C.S.M. c. C50 (the "*Act*"). The pertinent provisions of the *Act* include the following:

Requirements

2(1) Any person may make application to the director for a change of name who has resided in the province for at least three months immediately before the date of application and who

- (a) is 18 or more years of age;
- (b) has been married;
- (c) has cohabited in a common-law relationship; or
- (d) is a parent with custody of the child.

.....

Refusal by director of application

2(3) The application shall be refused where

- (a) the requirements of this Act are not met; or
- (b) the director is of the opinion that the proposed name might reasonably cause mistake or confusion to any other person; or
- (c) the director is of the opinion that the change of name is sought for an improper purpose or is on any other ground objectionable; or
- (d) the director is of the opinion that the applicant has made frequent changes of name;

and the director shall notify the applicant of the reasons for refusal and of the right to appeal.

Appeal

2(4) Upon the refusal of the director to register a change of name, a person affected by the refusal may, within 28 days of receipt of notification of refusal and upon 10 days notice to the director and to such other persons as the court may direct, apply to the court for an order that the director register the change of name.

.....

Change of name of children by parent

4(1) A parent may apply to change the name of any children who are in their custody

- (a) with the written consent of the other parent who has custody; or
- (b) on notice by registered or certified mail to the parent who does not have custody.

[emphasis added]

[4] In the case at hand, the initiating pleading filed by the petitioner in 2021 identified the proceeding as being governed by *The Family Maintenance Act*, C.C.S.M. c. F20, which, like *The Family Law Act*, C.C.S.M. c. F20 (which subsequently came into effect on July 1, 2023), contains the presumptive provision where, as here, the parents of a child have not cohabited after their child's birth:

Joint rights of parents respecting children

36 Subject to a parenting order under section 37, parents have joint rights to exercise parental responsibilities with respect to their children, unless the parents have never cohabited after a child is born, in which case the parent with whom the child resides is the only parent with decision-making responsibility and parenting time respecting the child.

[emphasis added]

[5] The *Act* has remained unchanged since *The Family Law Act* came into effect. This is obvious from reference in s. 4(1) noted above, which speaks of a parent with a child "in their custody" and "to the parent who does not have custody". Further, s. 1(1) of the *Act* continues to contain the definition: "**custody**" means the care and control of a child by a parent of that child".

[6] The anomaly that arises in this case by reason of the petition having been filed under the former *The Family Maintenance Act*, which, like *The Family Law Act*, contains the presumptive provision respecting parents who have not

cohabited with the child, is that the petitioner at that time actually had no status to seek the requested relief under the **Act**, as he did not then have “custody” or “care and control” of the child, although he is identified on the child’s birth certificate as the child’s biological father. For that reason, when the matter appeared before me initially the petitioner’s pleading was then amended to invoke s. 37(2)(e) of **The Family Law Act**, and seek to clothe the court with jurisdiction to hear the request for relief in the form of a change of name of the child, as an incident of a parenting order.

[7] The question that arises is whether the court has jurisdiction under **The Family Law Act** to grant that relief, or whether it is intended that the **Act** provides a complete and exhaustive scheme for pursuit of the change of a child’s name. I am of the view that the latter interpretation is correct. If any authority is required to arrive at that conclusion, I endorse and rely upon the decision of Goldberg J. in **D.S v. C.S.**, 2011 MBQB 184, where she very helpfully outlined the scheme of the **Act** (see paras. 8-10).

[8] That being said, in this particular case, the petitioner is not left without recourse. He remains free to pursue a request of the Director of Vital Statistics pursuant to the **Act**, respecting his child, as he now has status, by the terms of the final order (consent) pronounced on January 10, 2025 (and indeed had the status to pursue that relief by reason of the earlier consent interim order pronounced on April 16, 2024, by Dueck J.), as he has been granted periods of parenting time. In my view, his possession by court order of parenting time is

analogous to his having “care and control” in relation to the definition of “custody” under s. 1(1) of the **Act**, thus enabling him to rely upon s. 4(1), which provides that, “[a] parent may apply to change the name of any children who are in their custody”. Of course, the written consent of the other party who has custody under 4(1)(b) is required, but s. 5(2) permits the director to dispense with such consent:

Director may dispense with consent

5(2) The director may dispense with the consent of any person required under section 4

- (a) if a duly qualified medical practitioner states in writing that the person is incapable of giving consent; or
- (b) if satisfied it is in the best interests of the child.

[emphasis added]

[9] Section 6(1) further provides recourse to the respondent to object to registration of a name change by the director by court application for an order requiring that the director not register the change of name, but it is then the respondent who bears the onus to establish that the change would not be in the best interests of the child.

[10] Accordingly, I must dismiss the request made by the petitioner pursuant to s. 37(2)(e) of **The Family Law Act**. The proper route to pursue the relief the petitioner requests is subject to the statutory scheme set out in the **Act**.

[11] Given that this discrete issue (which is somewhat novel and relatively narrow) actually now awaits a disposition if pursued under the **Act** and arose within a much broader and complicated dispute between the parties which they

ultimately resolved by agreement, I am not inclined to consider any award of costs is appropriate.

_____J.