IN THE SUPREME COURT OF BELIZE, A. D. 2013

ACTION NO. 1 OF 2013

IN THE MATTER of an Application of Lito Gabriel Vega under Section 90 of the General Registry Act (Chapter 327) of the Laws of Belize, R. E. 2000

AND

IN THE MATTER of recording of a Deed Poll dated the 22nd October, 2012, lodged and recorded in Deed Book Volume 3 of 2012 at Folios 1131 to 1133

	(Lito Gabriel Vega	**Applicant**
BETWEEN	**(And**	
	(Elvira Virginia Mulholland	**Respondent**

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Robertha Magnus-Usher for the Applicant

Mrs. Michelle Trapp-Zuniga of Belize Legal Aid Center for the Respondent

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J U D G M E N T

1. This is an application brought under Section 90 of the General Registry Act Chapter 327 of the Laws of Belize where the

Applicant is seeking an order of the Court to cancel the registration of a Deed Poll which has injuriously affected him. The Applicant is Lito Gabriel Vega Sr. and he is the father of Lito Gabriel Vega Jr. who is four years old. The mother of the child is Elvira Mulholland (nee Grant). By virtue of a Deed Poll dated 12th October, 2012, and registered at the General Registry in Deed Book Volume 3 of 2012 at Folio 1131 to 1133, the Respondent changed the name of the child from "Lito Gabriel Vega" to "Gabriel Harry Mulholland".

2. The Applicant contends that this name change was done without his knowledge or consent, and that it was done to further deprive him of access to his child, and to achieve a disconnection between him and his child. The Respondent argues that she is fully entitled in law to change the child's name as she is not married to the child's father. She further states that she wants all her children (including her two children from a previous marriage) to share her present married name "Mulholland", and that it would be in the best interest of the child for him to keep that name under the Deed Poll so that the child would share the name of her present husband and her youngest child.

The Issue

3. Which course of action is in the best interest of the child? Should the court dismiss the application and allow the child to keep the new name "Gabriel Harry Mulholland" under the Deed Poll, or should the court order that the Deed Poll be cancelled and the child's name be restored to "Lito Gabriel Vega," his father's name?

The Facts

4. **i)** Elvira Virginia Mulholland (then Elvira Grant) lived together with Lito Gabriel Vega Sr. as husband and wife for about three years. The child was born on July 16th, 2008 and both parents, although not married to each other, agreed to and did register the name "Lito Gabriel Vega" as the child's name. Lito Vega Sr. was registered as the child's father on the birth certificate.

ii) The child started and was registered in school by the Respondent with his legal name "Lito Gabriel Vega" in April 2012.

iii) Lito Vega Sr. lived with the child and his mother, until approximately 1 year and 1 month after the child's birth when he left the home.

iv) The child is called “Litito” by his father and his father’s family, while his mother calls the child “Gaby” which is short for Gabriel, Mr. Vega’s middle name. She states that the name Harry is that of her late father.

v) The name change was done without informing or seeking permission from the Court or from the father of the child.

vi) The child calls Lito Vega Sr. “daddy” and he also calls his stepfather Jeffery Mulholland “daddy”. The Respondent has said that she tells her child that he has two daddies who love him.

vii) Jefferey Mulholland, the step father has not adopted the child. He is presently married to the Respondent for the past two years.

viii) Mrs. Mulholland has three other children, two of whom bear the surname “Bautista” from her previous marriage. Her youngest child bears the surname “Mulholland” and that child is the biological child of her present husband. She states that she has also been attempting to change the names of the Bautista children but has been prevented from doing so because the whereabouts of their father is unknown, and since they were

children of her marriage to Mr. Bautista, his consent is necessary before that change can be effected.

ix) Mrs. Mulholland claims that she was unhappy with the Court's decision on April 13th, 2012 to extend the access period from Friday to Sunday and she appealed against it because she claims Mr. Vega was not using the access time that was already available to spend time with his son. Mr. Vega's access to the child was again extended by the Magistrate's Court in November 2012 and January 2013 for longer periods on the weekend, as well as shared access with the Respondent during the holidays of summer, Easter and Christmas. Mr. Vega claims that he and his son have a good relationship and that the child looks just like him and knows that he is his biological father. He says he now sees his son every other weekend and when he does, he takes him out for ice cream, takes him to play football at the field, goes with him to the beach at Corozal and takes him to visit members of his family. He maintains his child financially thru an order of the Family Court.

x) The Applicant states that the Respondent sought the leave of the court to remove the child from the jurisdiction in October 2012. In her evidence, the Respondent clarified that she was merely seeking permission of the Court to take the child to visit Canada along with her new husband and her other children. She further explained in court that this visit would have been a preparatory trip as she and her husband plan to migrate to Canada eventually taking all the children with them. The name change would therefore make it easier for the immigration process to proceed and for the child to get his Canadian residency and then citizenship, and this she asserts would be another benefit to the child.

xi) The Respondent claims that she wants all her children to have the name Mulholland and that she executed the name change in the best interest of the child. She said that since her child is now in school she did not want him to suffer discrimination based on the fact that he carried a different name from herself and her husband. She submits that she has sought and achieved stability for her entire family through her new marriage, and that her husband is now closer to the child than

the biological father Lito Vega Sr. When asked to describe the relationship between her husband Jim Mulholland and the child she stated as follows:

> *"Excellent. He hugs him at night before going to bed. He kiss him at night. We all go fishing. We have family Sundays. We go to church. My husband taught him to ride bike, play football. At nights, they would do the flash cards. They would eat together, watch TV together, and the other boys of course. They would run jokes together, play. He drops him off to school, picks him up… When he has a tummy ache or not feeling well, he runs to my husband."*

Submissions

5. Mrs. Magnus Usher argues on behalf of the Applicant Mr. Vega that English case law establishes that a change of the registered name of a child should only be done if this is in the best interest of a child. She cites numerous authorities for this proposition including ***Re C (change of surname)*** [1998] 2 FLR 656**,** ***Dawson v. Wearmouth*** [1999] 2 AC 308, and ***Re T (Orse.H) An Infant*** [1963] CH 238. Learned Counsel also relies on the various

provisions of the Families and Children's Act Chapter 173 of the Laws of Belize as the statutory framework governing the rights and duties of parents and children. She submits that the burden of proof is on the Respondent to show that the deed poll was rightly registered, and this cannot be done if that registration is injurious to the child, and to the father. Section 16 of the Families and Children's Act declares that the mother is the guardian of any child born out of wedlock; but the section also states that the Court has the same power that it has regarding a child born within wedlock. The Court therefore has the power to cancel the change of registered name of a child born out of wedlock. Mrs. Magnus Usher also submits that although usage of the change to the child's name in this case has been for a relatively short period, case law shows that even long usage does not matter. The Deed Poll was done by the mother to injure the feelings of the father and separate him from his son. The court should cancel the Deed Poll and order that the child be known by the name he was registered at birth: "Lito Gabriel Vega".

Mrs. Trapp Zuniga states on behalf of the Respondent Mrs. Elvira Mulholland that the change of name was done in the best interest of the child and should be allowed by the court to remain. She also relies on the Families and Children's Act of Belize and she makes the point that unlike the United Kingdom from which most of the relevant case law originates, Belize has no statutory provision similar to that of Section 1, 8 and 13 of the United Kingdom Children Act 1989 requiring consent of the parent who does not have parental responsibility or custody before a name change can be effected. Learned counsel for the Respondent cited similar case law in support of her arguments as those cited by learned counsel for the Applicant ***Dawson v. Wearmouth*** 1999 2 WLR 960**,** ***Re C (A Minor) (Change of Surname)*** [1998] 2 FLR 656, [2001] EWCA Civ 1344 and ***Re PC*** **[1997]** 2 FLR 730**.** Mrs. Trapp Zuniga argues that the Applicant merely has the duty to maintain his child which does not by itself amount to parental responsibility. Since the Respondent was an unwed mother at the time the child was born and is not married to the child's father, she alone has full parental responsibility and custody of the child under Section 16(2) of Families and

Children's Act. She further submits that the Applicant has failed to prove that he has been injuriously affected by the change of surname, and that the child's name on the birth certificate will always be that of the Applicant. She also states that even though the Applicant has been granted rights of access and visitation by the courts, he seldom utilizes those times granted to him. She states that since the child now has a closer bond with his step-father who has daily contact in caring for him along with the Respondent, it is in the best interest of the child for the court to allow the Deed Poll to remain and for the child to keep the new name: "Gabriel Harry Mulholland".

The Law

6. As rightly pointed out by both counsel in their very helpful and extensive submissions, the governing legislation on this issue is the Families and Children's Act Chapter 173 of the Laws of Belize:

> "*Section 1: Whenever the state, a court, a Government agency or any person determines any question with respect to -*

(a) the upbringing of a child… the child's welfare shall be the paramount consideration."

That is the principle which underscores the entire Act, and that is the principle which must guide this court in determining this vexed issue.

The approach of the courts to the specific issue of change of a child's name has been varied as the cases illustrate: ***Re C (Change of Surname)*** [1998] 2 FLR 656 where the parents of C separated, C had been registered at birth under the father's surname. The parties were not married. The mother changed the child's name by way of deed poll without the father's consent. He applied for a specific issue order changing C's surname back which was not heard until 5 years later. The judge dismissed the application criticizing the father's delay in bringing the issue to court and suggesting that having a name different to her mother's name would cause C problems at school. The father appealed to the Court of Appeal which dismissed his appeal and held that any dispute as to a child's registered name ought to be referred to the court whoever had parental responsibility. The child's registered name was a matter of importance and changes could only be

justified by the demands of welfare. Where the registered surname had been lawfully changed, but that change was subsequently challenged, the correct approach was therefore whether the original change of name had been in the child's best interests. In this case the mother's decision to change the child's surname was not justified. There was nothing unusual in a mother and child having different surnames. However in light of the unfortunate delay since the change of name and the impact on contact which forcing use of the father's surname would be likely to have, an order requiring C to use the name on her birth certificate would not be made.

In the leading House of Lords decision of ***Dawson v Wearmouth*** [1999] 2 AC 308, a child was born to unmarried parents who separated soon after his birth. The mother registered the boy in the surname by which she was known, that of her former husband and two of her children of her former marriage. The father applied under section 8 of the Children Act 1989 for a "specific issue" order that the child be known by his surname. The judge made the order sought, prohibiting the mother from causing the child to be known by any other name. The Court of

Appeal allowed an appeal by the mother, holding that the judge erred in principle by approaching the application as if it had been heard before the registration of the child's birth. On appeal by the father to the House of Lords, the appeal was dismissed. In considering a case where there was no substantial existing usage, how the discretion to make a specific issue order requiring the use of a different name from that which the child had been registered should be exercised, the criteria in section 1 of the Act of 1989 should be applied and an order should not be made unless there was some evidence that it would be in the interests of the child's welfare. That had been a matter for the discretion of the Court of Appeal and it had been entitled to conclude, bearing in mind, inert alia, that use of the father's surname was unnecessary for preserving a link with the father, that there were no circumstances of sufficient strength to justify the making of the order.

After reviewing the authorities in his judgment, Lord Jauncey of Tullichette referred to ***In Re T*** [1963] Ch 238 as follows:

> *"The importance of a child bearing its father's name has been emphasized on many occasions. In* ***Re T (orse. H)***

(AN Infant) [1963] Ch. 238 *, a case where a mother had by deed poll changed the paternal surname of her daughter by her first husband to that of her second husband, Buckley J. said at p 242:*

> *'In the case of a divided family of this sort it is always one of the aims of the court to maintain the child's contact, respect and affection with and for both of its parents so far as the circumstances will permit. But to deprive the child of her father's surname, in my judgment, is something which is not in the best interests of the child because, I think, it is injurious to the link between the father and the child to suggest that there is some reason why it is desirable that she should be called by some name other than her father's name.' "*

In setting out a comprehensive list of some of the major factors that the court must consider in dealing with the issue of change of a child's name, after reviewing the case law, Butler Sloss LJ in ***In Re W*** 2001 Fam (Court of Appeal) 1 stated:

"The present position, in summary, would appear to be as follows: (a) If parents are married they both have the power and the duty to register their child's names; (b) If they are not married the mother has the sole duty and power to do so; (c) After registration of the child's names, the grant of a residence order obliges any person wishing to change the surname to obtain leave of the court or the written consent of all those who have parental responsibility; (d) In the absence of a residence order, the person wishing to change the surname from the registered name ought to obtain the relevant written consent or leave of the court by making an application for a specific issue order; (e) On the application the welfare of the child is paramount, and the judge must have regard to the Section (1)3 criteria; (f) Among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance, recognition of the biological link with the child's father. Registration is always a relevant and an important consideration but it is not in itself decisive. The weight to

be given to it by the court will depend upon other relevant factors or valid countervailing reasons which may tip the balance the other way; (g) The relevant considerations should include factors which may arise in the future as well as the present situation; (h) Reasons given for the changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight; (i) The reasons for an earlier unilateral decision to change a child's name may be relevant; (j) Any changes of circumstances of the child since the original registration may be relevant; (k) In the case of a child whose parents were married to each other, the fact of the marriage is important and I would suggest that there would have to be strong reasons to change the name from the father's surname if the child was so registered; (l) Consequently, on an application to change the surname of the child, the degree of the commitment of the father to the child, the quality of contact, if it occurs, between father and child, the

existence or absence of parental responsibility are all relevant factors to take into account."

Decision

7. I have reviewed the evidence and the authorities submitted to me in this case. I am grateful to both counsel for their detailed and well researched arguments which have been of invaluable assistance to the court. This is by no means an easy decision, as I am convinced from the evidence that both parents love the child and both desire what is best for him. The child was registered in the name "Lito Gabriel Vega" at birth by agreement between both his parents. Mrs. Mulholland has advanced to this court her desire to improve the life of her child as the reason for changing the child's name. I am not convinced that this was done to spite Mr. Vega or to distance him from his child. While initially the pain, disappointment and anger she experienced in the immediate aftermath of her separation from Mr. Vega may indeed have been part of her motivation to change the child's name, the fact remains that today circumstances have changed and both Mr. Vega and Mrs. Mulholland have now moved on with their respective lives. They are now each married to different people.

The sole question which now concerns the court is whether this change of name is in the best interests of the child. Mrs. Mulholland has managed to rebuild her life and she is now happily married to someone else. She has commendably established a stable loving home for her children with her husband as the father figure in the home. She gives as her reasons for the name change, her desire to have all her children under the name “Mulholland” as one blended family and her desire to avoid the societal stigma of her child having a different name from the rest of her children and her husband. As the cases above illustrate neither of these reasons are compelling enough for the change of name to be allowed to stand. One important reason which she did advance in evidence is that she and her husband plan to eventually migrate to Canada and that the change of name would make it easier for the child’s residency and citizenship process to progress. I also have to consider the fact that from the evidence it appears that while the child knows Mr. Vega as his biological father, the child now has a very strong and loving relationship with his step father who helps to nurture him on a daily basis. I am cognizant of the fact that

Mrs. Mulholland has testified that in the past Mr. Vega has not been making use of the access time granted to him by the court and it is a relief to learn that he is now making full use of that valuable time with his son. The incident where Mr. Vega did not attend hospital to enquire about his sick child when Mrs. Mulholland had informed him that the child's genital area was infected also does not commend him to the court. The level of commitment that a parent has is one of the factors I must also weigh in reaching this decision, and I strongly condemn the fact that Mr. Vega did not see it fit to rush to the side of his ailing son immediately upon learning of his condition. It is hoped that these proceedings have demonstrated to Mr. Vega the seriousness with which he must approach his parental role as it is not something which he can take for granted merely because he is the child's biological father.

I find that the reasons advanced by Mrs. Mulholland for the change of name are not sufficient in law for the Deed Poll to stand. This is so especially in light of the fact that the child will eventually migrate to Canada and there is a real risk that the parental bond between the child and his biological father would

be severely eroded by mere virtue of the geographical distance between Canada and Belize. In the event of such a move all her children including those whose surname is Bautista would be included so there is no reason in law for the child's name to be changed from Vega to Mulholland. I also believe it is in the best interest of the child to preserve the child's sense of self and identity by keeping the name with which both of his biological parents registered him at birth. I therefore order that the Deed Poll be cancelled and the name of the child be changed back to "Lito Gabriel Vega".

8. Each party to bear their own costs.

Dated this 1st day of November, 2013.

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Michelle Arana
Supreme Court Judge