IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 25

District Court Appeal No 63 of 2018

Between

UPD

… *Appellant*

And

UPC

… *Respondent*

In the matter of FC/OSG 201/2017

In the matter of Section 5 of the Guardianship of Infants Act (Cap 122)

And

In the matter of [name of child]

Between

UPC

… *Plaintiff*

And

UPD

… *Defendant*

JUDGMENT

[Family Law] — [Child] — [Name]
[Family Law] — [Guardianship] — [Welfare of child]

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UPD
v
UPC

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High Court (Family Division) — District Court Appeal No 63 of 2018
Tan Puay Boon JC
14 March 2019

18 December 2019 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This case concerns the change of the name of a girl ("the Child") by deed poll by her mother ("the Mother"), the appellant, and the Mother's husband ("the Husband") on 15 August 2017, which the court-appointed guardian of the Child ("the Guardian"), the respondent, opposes. The Child was born in September 2008, and is now 11 years old.

2 The Guardian has earlier filed FC/OSG 201/2017 on 21 September 2017 ("OSG 201") to seek sole care and control of the Child. The application was made under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("GIA"), with the Mother as the defendant. After the Guardian discovered that the Child's name and racial group had been changed by deed poll, the Guardian's solicitors wrote to the Mother's solicitors on 14 December 2017 to

object to the change.[1] The Guardian also filed FC/SUM 665/2018 on 21 February 2018 under OSG 201 to seek various orders, including:

> a. The Deed Poll executed by [the Mother] and [the Husband] on 15 August 2017 ("Deed Poll"), purporting to change the name of the Child, be declared void and inoperative;
>
> b. The Child's name shall remain as [her original name] and her race shall remain as [her original race]. Any changes that have been made by [the Mother] to the Child's name and/or race shall be declared void and inoperative and [the Mother] shall henceforth be restrained from changing the Child's name and/or race without [the Guardian's] express written consent.

3 Other orders the Guardian sought included orders directing the Mother to disclose the authorities and/or institutions which she had registered the deed poll with; to inform them that the name of the Child should revert to her previous name; and to inform the Immigration and Checkpoints Authorities ("the ICA") that the race of the Child should revert to her previous race.

4 The District Judge ("the DJ") allowed the application to set aside the deed poll but did not grant the further ancillary or consequential orders sought by the Guardian. The grounds of decision of the DJ may be found in *UPC v UPD* [2018] SGFC 86 ("the GD"). The Mother has appealed against the decision.

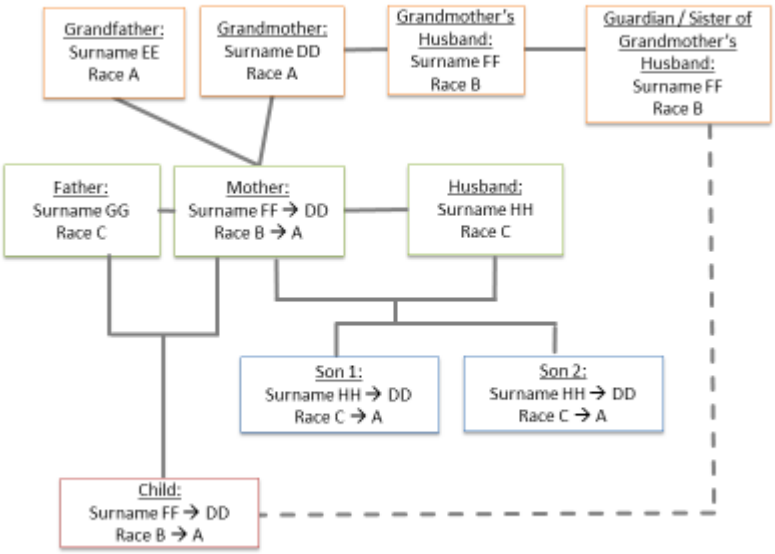
Background

[1] Guardian's Affidavit dated 21 February 2018 ("GA5") at para 19 and pp 38 and 39.

Parties and other persons involved

5 The parties and the other persons involved in this case are from three racial groups – Race A, Race B and Race C – in the order that they first appear below in this judgment.

6 For ease of reference, I have set out below in schematic form the relationships and the relevant personal information of the parties and other persons involved in this case:



7 The Mother was born in 1991 to parents of Race A. Her mother ("the Grandmother") has Surname DD and her father ("the Grandfather") has Surname EE. The Grandmother then married her husband ("the Grandmother's Husband"), who has surname FF and is of Race B. According to the Mother, the

Grandmother's Husband adopted her and she took his surname, *ie* Surname FF.[2] Her racial group was also changed to Race B.

8 The Mother had a difficult childhood. When she was 11 years old, she appeared before the Juvenile Court. She also has mental health conditions, and was treated at the Institute of Mental Health. She continues to receive such treatment.

9 In 2008, the Mother met the Child's father ("the Father") and she gave birth to the Child in September that same year. She was then 17 years old.[3] The Father, who has Surname GG and is of Race C, left the Mother after he learnt of the pregnancy. He has had no role in the Child's life, and does not feature at all in the present proceedings. He was also not named in the Child's birth certificate.

10 The Child took the Mother's surname and racial group at the time she was born (*ie* the Surname FF and Race B), which were that of the Grandmother's Husband.[4] These are the surname and racial group that are stated in her birth certificate.[5]

The appointment of the Guardian

11 In January 2009, the Child was placed in the care of one Mdm R, who is related to the Father. On 3 July 2009, the Mother put the Child up for adoption by Mdm R. The Mother had signed various documents and gave the requisite

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2 Natural Mother's Affidavit dated 24 April 2018 ("NM4") at para 25.

3 NM4 at para 11.

4 NM4 at para 26.

5 GA5 at p 20.

consent for the adoption. However, Mdm R never commenced any adoption proceedings and no formal adoption orders were ever made.[6]

12 The Guardian is the sister of the Grandmother's Husband, and has no blood relationship with the Mother or the Child. She is 63 years old this year.[7] Although both she and the Grandmother's Husband have surname FF and are of Race B, they are siblings who were adopted by the surname FF family and were originally of yet another racial group, *ie* neither Race A, Race B nor Race C.[8]

13 The Guardian had returned to Singapore from Europe after her marriage there was dissolved. She became known to the Mother several months after the Child was born and would visit the Child regularly when the Child was residing with Mdm R.[9] The Guardian started assisting Mdm R with the care of the Child, including providing financial support and bringing the Child to her own home and bringing her home on the weekends.[10]

14 Sometime in mid-January 2011, Mdm R asked the Guardian to be the Child's legal guardian as she could not afford the time and effort required to care for the Child.[11] When the Child was three years old, the Mother and the Grandmother agreed to appoint the Guardian as the legal guardian of the child

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6 Guardian's Affidavit dated 21 September 2017 ("GA1") at para 12 and p 53.

7 GA1 at para 5.

8 Grandmother's affidavit dated 27 November 2017 at para 8.

9 GA1 at para 12.

10 GA1 at para 12.

11 GA1 at para 13.

through a court application by the Guardian (OSF 261/2011).[12] The following orders were made on 14 July 2011 ("the Guardianship Order"):[13]

> (1) The [Guardian] be appointed as the guardian of the infant, [Child] in pursuance of the Guardianship of Infants Act (Cap 122);
>
> (2) The Order for the guardianship of the infant be in place until further ordered (*sic*);
>
> (3) No order as to costs.

15 The Guardian lived with the Child in the house of the Guardian's friend's mother from March 2011.[14] In 2012, when the house was no longer available, the Guardian and the Child moved to live in Johor because of the lower cost of living there.[15] They did not live in the Guardian's own flat because it was then tenanted.

The life of the Mother and her role in the Child's life

16 The Mother lived with the Guardian and the Child in Singapore until 2012 when they moved to Johor.[16] The Mother and her Husband, whom she had not yet married at the time, also moved to Johor. The Mother gave conflicting evidence on whether they lived together with the Guardian and the Child or separate from them when they were in Johor, but nothing turns on this.[17] After a few months, the Mother and the Husband moved back to Singapore and,

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12 GA5 at pp 15–19.

13 ORC 12790/2011.

14 GA1 at paras 16 and 17.

15 GA1 at para 18.

16 NM4 at para 13.

17 Natural Mother's Affidavit dated 27 November 2017 ("NM2") at para 59; NM4 at para 13.

according to the Guardian, there was little contact between the Mother and the Guardian after that until 2016, when the Mother needed her help to look after her elder son as she was about to give birth to her younger son.[18]

17 The Mother married the Husband, who is of Race C, in July 2013 and they now have two sons, "Son 1" born in 2014 and "Son 2" born in 2016.[19] They are the step-brothers of the Child ("step-brothers"). The Husband has surname HH and is of Race C. These were the surname and racial group of the step-brothers when they were born.

18 According to the Mother, she and the Husband moved from Johor back to Singapore in April 2014 because her relationship with the Guardian had worsened.[20] For almost two years after that when the Child was living with the Guardian, the Mother said that she kept in touch with the Child as much as she could.[21]

19 The Guardian continued to care for the Child, who attended five different pre-schools in Singapore and Johor when she was between the ages of three and six.[22] In 2015, the Child started Primary One at a school in Singapore, but was withdrawn some six months later. She was then enrolled in a school in Johor that followed the Singapore school syllabus.

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18 GA1 at para 22.

19 GA1 at para 9.

20 NM2 at para 63.

21 NM2 at para 65.

22 NM4 at para 14.

20 In July 2016, the Guardian asked the Mother whether she could adopt the Child, but the Mother was resistant.[23] There was no contact between parties from October 2016 until after 27 July 2017, when the Mother brought the Child back to Singapore from Johor.[24]

21 In May 2017, the Guardian placed the Child in a hostel in Johor.[25] On 26 July 2017, when the Mother contacted the principal of the Child's school, the principal informed the Mother that the Child had been placed in a school hostel ran by the principal and was being cared for by babysitters and other persons, who were unknown to the Mother, on weekends.[26] This was because the Guardian was working as a driver of a private car hire service in Singapore at the time.[27]

22 On 27 July 2017, the Mother and her friend, one Mdm G, removed the Child from her school in Johor and brought her back to Singapore without the Guardian's knowledge or consent.[28] From 27 July 2017 to 9 October 2017, the Child lived with the Mother and her family, while staying with Mdm G on the weekends.[29] The Mother could not cope with caring for the Child, and eventually gave her up to Big Love Child Protection Specialist Centre ("Big Love") on 9 October 2017, so that she could be cared for by others, including being put in a

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23 GA1 at para 23 and pp 59-60.

24 GA1 at paras 24 and 25.

25 NM4 at para 14.

26 NM4 at para 15.

27 NM4 at para 15.

28 GA1 at paras 27–41; NM4 at para 15; Natural Mother's Affidavit dated 8 November 2017 ("NM1") at paras 12–15.

29 NM2 at para 95; NM1 at para 17.

foster home.[30] Big Love returned the Child to the care of the Guardian on 12 October 2017.[31]

The changing of the surnames and racial groups of the Mother and the step-brothers

23 On 15 August 2017, the Mother changed her own name by deed poll. She was 26 years old then. In her new name, she retained her first name and middle name but replaced her Surname FF (the surname of the Grandmother's Husband) with Surname DD (the surname of the Grandmother). She also changed the racial group on her identity documents from Race B (the racial group of the Grandmother's Husband) to Race A (the racial group of the Grandmother).[32]

24 The Mother said she changed her surname because she was "in touch with the [Surname DD] family far more than she was with the [Surname FF] family" and she had "[Surname DD] blood in her veins".[33] She explained that she decided to change her racial group to Race A because both her parents were from that racial group. The decision was further based on many factors that she did not wish to disclose.[34] The Mother and the Husband also changed the surnames of the step-brothers from Surname HH (the surname of the Husband) to Surname DD (the surname of the Grandmother), and their racial groups from

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30 GA5 at para 10.

31 GA5 at para 10; NM4 at pp 16-17.

32 NM4 at paras 28–29, pp 17–18.

33 NM4 at para 27.

34 NM4 at paras 29-30.

Race C (the racial group of the Husband) to Race A (the racial group of the Grandmother).[35]

The changing of the Child's name and race

25 On 15 August 2017 also, the Mother and the Husband changed the name of the Child by deed poll[36] without the consent of the Guardian. While the Child retained her first name, her new middle name was now the Mother's middle name, and her surname was changed from Surname FF (the surname of the Grandmother's Husband) to Surname DD (the surname of the Grandmother). In the deed poll, the Mother and the Husband had stated that they were "the lawful parents and legal guardians" of the Child. The Child was almost nine years old then.

26 The Mother gave the following reasons for changing the Child's name. First, given that the Father's name is not stated in the Child's birth certificate, it is natural for the Child to take after the Mother's name. Second, the Mother wanted the Child to have the Mother's surname rather than the surname of the Grandmother's Husband, who has no blood relation with the Child. Third, the Mother wanted the Child to have a greater connection to her, especially after years of being separated.[37] Lastly, the Mother wanted the Surname DD to cement the Child's connection to the Mother, the step-brothers, the Grandmother and the [Surname DD] clan.[38]

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35 NM4 at para 31.

36 GA5 at pp 31-33.

37 NM4 at para 33.

38 NM4 at para 41.

27 The Mother informed the Guardian that she had gone to the ICA to complete the change of the racial group of the Mother and the Child from Race B to Race A.[39] No other evidence was provided to the court regarding the change of the Child's racial group.

Applications filed since 15 August 2017

28 Since 15 August 2017, which was the date of the changing of the names of the Mother and the Child, the parties have filed multiple applications to court. On 21 September 2017, the Guardian filed OSG 201 to apply for the sole care and control of the Child and the immediate return of the Child by the Mother to the Guardian's care (see [2] above). On 7 November 2017, the Guardian filed FC/SUM 3859/2017 to apply for leave to reside in Johor with the Child.

29 On 8 November 2017, the Mother filed FC/SUM 3867/2018 to apply for interim care and control of the Child to be given to Mdm G and for the Child to reside with Mdm G pending the final resolution of the matter, with both the Mother and the Guardian to have access to the Child. On 28 November 2017, the Mother filed FC/OSG 250/2017 to apply to remove the Guardian as the guardian of the Child and for her to relinquish care and control of the Child, along with the Child's documents, to the Mother. On 21 February 2018, the Guardian filed FC/SUM 665/2018 to void the deed poll and the change of the name and racial group of the Child (see [2] above).

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[39] GA5 at p 54.

The Consent Order

30 In December 2017, the Mother and the Guardian entered into a mediated agreement, resulting in an Order of Court by consent ("the Consent Order").[40] It varied the Guardianship Order, granting the Mother and the Guardian Joint Guardianship, and expressly stated that the "Joint Guardianship shall have the same legal meaning as joint custody, in that all major decisions relating to the Child, especially on education and medical treatment, shall be made jointly by the Joint Guardians".[41] The mediated agreement also established the following arrangements. The Guardian would still have care and control of the Child and the Mother would have at least two hours of access to the Child every week. Between December 2017 and 1 August 2018, when the Child was in Johor, the Mother would have access to the Child, including unmonitored communications with her. From 1 August 2018, the Child would reside in Singapore, with the same arrangements for access and unmonitored communications.

31 The Mother alleged that she was not given access to the Child by the Guardian after the Consent Order.

The DJ's decision to set aside the deed poll

32 After FC/SUM 665/2018 was heard on 17 May 2018, the DJ ordered the deed poll to be set aside on 21 June 2018. He did not make any further ancillary or consequential orders, allowing parties to take the necessary steps themselves to give effect to the order instead.

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40 FC/ORC 166/2018 dated 13 December 2017.

41 GA5 at p 27.

33 The DJ accepted the view that while guardianship authority cannot exceed parental authority, guardianship authority is similar to parental authority when a non-parent is appointed as a guardian entrusted with custody. The guardian entrusted with custody is expected to exercise the authority over the child co-operatively with the parents and always in pursuit of the welfare of the child.[42] The DJ also found that the change of name or surname of the child falls within the list of matters under "custody" as it goes to the identity of the child, having derived guidance from the cases of *L v L* [1996] 2 SLR(R) 529 ("*L v L*") and *CX v CY* [2005] SLR(R) 690 ("*CX v CY*").[43] He rejected the Mother's submission that the current proceedings that had been brought by the Guardian was an interference with the Mother's parental rights. Further, he found that the Guardian had a right to be consulted and for her consent to be obtained on any intended change in the Child's name or racial group by the Mother.[44]

34 Finally, the DJ accepted that the Child had grown up with and identified herself with her former name and surname, as well as her former racial group. Accordingly, he was of the view that the surname change would cause the Child "considerable confusion, difficulties and embarrassment".[45] The DJ also accepted that the Mother's desire to change the Child's name was in the Mother's own interest and not in the best interest of the Child.

Appellant's case

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42 Grounds of Decision ("GD") at paras 17 and 18.

43 GD at para 22.

44 GD at para 22.

45 GD at para 28.

35 In essence, the Mother's submissions in this appeal are as follows. First, s 5 of the GIA does not give the court jurisdiction to hear applications by a guardian relating to the identity of a child. Parents stand at the apex of all the relationships a child has and parental authority takes precedence over a guardian's authority. The supremacy of parental rights over those of a guardian is recognised by the GIA and disputes over "custody" between a parent and a guardian are considered differently from such disputes between parents. Second, the name of a child is a matter of parental rights in respect of a child's identity and connection with her family. This falls outside the scope of matters that are under "custody" and is dealt with differently. The local cases dealing with changes of name involved disputes between natural parents. A guardian should not be allowed to interfere with decisions on a child's identity. International law and case law from other jurisdictions also consider a change of name to be reflective of the identity of a child and an exercise of parental authority. Third, it is in the best interests of the Child that her name should now be changed to follow the new surname of the Mother (and step-brothers) to reflect her bond with them.

My decision

36 I am of the view that the appeal should be dismissed. I will deal with the submissions raised by the Mother, the Guardian's responses to these submissions, as well as whether any ancillary orders should be made on the change of the racial group of the Child.

37 In coming to my decision, I first deal with the jurisdiction issue of whether the Guardian has the *locus standi* to make an application under s 5 of the GIA. Second, I deal with the issue of whether the name of a child is a matter of parental rights in respect of a child's identity and connection with the child's

family. Finally, I consider whether it is in the best interests and welfare of the Child to change her name.

38 In this judgment, the words "child" and "infant" (which is the word used in the GIA) have the same meaning unless the context otherwise requires. The word "Child" refers to the girl whose name is the subject of the present action.

Jurisdiction to hear a guardian's application under s 5, Guardianship of Infants Act

39 Section 5 of the GIA states:

> **Power of court to make, discharge or amend orders for custody and maintenance of infants**
>
> **5.** The court may, upon the application of either parent or of any guardian appointed under this Act, make orders as it may think fit regarding the *custody* of such infant, the right of access thereto and the payment of any sum towards the maintenance of the infant and may alter, vary or discharge such order on the application of either parent or of any guardian appointed under this Act. [emphasis added]

40 As a preliminary issue, where the submissions of the Mother concerned who can be considered a guardian under the GIA,[46] I do not think that it is necessary to address them. This is because the Guardian was appointed under the Guardianship Order (see [14] above). There can thus be no doubt that she is a "guardian appointed under this Act [the GIA]" and has the *locus standi* to make the application under s 5 of the GIA.

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46 Appellant's Case ("AC") at paras 55 to 56.

Whether parents stand at the apex of all relationships a child has

41 The Mother submitted that a parent is at the apex ahead of all other adults in her relationship with the child and the guardian's authority can only be less than that of the parent. She relied on the commentaries of Prof Leong Wai Kum ("Prof Leong") in *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) ("*Elements of Family Law*") at paras 7.037 and 9.017.

42 Besides referring to *Elements of Family Law*, the Mother has made various references to the 1988 United Kingdom Law Commission report no. 172 *Review of Child Law – Guardianship and Custody* ("Law Commission Report") in support of her submissions.[47]

43 The Mother also cited the following passage from [32] of the decision of the High Court in *UDA v UDB and another* [2018] 3 SLR 1433 as authority for the supremacy of parental rights:

> … I illustrate this point by referring to an example on invoking the court's jurisdiction to hear a matter on the guardianship or custody of a child. Section 17(1)(*d*) of the SCJA confers jurisdiction on the High Court to "appoint and control guardians of infants and generally over the persons and property of infants". But one does not simply walk into the court to ask for a grant of custody over one's grandchild. For instance, if a grandmother disagrees with the parenting style of her daughter-in-law, she must establish her basis for invoking the court's jurisdiction or power to grant her the custody of her grandchild. The enabling provision for the invocation of the court's jurisdiction and power is s 5 of the [GIA], which permits only "either parent or … any guardian appointed under this Act" to make the application. *Unless she is already a guardian appointed under the GIA, the grandmother may not be able to make the application* (for a discussion on whether she could in limited circumstances do so, see Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] Sing JLS 432 and Debbie S L Ong and Stella R Quah,

47 AC at paras 62 to 63.

> "Grandparenting in Divorced Families" [2007] 1 Sing JLS 25 ("Ong and Quah")).
>
> …
>
> [emphasis added]

44 The relationship between parents and their child is indeed unique. Being the ones who have brought the child into the world, absent any other party who may become involved in the upbringing of the child, parents are charged with the duty to perform that role, and are fully responsible for the well-being of the child when discharging that duty. Even when other parties become involved in the child's upbringing, the relationship between parents and their child does not change. However, where the parents then stand *vis-à-vis* these other parties would have to be examined based on what the laws that govern such relationships provide.

45 I acknowledge and appreciate the usefulness of the academic commentaries for their assistance in deciding this case. Indeed, besides the Mother, the Guardian also relies on commentaries in the same publication to support her position. I further note the discussions and the recommendations of the Law Commission Report. I have taken all these into consideration when arriving at my decision.

46 As for *UDA v UDB*, the passage from [32] was to highlight that the jurisdiction of the court has is to be invoked before it can exercise its powers. The illustration used was that in a contest over the custody of a child between its parents and grandmother who was not formally appointed as a guardian, or accepted by the court as a guardian, the grandmother could not invoke the jurisdiction and powers of the court under s 5 of the GIA until she was so appointed or accepted. I do not think that the illustration assists the Mother in

the present case where the Guardian has been formally appointed by the court as a guardian.

47 To reiterate, in dealing with how the present dispute should be decided, it would be more appropriate to examine the statutory purpose of the GIA and consider the framework that it provides for resolving disputes that come within its ambit. Thereafter, the status of a parent's relationship with a child *vis-à-vis* the status of the relationship of other adults, including guardians, with the child, can be taken into consideration.

How questions relating to children are decided under the Guardianship of Infants Act

48 Under the GIA, it is beyond doubt that the welfare of the infant is paramount when considering matters relating to the infant. This is entrenched by s 3 of the GIA, which states:

> **Welfare of infant to be paramount consideration**
>
> **3.** Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

49 Under this section, as between parents, neither parent is deemed to have any superior right to the other parent in matters relating to the infant.

50 However, while it is the parents who are usually charged with the duty of bringing up an infant and dealing with issues connected with it, for various reasons they may not always be present, and other parties can then become

involved in the infant's upbringing. Sometimes these other parties are formally appointed as guardians and sometimes they are not. In the latter situation, sometimes these parties are recognised as guardians despite there being no formal appointment (see the decision of the Court of Appeal in *Lim Chin Huat Francis and another v Lim Kok Chye Ivan and another* [1999] 2 SLR(R) 392 ("*Lim Chin Huat Francis*")), and sometimes they are not.

51 There will also be parents who, although present, are less than ideal parents or are otherwise unable to function as parents or discharge all their duties as parents. Other parties may then become involved in the infant's upbringing.

The appointment of testamentary guardians and the requirement to act jointly

52 I begin by examining the framework under the GIA when one or both of the parents are deceased.

53 Sections 7(1) and 7(2) of the GIA provides that either or both parents of an infant may appoint any person to be guardian of the infant after his or her death ("the testamentary guardian"). Upon the death of the appointing parent, the testamentary guardian is to act jointly with the surviving parent of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting: s 7(3) of the GIA. This is because the surviving parent also becomes the guardian of the infant: ss 6(1) and 6(2) of the GIA. Where both parents have died, the testamentary guardians are to act jointly: s 7(5) of the GIA.

54 Where a surviving parent objects to the testamentary guardian so acting, or where the testamentary guardian considers the surviving parent unfit to have custody of the infant, the testamentary guardian may apply to court to have

custody of the infant. The court may refuse the application, in which case the surviving parent remains as the sole guardian, grant the application so that the testamentary guardian becomes the sole guardian, or order that the testamentary guardian act jointly with the surviving parent: s 7(4) of the GIA.

55 Under s 8 of the GIA, when a dispute arises on any question affecting the welfare of an infant between two or more persons who act as joint guardians of an infant, whether between a testamentary guardian and the surviving parent, or between testamentary guardians, any of them may apply to the court for its direction. They can also apply to the court under the section to vary or discharge any order previously made under this section: s 8(c) of the GIA.

56 The sections referred to above show that in the case of an infant where one of the parents has died, the guardianship rights of the surviving parent can be circumscribed on application to court by the testamentary guardian if the guardian considers that the mother or father is unfit to have the custody of the infant. Even when the surviving parent continues as guardian, he or she has to act jointly with the testamentary guardian, and any dispute between them will be resolved by the court. The GIA does not place one party above the other, or allow either of them to decide any question affecting the welfare of the infant without involving the other.

The application of the framework for testamentary guardians to other guardians

57 I fully appreciate that the above sections govern the roles and relationship between a surviving parent and a testamentary guardian or between testamentary guardians, and that there is no express provision similar to ss 6 and 7 of the GIA which governs the roles and relationships between a parent and a guardian appointed during the lifetime of the parents of the infant. However, I

am of the view that, in the absence of any express provisions to the contrary in the GIA, the same framework would also apply.

58 First, while s 8 following immediately after ss 6 and 7 appears to suggest that the section applies to situations where the dispute is between persons who act as joint guardians of an infant where one or both of its parents are deceased, the language of s 8 contemplates that it is of a wider application. The section does not make any reference to ss 6 or 7 of the GIA, and its scope is not expressly limited to situations where one or both of the parents of the infant are deceased.

59 I should add that this section deals with disputes between persons who "act as joint guardians" and is not limited to dealing with disputes between persons who are "appointed as joint guardians", as the Mother seemed to suggest.[48] There is no necessity for such a restriction as s 7 of the GIA, for example, does not require any such formal appointment, and only charges the relevant parties to "act jointly".

60 Section 5 of the GIA (see [39] above), which allows a parent or guardian appointed under the GIA to "make, discharge or amend orders for custody and maintenance of infants", also draws no distinction between the type of guardians appointed under the GIA (*ie*, testamentary guardians or otherwise) who may apply under the section.

61 I would add that although s 5 of the GIA does not refer to applications under the section being made only when there is a dispute between the parents or between the parents and guardians of an infant, I do not think its scope is

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[48] AC at para 71.

limited to unilateral applications in situations where there is no dispute, as applications would be unnecessary in most of such situations.

62 Sections 5 and 8 of the GIA do not set out how the provisions are to be applied in particular situations and whether how they are applied depends on who the applicant is. However, whether a parent is unable to act because he or she is deceased, or because he is not available to act or is incapable of acting, the situation faced by the infant is still the same and a framework is needed to resolve any impasse. Since the court is to have regard to s 3 of the GIA in deciding matters relating to the infant, this must mean that when a guardian appointed during the lifetime of the parents makes the application, the same framework would have to apply in dealing with that application. Otherwise, it would mean that the considerations in deciding matters relating to the infant would depend on who is applying, whether he is a parent, testamentary guardian or guardian appointed during the lifetimes of the parents. I do not think that how matters relating to an infant is decided depends on who the applicant is. To do so would be tantamount to placing the interests of the infant below that of the applicant, which is inconsistent with the mandate under s 3.

63 Therefore, whether or not parents stand at the apex of all relationships a child has, subject to s 11 of the GIA which is discussed at [68]–[69] below, the decision on matters to the child would still have to be made based on what is in the best interest of the child.

64 I would add the following. Guardians may be appointed to act during the parents' lifetimes for a variety of reasons. These can include the impending unavailability of the appointing parent to look after the infant, whether because he is relocating to a different country without the infant, or is suffering a physical or mental ailment that would soon render him unable to look after the

infant even though he remains in the life of the infant. Whatever the reason may be for the appointment, once a guardian is appointed, he has a duty to act in the best interests of the infant as provided under the terms of the appointment until his appointment ceases, or when he is otherwise removed. That duty would have to be exercised independently of whoever it was who has appointed him. To hold otherwise would detract from the purpose of the appointment.

65 This next part of the judgment deals with how the issue of the name change of the Child is decided, and does so based on the legislative framework provided under the GIA. It does not attempt to prescribe what the hierarchy of the relationships between parents, guardians and even non-guardians and a child should be, and should not be viewed to be doing so.

66 Also, the dispute in the present case does not concern the appointment of the Guardian, but is confined to the dispute between the Mother and the Guardian over the naming of the Child. Therefore, while I have commented generally on the applicability of the framework dealing with testamentary guardians to guardians who are appointed in the lifetime of a child's parents, I appreciate that I only need to consider whether the framework for dealing with disputes between a surviving parent and the testamentary guardian can apply to resolve the dispute between the Mother and the Guardian, who was appointed with the agreement of the Mother. The applicability of this framework to disputes involving other types of parties who are part of the life of a child will have to be decided when such cases arise.

Whether the Guardianship of Infants Act recognises the supremacy of parental rights over that of a guardian's rights

67 The Mother argued that the GIA evidences the supremacy of parental guardianship over non-parental guardianship. This is because the appointment

of guardians is to supplement the role of parents, usually in their absence. Moreover, s 6 of the GIA provides that on the death of a parent, the surviving parent becomes the guardian of a child by default, without the need for an appointment by the court. The surviving parent only needs to act jointly with the guardian appointed by the deceased parent, and his rights are not supplanted by that of the guardian's. Disputes between the surviving parent and the guardian are resolved by the court. Further, all other provisions of the GIA limit the authority of guardians, unlike the authority of parents which is unlimited. Finally, s 11 of the GIA also mandates a hierarchy of parental authority over guardianship authority, as the wishes of the parents of a child must be considered when the court exercises the powers under the GIA.

68 For the reasons set out earlier, I do not accept these arguments in support of the supremacy of the parental rights over the guardian under the GIA. I also do not accept that s 11 of the GIA mandates a hierarchy of parental authority over guardianship authority. The section states:[49]

> **Matters to be considered**
>
> **11.** The court, in exercising the powers conferred by this Act, shall have regard primarily to the welfare of the infant, and shall, where the infant has a parent or parents, consider the wishes of such parent or both of them, as the case may be.

69 In *Lim Chin Huat Francis* at [84]–[85], the Court of Appeal clarified that s 11 of the GIA directs the court in exercising its powers under the GIA to have a primary or paramount regard for the welfare of the infant, and is consonant with s 3 of the GIA. In doing so, the wishes of the child's parents are to be taken into account when determining this. This does not mean that a

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[49] AC at paras 74–81.

parent's wishes are the determinative factor, as the overriding concern is still the welfare of the infant. Section 11 of the GIA also does not stipulate that in a dispute between a parent and a guardian, the parent's wishes *must* be preferred over a guardian's wishes. If the approach is indeed hierarchical as the Mother has submitted, the legislature would certainly have made this abundantly clear in the GIA. In any event, this is unlikely to be the legislative intent, as sometimes guardians are appointed because the ability of a parent to look after the welfare of a child is in doubt, *eg*, when the parent is seriously ill and is not able to do so, or the parent has little interest in the welfare of the child. In such limited situations, the argument for the supremacy of parental rights breaks down. Indeed, in *Lim Chin Huat Francis*, the Court of Appeal stated that the wish of the child's mother for the child to be adopted by the respondents "should not be given any weight" after reviewing her involvement with the life of the child since birth, and finding that it was "unsubstantiated, having been made without consideration to [the child's] welfare" (at [90]).

Whether disputes over "custody" between parents, and between parents and guardians should be considered differently

70 The Mother submitted that since guardianship is a legal construct, the custody rights of a guardian are defined differently from parental rights and responsibilities. The guardian is not an adoptive parent, and through an *inter vivos* appointment of a guardian, a parent cannot be said to have abdicated all of her rights. Accordingly, a guardian's rights of "custody" that can be raised in an application under s 5 of the GIA must be more limited than the entirety of rights encompassed in parental rights. A guardian can therefore only make an application under s 5 for limited questions in relation to the custody of a child,

and not all questions relating to the child,[50] such as those covered under parental rights.[51]

71 The Mother also submitted that applications by a guardian relating to the identity of the child do not fall within the scope of "custody" under s 5 of the GIA. She further submitted that for guardians, custody refers to "the package of rights necessary for a guardian to care for the welfare of a child on a day-to-day basis, such as decisions relating to health and education, but not such a fundamental right as the identity of a child."[52]

72 I am unable to accept the Mother's submissions for the following reasons.

73 First, I acknowledge that the rights of a guardian are subject to that set out in the instrument of appointment. For example, a guardian may be appointed for a specified period, and would cease to act after the period expires. Otherwise, the rights of the guardian are governed by the relevant statutes, *eg*, a guardian of the property of an infant can only deal with it with the leave of the court (see ss 16, 17 and 18 of the GIA), or even the Constitution of the Republic of Singapore (1999 Reprint) ("Singapore Constitution"), *eg*, besides the parents, a guardian can also decide the religion of a person under the age of 18 (see Art 16(4)). While a guardian is not an adoptive parent, and the parents retain parental authority, how any issue relating to the child is decided will depend on the governing statutory provisions, and not on the status of the parties who disagree over that issue.

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50 AC at para 57.

51 AC at paras 85 and 95.

52 AC at para 92.

74 Second, the Mother's proposition that the guardian's custodial rights are limited to the package of rights necessary for a guardian to care for the welfare of a child on a day-to-day basis[53] is not supported by case law. In fact, this view is inconsistent with the definition of "custody" adopted by the Court of Appeal in *CX v CY*:

> 31 To understand what each order entails, we must first realise that, where parties are splitting up, custody as a general concept is divided into two smaller packages, *ie*, "care and control" and residual "custody". In this context, residual "custody" is no longer the same concept as our general understanding of custody. Instead, residual "custody" is the package of residual rights that remains after the grant of a care and control order that dictates which parent shall be the daily caregiver of the child and with whom the child shall live. ***To put it simplistically, "care and control" concerns day-to-day decision-making, while residual "custody" concerns the long-term decision-making for the welfare of the child.***
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> 32 As was appropriately summarised by Anthony Dickey in *Family Law* (LBC Information Services, 3rd Ed, 1997) at pp 326–327:
>
> > [A]t common law, care and control concerns the right to take care of a child and to make day-to-day, short-term decisions concerning the child's upbringing and welfare. Custody without care and control (that is, custody in its narrow sense) concerns the right to make the more important, longer-term decisions concerning the upbringing and welfare of a child.
>
> 33 In other words, *a "custody order" only gives the parent the residual right to decide on long-term matters affecting the child's welfare. For instance, the right to decide on the type of education resides with the parent(s) with custody as it concerns the more important and long-term aspects of a child's upbringing.* The right to decide the particular school may also reside with the custodian(s) depending on the importance of this decision to the child's education. However, the right to decide how a child should dress or travel to school, what sport he should take up or musical instrument he should play and similar ordinary day-to-day matters, resides with the parent who has care and control. Such a demarcation between the two types of orders

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53 AC at para 92.

> proposed by Dickey is generally consistent with our local jurisprudence where matters such as choice of schools, tutors or healthcare have been regarded as matters for the custodian(s) to decide (for example, see *Yeap Albert v Wong Elizabeth* [1998] SGHC 97 at [16]).
>
> [emphasis added]

75 The Court of Appeal defined "residual custody" as matters concerning the "long-term decision-making for the welfare of the child".

76 While I note that the dispute over custody matters in *CX v CY* was between two parents, I am of the view that the definition of custody given in *CX v CY* can still provide guidance to interpret the definition of "custody" in s 5 of the GIA in a dispute between a parent and a guardian.

77 The changing of the name of a child goes towards the child's identity. Since this is one of the "long term matters affecting the child's welfare", it would be a matter that relates to "custody" (*CX v CY* at [33]). Under s 5 of the GIA, which deals also with issues of custody, a guardian will be entitled to apply to the court for the determination of the name change of a child by his parent, and the court would have the jurisdiction to hear this application.

78 Third, a plain reading of the statute indicates that "custody" in s 5 of the GIA has the same definition regardless of whether a parent or a guardian applies for an order. In the absence of further clarification or specification in the GIA, the wording of s 5 implies that *both* a parent and a guardian can apply to the court for orders regarding the "custody for such infant". Further, it would be logical for a court to allow a guardian to make an application to the court regarding long-term decisions for the welfare of the child, which includes the child's identity, but ultimately leave it to the court to decide on such an application, having the welfare of the infant as the paramount consideration.

Adopting the Mother's approach would mean that the court would never be able to consider long-term decisions for the welfare of the child on the application of a guardian to court. As such, there is no reason why the plain reading of s 5 in the GIA should be departed from.

79 Fourth, the Mother's submission that the guardian's authority over the child cannot exceed the parents' natural authority (*Elements of Family Law* at para 9.044) does not automatically mean that a guardian's rights are so limited as to bar a guardian from ***making an application*** under s 5 of the GIA regarding the identity of the child, which is a long-term decision. In *Elements of Family Law* at para 9.148, Prof Leong commented that where a guardian is appointed to have full authority of a child, this order can be called a "custody" order, though qualifying that the modern understanding is that the total bundle of authority over a child is split into the residual "custody" order and the "care and control" order: see *CX v CY*. This suggests that there are cases where legal guardians can have *full authority* over a child. Moreover, there are different types of guardianship orders which bestow dissimilar levels of authority to a guardian (*Elements of Family Law* at para 9.045):

> The authority bestowed on a guardian, flowing as it does from formal appointment, can be narrower than parental authority. The instrument of appointment can set out the time and other limits of the authority of the guardian. The guardian may be appointed to have only "care and control" of the child, or more widely, to have "custody" of the child. … while a parent exercises authority both over the person and the property of the child, a guardian may be appointed only for the "person of the infant" or for the "property of the infant". *Appointments of guardian are, by default, appointments of guardian of the person of the infant. Such guardians step into the shoes of the parent to exercise the authority that the parent naturally possesses over the child.*
>
> [emphasis added]

80 In the present case, the Guardianship Order did not contain any restriction on the Guardian's authority over the Child, such as over the "care and control" order or over the "property of the infant". This was not unexpected as the Mother was in no position to care for the Child, and was even prepared to give her up for adoption. I find that in the absence of any restriction, the default position stands and the Guardian's appointment was that of a guardian of the infant who steps into the shoes of the parent to exercise the authority that the parent naturally possesses over the child. This necessarily entails the Guardian being able to make an application under s 5 of the GIA regarding the identity of the Child, which affects her welfare. For the above reasons, I find that the court has the jurisdiction to hear the Guardian's application on the change of name or racial group of the Child under s 5 of the GIA.

81 I note though that the Mother has submitted that the name of a child goes to the identity of the child, and is a parental right that is not part of the rights covered by custody. I will deal with this below.

Whether the name of a child is a matter of parental rights in respect of a child's identity and connection with the child's family

Local cases dealing with change of name

82 In *L v L* [1996] 2 SLR(R) 529 ("*L v L*"), the mother who was given custody of a child after divorce changed her surname by deed poll from L to T a year after the divorce. She then married the man with the surname T. Four years later, when the father discovered the change, he applied to set it aside. This was refused by the High Court but allowed by the Court of Appeal, which held at [17]:

> … the surname of a child is the symbol of his identity and his relationship with his parents …

and

> … [i]n making an order for custody under s 119 of the Charter, the court has powers under s 120 to impose such conditions as it thinks fit. If the custody order is not made subject to any conditions the order by virtue of s 20 "*shall entitle the person given custody to decide all questions relating to the upbringing and education of the child*".
>
> [emphasis added]

83 It also held at [18]:

> … it was not within the scope of [the child's] upbringing and control of which was conferred on the mother as the custodial parent by s 120 of the [Women's Charter (Cap 353, 1985 Rev Ed)] (now s 126 of the WC) …

and at [22]:

> … the surname of a child is the symbol of his identity and the link between the child and his father. To change the surname of a child is thus a serious matter and the court will not countenance such a change unless there are compelling reasons for doing so …

84 The Court of Appeal further held at [23]:

> The mother was not empowered by the custody order to sever this link between [the child] and the father unilaterally by renouncing on [the child's] behalf her surname L and assuming on her behalf the surname T. There was also no suggestion that the father was an unfit parent showing no interest in [the child] or that it was in any way undesirable for [the child] to continue to be known by the surname L. The evidence was to the contrary. The father had been providing for [the child]. He has also been taking an active interest in and regularly enjoying his "generous" access to [the child].

85 In *Khor Bee Im v Wong Tee Kee* [2002] 1 SLR(R) 55 ("*Khor Bee Im*"), the father abandoned his child and the mother in 1985, when the child was about eight months old, to live another woman. Parties were divorced in 1988 and custody of the child was given to the mother. She remarried in 1989, and changed the surname of the child in 1990, when the child was about five years

old. When the father discovered the change in 2001, he applied to declare the change in surname null and void. The child was already 17 years old then.

86 The High Court applied the approach in *L v L* and refused the father's application, as it found that there were compelling reasons for the court to countenance the change of surname (at [14]).

87 Save for the payment of maintenance (at [12]), the father had shown no attachment to or desire to keep in touch with the child. Despite suggestions by the mother for him to see the child, he had only been with him once in 1990. The mother's husband loved the child very much, and was the only father he knew (at [5]). The child had little recollection of the father, was angry and felt deserted and unloved by him, and preferred to be known by his new surname (at [7]). The child had been known by his new surname for 12 years, and all his friends knew him as such. All his school and official records also bear that surname (at [13]). It was not in the interest of the child to order his surname to be changed back as that would cause him considerable difficulties and even embarrassment.

88 Both *L v L* and *Khor Bee Im* were thus decided on the welfare principle.

89 In *L v L*, the Court of Appeal had held at [21] that:

> A custody order, without s 120 of the [Women's Charter (Cap 353, 1985 Rev Ed) ("WC")], would only empower the custodial parent to decide on the day to day matters relating to the child.

90 The Court of Appeal has since explained in *CX v CY* that the "custody order" it had referred to in *L v L* at [18] was one on the care and control of the child (see [30]). There is therefore no clear decision that the naming of a child is not within matters which form part of the custody of a child. Accordingly, the

cases do not assist in establishing whether the naming of a child is a parental right over which the guardian has no say.

91 As stated by the Court of Appeal in *L v L*, the surname of a child is the symbol of his identity and his relationship with his parents (at [17]). However, I am of the view that this is not the only such symbol, as the child's identity and relationship with his parents are also defined by his religion and the language he is brought up to use as well. Since the choice of religion can be decided by a guardian (Art 16(4), Singapore Constitution) and the language of instruction is part of "upbringing and education of the child", which are custodial rights referred to in s 126(1) of the WC, it follows that the choice of a child's surname is also part of the custodial rights over a child. Therefore, whether or not the choice of a child's surname is a parental right, it is something that is to be dealt with as part of custodial rights.

92 I note that the above cases on the naming of a child concerned disputes between parents, given that it is part of custodial rights. That said, a guardian is not precluded from putting it before the court, and the same principles would then apply when deciding the issue.

International law and case law from other jurisdictions

93 The Mother has referred to the first paragraph in the Declaration made by Singapore in 1995 when ratifying the United Nations Convention on the Rights of the Child (20 November 1989), 1577 UNTS3 [1991] ATS 4/28 ILM 1456 (1989) ("UNCRC") which states:

> The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and

> in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.

94 She also referred to cases decided in Australia on the issue of the identity of a child in relation to Article 8 of the UNCRC, which states:

> Articles 8
>
> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
>
> 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

95 She submitted that even when *adoptive* parents wish to change the name of an adopted child, the sanction of the court was necessary in the Australian cases of *Re KSE & The Adoption Act 2000* [2006] NSWSC 92 ("*Re KSE*") and *Re MJR and Another* [2003] NSWSC 937 ("*Re MJR*") . In contrast, there are no requirements for a *natural* parent to seek court approval to change the name of her child in Singapore. Accordingly, the Mother argued that there is no need for a natural parent, such as herself, to seek the consent of the Guardian for the name change. However, I am of the opinion that the principles discussed in the Australian cases are inapplicable to the present case. The cases of *Re KSE* and *Re MJR* concern Australian statutory requirements for the court to approve a change in the given name or names of a child on application by an adoptive parent, while the present case does not involve an equivalent Singapore statute.

96 As may be seen from *L v L* and *Khor Bee Im*, where the other parent opposes the name change, the sanction of the court is necessary. Further, having regard to the framework of the GIA that I have described above, the same would

apply if a guardian who has joint custody of the child opposes the name change. So even though a child's name is an element of his identity that he has a right to preserve, I do not think it is an issue that can be dealt with in such a straightforward manner that the Mother has submitted.

97 Having decided that the change of the surname of a child is an issue that is to be decided as part of the matters under custody of the child, the Guardian has a right to be involved in that determination, and the decision is to be based on what is in the best interest of the Child ("the welfare principle"), I turn next to consider how the issue is to be decided using this principle.

Whether it is in the best interests and welfare of the Child to change her name

The legal position in cases on name changes

98 The cases on disputes in name changes that are referred to by parties are those involving parents who were once married (*L v L* and *Khor Bee Im*) or who have not been married (*TAM v TAN* [2014] SGDC 73 ("*TAM v TAN*") and *TDI v TDJ* [2016] SGFC 45 ("*TDI v TDJ*")). The present case, however, does not involve the Father of the Child. It is concerned with whether the Mother, who once having shared the surname of the Child but has since changed her own surname, could similarly change the surname of the Child to be the same as hers again. Notwithstanding the differences in the factual circumstances, I am of the view that the approaches in those other cases are still helpful in deciding the present case.

99 The DJ stated at [13] of the GD that:

> It is accepted that a child's name is a symbol of the child's identity and relationship with the child's parents (*L v L* [1996] 2 SLR(R) 529 ("*L v L*") at [17]). It is also not in dispute that change of name or surname is a serious matter, and that the Court would not countenance such change unless there are

> compelling reasons to do so (*L v L* at [22], *TDI v TDJ* [2016] SGFC 45 ("*TDI v TDJ*") at [15]). In deciding whether or not to countenance a name change, consideration should be given effect on the child (*Khor Mee Im v Wong Tee Kee* [2002] 1 SLR(R) 55 at [13], *TDI v TDJ* at [15]). Further, a change of surname is not necessary just for the child to know that he was the parent's child (*TAM v TAN* [2014] SGDC 73 ("*TAM v TAN*") at [30], *TDI v TDJ* at [15]). At the end of the day, the welfare of child is paramount, and overrides any other consideration (*BNS v BNT* [2015] SGCA 23 at [19], *TDI v TDJ* at [16]).

I agree.

The factors to consider for name changes

100 In *TDI v TDJ* at [18], the District Court has set out a list of non-exhaustive relevant factors to consider when deciding applications to countenance or allow a change of the name or surname of a child, subject to the overriding consideration of the best interest of the child. I adopt them and reproduce them below:

> a. the reasons for the registration of a particular name or surname for the child;
>
> b. the reasons given by the parent for seeking to change the child's registered name or surname;
>
> c. the lapse of time between the registration of the child's name or surname and attempted change;
>
> d. the impact of any change in name or surname on the child (for instance, in terms of his official documentation such as his school and bank records); and
>
> e. the importance of maintaining a link between the parent and the child through the name or surname after divorce; and
>
> f. the wishes of the child on his choice of name or surname where he is of sufficient maturity.

101 Before considering the various factors, I set out in the table below the chronology of the relevant events that would assist in reviewing the parties' evidence:

Year	Mother's age	Child's age	Event
1991	0		Birth of Mother.
			Grandmother married her husband.
2002	11		Mother appeared before Juvenile Court.
2008	17	0	Birth of Child.
2009	18	1	Child looked after by Mdm R and then Guardian.
2011	20	3	Guardian appointed by Court as guardian of Child. Grandmother emigrated.
2012	21	4	Guardian and Child moved to Johor. Mother and Husband moved to Johor. Mother reaches age of majority.
2013	22	5	Mother and Husband moved back to Singapore and got married.
2014	23	6	Son 1 born.
2015	24	7	Child started Primary One.
2016	25		Son 2 born.
2017	26	9	Names of Mother, Child and step-brothers changed by deed polls.
2018	27	10	Guardian filed summons to void the name change of Child.

The reasons for the name of the Child when she was born

102 The Mother said the Child came to have surname FF because the Father's name is not on the birth certificate of the Child, and it was natural for the Child to have her surname. However, it would appear that this was also a statutory requirement.

103 When the Child was born in 2008, s 10(1) of the Registration of Births and Deaths Act (Cap 267, 1985 Rev Ed) provides that:

> **Surname of child**
>
> **10.**—(1) Any surname of a child to be entered in respect of the registration of the birth of the child shall be that of the father of the child; but where the child is illegitimate and the father is not an informant of the birth, the surname, if any, shall be that of the mother of the child.

Therefore, since the Mother was not married to the father of the child (*ie*, the Father) and her surname then was FF, it was the only surname that the Child could have had for the registration of her name as a legal requirement.

The Mother's reasons for changing the Child's name

104 The Mother's reasons for changing the Child's name have been set out in [26] above. I will consider them in turn.

(1) IT WAS NATURAL FOR THE CHILD TO FOLLOW THE MOTHER'S SURNAME

105 As stated in [102] above, the Child did follow the Mother's surname when she was registered at birth. However, now that the Mother has changed her own surname, it does not immediately follow that the Child has to change her surname to be again the same as that of the Mother. Otherwise, the Child would have to change her surname whenever the Mother does so, something the Mother is at liberty to do. Other factors would therefore have to be considered before deciding whether this should take place.

(2) THE CHILD WAS NOT RELATED TO THE GRANDMOTHER'S HUSBAND BY BLOOD

106 The Mother said she wanted the Child to have her new surname (*ie*, Surname DD) instead of the surname of the Grandmother's husband (*ie*, Surname FF), as they were not related by blood. This is a fact that was

always present and known to the Mother. Yet she had not done anything about it previously before 2017. While she said she was held back by the lack of finances,[54] it would appear that the impetus for the change only arose after the Mother brought the Child back from Johor. She then changed her own surname, which she had for 26 years, from that of the Grandmother's husband (*ie*, Surname FF) to that of the Grandmother (*ie*, Surname DD). On the same day, she changed the surnames of her sons (*ie*, the step-brothers), as well as that of the Child, who was about to turn nine.

(3) THE MOTHER WANTED THE CHILD TO HAVE A GREATER CONNECTION TO HER, AND TO CEMENT THE CONNECTION OF THE CHILD TO HER AND HER FAMILY

107 I will consider third and fourth reasons together.

108 This is not a case where the Mother changed her surname because she had remarried, adopted the surname of her new husband, and wanted the Child to follow the surname of the new family. Instead, the Mother changed her own surname to Surname DD (*ie*, that of her mother (the Grandmother)), and made her two children with her Husband and the Child follow her new surname. It is therefore necessary to also consider the reasons the Mother gave for changing her own surname (see [24] above).

109 It is not disputed that the Mother and the Grandmother's Husband are not related by blood. Instead, she is the daughter of the Grandmother and the Grandfather, who are from the same racial group (*ie*, Race A). The Mother could have changed her surname when she turned 21 in 2012, or when she married at 22 in 2013. Yet, she decided to keep her surname FF until 2017, when

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54 NM4 at para 36.

she was 26 years old. She stated that there were other factors that she considered in arriving at the decision to change her surname, but she chose not to disclose what they were.

110 As for the Mother's assertion that she was "in touch" with the Surname DD family far more than the Surname FF family, she did not provide further particulars in support of this contention.

111 From the undisputed evidence, after giving birth at 17 in 2008, she had lived with the Guardian and the Child from time to time between 2008 or 2009 to 2014,[55] when the Child was six years old. During that period, her mother (*ie*, the Grandmother) had emigrated to North America in 2011. Her relationship with her mother was not always good, as evidenced from their exchanges in 2012 over what had happened to the Grandmother's flat when the Mother failed to repay loans obtained from unlicensed moneylenders.[56]

112 I am therefore doubtful if the Mother is as "in touch" with the Surname DD family as she claimed to be.

113 As for the Mother's wish to use Surname DD to cement the Child's connection with her, the step-brothers, the Grandmother and the Surname DD clan, what had happened between July and October 2017 when the Mother had care and control of the Child showed that the Mother was not in a position to look after Child. She candidly admitted this, and suggested that she would only be ready to do so after one or two years.[57] Moreover, the Grandmother has

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55 AC, at para 20.

56 Guardian's Affidavit dated 7 December 2018 ("GA 4") at pp 47-52.

57 NM2 at para 147.

migrated, and there does not appear to be any particulars of the other members of the Surname DD clan and their relationships with each other.

114 In the result, it appears that the Surname DD will be the only connection between the Mother and the Child. Whether it can cement the connection of the Child to her, the step-brothers, the Grandmother and the Surname DD family is doubtful.

The lapse of time between the registration of the Child's name and surname and the change, and the impact of the change of surname on the Child

115 I will deal with these two factors together.

116 In *Khor Mee Im*, where the father discovered that the child's surname was changed by the mother only after 12 years, he failed in his application to reverse it. Amongst the reasons given by the High Court was the adverse impact of such a decision on the child who had lived with the new surname for such a long period of time.

117 When the surname and middle name of the Child was changed in 2017, she was about to turn nine years old and was in Primary Three. Having had the previous name for so long, she has become known by that name to the people who have entered her life previously.

118 The Child had spent part of her Primary One in the school where she is now re-enrolled in after she was brought back to Singapore by the Mother in 2017. According to the Guardian, some of her former teachers and classmates remember the Child's former name and addressed her by it.[58] The Guardian said

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58 GA5 at para 32.

it would be difficult for the Child to explain the reason for the change if her name is changed.[59] The Guardian argued that it is therefore not in the Child's best interest to have to change her name after such a long time.

119 I agree that given the length of time the Child has had Surname FF, there will definitely be an impact on her if her surname is changed to Surname DD. However, she is much younger, and has crossed fewer milestones in life than the child in *Khor Mee Im*, who was almost an adult and whose name appeared in his school records, examination certificates, polytechnic records, bank account and similar important documents at the time of his name change. In comparison, the Child would have fewer of such documents with her name, as she has not yet even completed her primary education. The only bank account that would be affected is the Child Development Account ("CDA") into which money received from the Government under the baby bonus scheme is paid.

120 However, like the child in *Khor Mee Im*, the Child is likely to continue to mix with those who know her by her previous name: members and extended members of the Surname FF family, her teachers, classmates and friends. She is also unlikely to be living with the Mother and her family anytime soon. The impact on the Child of having to deal with all these while bearing a new surname would require careful consideration.

The importance of the surname in maintaining a link between the Mother and the Child

121 The District Court in *TDI v TDJ* pointed out at [17] that:

> An application of the "golden thread" principle [the welfare of the child is paramount], in my judgment, meant that reasons

[59] GA5 at para 35.

> given by a parent for changing or seeking to change a child's name or surname based on the sole fact that the name is not of the parent's choice, or the surname is not the same as the parent's should not by itself, without more, be determinative of whether the Court should allow or countenance such change. The maintenance of a link or bond between a parent and a child is not a mere matter of a name or surname on a birth certificate, a deed poll or indeed any other document, but also a matter of *the degree of commitment, quality of contact and existence of parental responsibility by a parent towards a child.*
>
> [emphasis added]

122 The Mother said that the Child having the same surname as her would allow her to have a closer connection with the Child. However, while a child's name is a symbol of his identity, it is not the only link or bond of the child to his or her parent. As pointed out in *TAM v TAN* and *TDI v TDJ*, it is not necessary for a change of surname to allow the child to know he or she is the parent's child. If that was indeed the case, it could lead to a situation where a child has to change his surname every time his parent, who is free to change his surname anytime, decides to do so in order to preserve the parent-child connection.

123 The link or the bond is also a matter of "the degree of commitment, quality of contact and existence of parental responsibility by a parent towards a child" (see [121] above). Thus, this is a factor which contributed to the success of the father in *L v L*, who had maintained a close relationship with his daughter (*L v L* at [23]), in opposing the change of her surname by the mother to that of her new husband. On the other hand, it contributed to the failure of the father in *Khor Mee Im*, who only saw the son once in over ten years despite suggestions by the mother for him to see the child, and has shown no attachment save for the payment of maintenance, in opposing the change of surname by the mother to that of her new husband.

124 After the Child was born in 2008, she was looked after by Mdm R and the Mother had agreed to the Child being adopted by Mdm R. When the adoption did not take place, the Mother had left the Child to be cared for by the Guardian. She also supported the Guardian's appointment as guardian in 2011 when the Child was three years old. As can be seen from the table at [101] above, the Mother had only lived with the Guardian and Child from 2008 or 2009 in Singapore and then in Johor until 2012, when the Child was four years old.

125 The Mother's evidence was that she had always kept in touch with the Child after she stopped staying with the Guardian, and thought that the Child had continued her education in the Singapore school in which she was enrolled for Primary One in 2015. She said that it was only in 2017 that she realised that the Guardian had withdrawn the Child from the Singapore school a few months after her enrolment and brought her to Johor where she was enrolled in a school there which followed the Singapore school curriculum.

126 According to the Guardian, the Mother hardly contacted the Child after she returned to Singapore and got married in 2013. It was only in 2017 that the Mother removed the Child from Johor and brought her back to Singapore without her knowledge. Records of exchanges between the Mother and Guardian show that the Mother was aware of the withdrawal of the Child from the Singapore school as early as April 2016,[60] and was content to maintain the *status quo* of the Guardian looking after the Child and deciding where she went to school.

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60 Guardian's Affidavit dated 7 December 2017 at para 125 and p 57.

127 In the circumstances, the Child would have been more in touch with the Surname FF side of her family instead of the Surname DD side of her family. Moreover, the Grandmother had emigrated in 2011 and was living in North America. The Child did not visit her there, but has been to Europe where she met with the Guardian's family members.

128 The parties have made various allegations against each other on their suitability for the custody, care of the Child. As the issue before me is the name change of the Child, I would only consider those which are relevant for dealing with this issue.

129 The Mother and Husband, who both have mental health issues, are unemployed and live with their two children in a one-room HDB rental flat.[61] They depend on welfare assistance for maintaining their family. They also depended on financial help from relatives from time to time, such as when the Guardian paid for the Mother's hospital bills when she gave birth to Son 1 in October 2014.[62] It appears that the Mother has not provided any financial contributions to support the Child.[63] As stated in [113] above, the Mother recognised that she would not be in a position to care for the Child for some time yet.

130 The Guardian also has mental health issues, which she said is under control. She has financial issues as well, but she seems to be able to get by, and has managed to support the Child for almost nine years. There are allegations

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61 GA5 at para 5.

62 GA1 at para 20.

63 GA1 at para 18, 20 and 21.

against the quality of the care that she is giving to the Child, but that is a matter to be decided separately from the present proceedings.

131 For the immediate future, the care and control of the Child is with the Guardian, who shares a common background as the Child in the way she has been brought up for the last nine years. If the Child's surname is changed to that of the Mother's new surname, she remains in the same environment where she will continue to have to live in, but with a new surname.

132 Whether or not the care of the Child remains with the Guardian eventually, the Mother still cannot look after the Child. She has not been looking after the Child for the first nine years of her life, and had to rely on others to do so. Even in FC/OSG 250/2017, she has also not sought to have immediate care and control of the Child for herself, but applied for the Child to be put under the interim care and control of Mdm G, after earlier giving up the care and control of the Child to Big Love. It would be fair to say that until the Mother herself is able to provide care and control to the Child, her future role in the Child's life is likely to remain the same, being that of a natural parent who keeps in touch with the Child, whether frequently, regularly or otherwise, while the Child is brought up by persons other than the Mother.

133 The Child will therefore continue to grow up in an environment where she is brought up by persons other than the Mother, whether it is the Guardian or someone else, be it the choice of the Mother or the court if it is called upon to intervene. Based on the evidence before me, whichever surname the Child will take after this judgment, the only real links between the Mother and the Child after today will be the blood bond between them, and the visits she can make to the Child. And if the Child takes the Surname DD that the Mother now has, this link will likely be only a symbolic one.

The wishes of the Child in the choice of her surname and name

134 As stated in [25] above, besides the change of the surname, the Child was given a new middle name which is the Mother's first name. According to the Guardian, the Mother told her that the Child wanted to keep the surname FF.[64] The Child has also told the Guardian that she preferred to be known by her original name. She had grown up being called by her original first and middle names.[65] The Mother, on the other hand, said that the Child had helped to choose her new middle name.[66]

135 Given the conflict in evidence, it is necessary to make a finding on whose version is true. Having regard to the relationships that the parties have with the Child, I am of the view that it is more likely that the Child would have preferred to keep her old name, as the Guardian has been her only caregiver and a big part of her life for several years since she was a toddler. The Mother knew as early as April 2016 that the Child was placed in a school in Johor.[67] Yet she had been content to let the Guardian continue to look after the Child until 27 July 2017 when she and Mdm G brought the Child from Johor back to Singapore. The name change took place on 15 August 2017, less than three weeks later, hardly time for a close bond to be built up between the Mother and the Child for her to endorse such a major change, especially when she was only almost nine then, and would be able to form her own views on something as major as a name change.

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64 GA5 at para 15.

65 GA5 at para 34.

66 NM4 at para 34.

67 Guardian's Affidavit dated 7 December 2017 at para 125 and p 57.

Evaluation of the factors for name changes

136 A number of factors are neutral (*eg*, how the Child got her name, and the Child not being related by blood to the Grandmother's husband).

137 As stated earlier, the present case is unlike that of a mother who has custody, care and control of a child who, having married or remarried, wishes to change the surname of the child from that of the child's father to that of her new husband.

138 I note the unique situation the Child is in. She is a child of parents from different racial groups, who took her Surname FF from the Mother and not her Father, as they were never married. She was raised as a member of a family with Surname FF from a racial group (*ie*, Race B) with whom she has no blood ties.

139 The Child's mother (*ie*, the Mother), who had little involvement in bringing her up, has married and started a family with her husband (*ie*, the Husband). Instead of adopting his surname, the Mother had changed her surname to that of her own mother (*ie*, the Grandmother), Surname DD. This was despite her being content to share the surname of the Child (*ie*, Surname FF), and be identified as a member of the same racial group (*ie*, Race B) for 26 years. She said that she had changed her surname to reflect her own actual heritage. However, the evidence does not support her averment that she is closer to the Surname DD family of her mother (*ie*, the Grandmother). The Grandmother has already emigrated in 2011, and there is no evidence of the Mother's contact with other family members of the Grandmother. Notwithstanding all these, I accept that it is the Mother's prerogative to change her own surname and racial group any time.

140 The Mother has also changed the surnames of her two sons with the Husband (*ie*, the step-brothers) to Surname DD, and wants the Child to follow suit, to discard the surname and racial group that the Child has had for the entire nine years of her life. She said this is intended to preserve the link that the Child has with her, her mother (the Grandmother) and the Child's step-brothers. Yet, on the available evidence, it is unlikely that the Child will have close links to the Mother's new family and her step-brothers after the change. There were minimal links between the Child and her step-brothers before 2017, and when the Child was brought back to live the family in July that year, the Mother could not cope and had to seek help from the Big Love and Mdm G just two months later. Eventually, the Child ended up being cared for by the Guardian again.

141 Given her circumstances, it is unlikely that the Mother will be able to care for the Child in the foreseeable future. It is also unlikely that there will be any close link between the Child and the Grandmother, her family and the step-brothers. The Child will therefore either remain in the Surname FF family circles in which she was raised if the Guardian continues to care for her, or be looked after by someone else altogether if the Guardian ceases to care for her.

142 In the circumstances, the only substantive link between the Child and the Mother will be the blood bond between them, and the visits she can make to the Child. This is irrespective of whatever surname the Child may have. The additional link that results from the Child having a new surname (*ie*, Surname DD) and racial group (*ie*, Race A) is likely to be only a symbolic one. The sole reason for the change of the Child's surname to that of the Mother's new surname is therefore to create and maintain this symbolic link between her and Child.

143 Since there will be few other links between them, I recognise the importance of preserving this symbolic link between the Child and the Mother and her relatives. However, I do not think that this should be achieved by endorsing what the Mother has done.

144 As required by s 11 of the GIA, I have considered the Mother's wish to change the surname of the Child. However, considering the factors listed in *TDI v TDJ* (see [100] above), the name change would result in the Child having to abandon the link to her heritage that she was brought up in. In exchange, there is no assurance that she will have anything to do with the heritage that her new surname and racial group are linked to. Indeed, for the immediate future, she will still be immersed in the heritage that is linked to her old surname and racial group while having a new surname and racial group. Thereafter, there is also no certainty of "commitment, quality of contact and existence of parental responsibility" (*TDI v TDJ* at [17]). While I accept that this may not be something which the Mother intended given her difficult circumstances, its impact on the Child will still have to be considered. The Child will also have to face all the associated difficulties incidental to the name change, which is not something that the Child would have wanted.

145 After weighing all the factors, I am of the view that it would not be in the best interests and welfare of the Child for her to change her surname and racial group for the reasons stated earlier.

146 The link between the Mother and the Child can be preserved without abandoning the Child's heritage from the Surname FF family, for example, by including the Mother's new surname (*ie*, Surname DD) as part of the Child's name, while retaining her Surname FF. There can be other options too.

However, this is not within my power to order, and I can only leave this course of action for the parties to consider.

Conclusion

147 For the reasons stated above, I agree with the DJ's decision to set aside the deed poll and accordingly dismiss the appeal.

148 As stated in [65] and [66] above, this judgment does not attempt to prescribe what the hierarchy of the relationships between parents, guardians and even non-guardians and a child should be. It also only deals with the framework that is to be used to resolve the dispute between the Mother and the Guardian, who has been appointed by the Court. It does not deal with what is the framework to be used when resolving disputes involving other types of parties who are part of a child's life.

149 There is much dispute between parties on the suitability of each of the parties to be given custody, care and control of the Child, with affidavits filed by them, the Grandmother and Mdm G all stating their respective views. While I have taken into account the contents of these affidavits where they are relevant to the decision on whether the Child's name should be changed, I wish to point out that my decision is restricted to this issue. I make no finding on any matter otherwise unless they are required for the resolution of the dispute over the Child's name.

150 With regard to the prayers to change the racial group of the Child back to Race B, I will leave it to parties to take the necessary steps to return matters to the previous *status quo*. All these will have to be done within one month of this judgment, in default of which there will be liberty to apply.

151 With regard to the issue of the representation by the Husband in the deed poll that he is a guardian of the Child, there were no substantive arguments on whether this would have invalidated the deed poll. Having regard to my decision to dismiss the appeal and therefore void the change of name, I make no findings on the issue. Had I decided to dismiss the appeal as it was in the best interest of the Child to change her surname and racial group, it would always be open to the Mother to execute another deed poll for the Child even if the earlier deed poll is invalidated.

152 Finally, given that both parties are legally aided, I make no order as to costs.

Tan Puay Boon
Judicial Commissioner

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Koh Tien Hua, Thian Wen Yi and Marcus Ho (Eversheds Harry Elias LLP) for the respondent.