

All in the family

Beth Mason sets out the position in law of step-parents and the remedies available to preserve their relationship with a step-child



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Family lawyers are, of course, very familiar with the complexities of family relationships. The breakdown of relationships, and the forging of new ones, is what keeps us in business. We are used to settling and litigating financial issues and child arrangements between husbands and wives and the parents of children. We may spend less time addressing those issues in relation to step-parents, but as we all live longer, and divorce more, step-parent litigation is likely to increase.

The introduction of additional adults into parental roles can cause conflict, both with the other parent and with the child themselves. Step-parents can be ill informed as to their position in law, either assuming that taking on the role of a parent in a child's life will automatically make them a parent in the eyes of the law, or the opposite, assuming that as they are not the child's natural parent their role in that child's life is dependent on, and limited by, their partner. The reality is somewhere in between and will, as with so many aspects of family law, depend largely on the individual circumstances of each case.

There are various aspects of living with a child that can present challenges to step-parents and to parents who remarry. The law can, in the right circumstances, assist with some of those challenges.

Parental responsibility

It is easy to see how a lack of parental responsibility, defined as 'all the rights, duties, powers, responsibility and

authority' for and in relation to a child (per s3(1), Children Act 1989 (ChA 1989)), could cause problems for a step-parent and more importantly for a step-child. In situations where a step-parent has day-to-day care of a child, but does not have the ability to authorise medical treatment, for example, the implications could be serious. However it is just as easy to see why the child's other parent may be very reluctant to share parental responsibility with an ex-partner's new spouse.

A step-parent does not obtain parental responsibility merely by marrying or entering into a civil partnership with the parent of a child. They can, however, be granted parental responsibility in a number of ways.

In 2005, an amendment was made to ChA 1989, adding s4A, ChA 1989, which allows a step-parent who is married to, or in a civil partnership with, a parent who has parental responsibility for a child to apply for a parental responsibility order or to enter into a parental responsibility agreement with the parents who already have parental responsibility.

When faced with an application for parental responsibility, the court will consider what is in the best interests of the child and, in the case of step-parents, the connection between the step-parent and the child. The risk of disruption to the child and the views of the other parent will also be relevant.

Applications are likely to take place in two circumstances:

- where there is an ongoing relationship between the

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step-parent and the natural parent and there is a desire to include the step-parent more fully in the child's life, or

- where that relationship has broken down and the step-parent wishes to remain involved with the child.

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As the statute only applies to those married to, or in a civil partnership with, the parent of the child, any application that takes place after the breakdown of the step-parent's relationship with the parent must be made before the divorce or dissolution. In either case the step-parent will need to demonstrate a significant level of commitment to the child and involvement in that child's life.

If a step-parent does obtain parental responsibility, that will be shared with the natural parents. The step-parent will have the same rights and responsibilities as the existing holders of parental responsibility, but the existing holders' own rights and responsibilities will not be affected.

The limited case law in this area mainly concerns applications from people who mistakenly believed they were the biological parents of a child. In *R v R* [2011] the application was made by a husband who discovered that the child he had been raising as his own with his wife was in fact the biological child of another man. The relationship broke down and the wife expressed an intention to marry the father of the child. The husband applied for a parental responsibility order prior to the divorce. Although the court was sympathetic to the husband, the application was refused as it was considered that it would not be in the child's best interests to place the husband at the heart of future decision-making in a way that would likely lead to conflict with

the mother. The court noted that such applications would more often be made (although it must be said not necessarily reported) by an 'incoming' step-parent who wished to raise a child together with their partner (para 36). The point was also made that if the husband's application had been made after

decree absolute rather than before, the court would have had no power to make the order he sought anyway (para 39). Given the likely disruption to the child, the court took the view that the fortunate timing of the husband's application did not warrant its success.

An unmarried step-parent cannot apply for parental responsibility, but can obtain it if there is a child arrangements order that the child lives with them (per s12(2), ChA 1989), or if they adopt the child. The partner of a parent (whether married or not) can apply to adopt that child (under s51(2), Adoption and Children Act 2002 (ACA 2002)). Doing so will not extinguish the parental rights and responsibilities of the parent to whom they are married or cohabiting with, but it will extinguish the rights and responsibilities of any other parent the child has (s46(2)-(3), ACA 2002). The consent of anyone with parental responsibility will be required and parents without parental responsibility are likely to be consulted by the court before an order is made.

Changing a child's name

With an ever-increasing number of combined families, we are likely to see more applications to change children's names motivated by a desire to unify a new family or to recognise a step-parent. There is surprisingly little case law on the issue, although *Dawson v Wearmouth* [1999] and *Re W, Re A, Re B (Change of Name)* [1999] provide useful general guidance on changing

children's names, and more recently *R v P (No.2)* [2019] dealt specifically with step-parents.

The House of Lords in *Dawson* set out the following principles:

- a change of surname should not be permitted without evidence that it would improve the child's welfare;
- the name of the child on registration is a factor to be taken into account but, depending on the child's age and understanding, not necessarily a major factor; and
- the attitude and views of the parents are only relevant insofar as they may affect the welfare of the child.

The Court of Appeal in *Re W* followed that guidance and expanded upon it. The most relevant points in relation to step-parents are:

- relevant considerations will include factors which may arise in the future as well as the present circumstances;
- reasons 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; and
- if the parents were previously married to each other, the fact of the marriage will be important and there would have to be strong reasons to change the name from the father's surname.

In *R v P*, the mother of a seven-year-old child moved from Lithuania to England with her daughter and applied to change her daughter's surname to that of her new husband. During the proceedings she suggested that the father's surname could be retained as a middle name. Despite a history of breached orders on the part of the father, and a marked reluctance to accept findings made against him in earlier proceedings, it was hoped that the somewhat fractured relationship between father and daughter could be restored in the future. The court

was concerned by the lack of anything relating to the father in the mother's home and found no evidence in support of the mother's claim that it would be safer for the daughter to travel to Lithuania if her surname was changed. Theis J considered that the child's knowledge of her father and his family was limited at that stage and it would be premature to change her surname. The possibility was left open for a future application if things changed.

A possible compromise, and one that may become more prevalent, is a change to a double-barrelled surname comprising of the father's surname and the mother's new married surname. In *Re R (a minor)* [2001], the Court of Appeal set aside an order allowing the mother to change the child's surname to that of her new partner, but encouraged the parties to consider a double-barrelled surname.

What if the relationship with the parent breaks down?

A step-parent without parental responsibility will have no automatic rights or responsibilities for a child if the relationship with that child's parent breaks down. However it is possible for a step-parent to maintain a presence in a former step-child's life, by way of a child arrangements order, and in some circumstances they may find themselves subject to an application for child maintenance.

In order to apply for a child arrangements order, a step-parent must meet one of the following conditions:

- they are or were married to, or in a civil partnership with, the natural parent and the child was a child of the family (s10(5)(a)-(aa), ChA 1989);
- they lived with the step-child for at least three years (s10(5)(b), ChA 1989); or
- they have parental responsibility under a parental responsibility order or a parental responsibility agreement by virtue of s4A, ChA 1989 (s10(4)(aa), ChA 1989).

The step-parent must otherwise obtain the leave of the court to make the application (s10(1), ChA 1989).

As ever, the court's paramount concern will be the welfare of the child and whether an ongoing relationship with the applicant is in that child's best interests. In *R v R*, although the court refused the husband's application for parental responsibility, it recognised and appreciated his connection

An order made against a step-parent will record on its face that it is made on the basis that the relevant person is not the child's parent.

Care should be taken by step-parents in the drafting of wills, as step-children will not be covered

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with the child and considered it was in the child's best interests for the relationship to continue to some extent. Arrangements were therefore made to enable the child to spend regular time with the husband.

The Child Maintenance Service cannot order a step-parent to pay child maintenance, nor can it order a parent to pay child maintenance to a step-parent. However, provision for child maintenance can be made under the Matrimonial Causes Act 1973 or the Civil Partnership Act 2004, where the parties are or were married or civil partners, and under para 16(2) of Sch 1, ChA 1989 which specifically deals with step-parents, and is limited to parties who are spouses or civil partners or former spouses or civil partners. In either case, the child will need to have been treated as a child of the family.

Under either statute the court will consider a variety of factors including:

- the financial needs of the child;
- the financial resources of the parties;
- whether the step-parent has assumed financial responsibility for the child;
- whether that was done in the knowledge that the child was not their biological child; and
- whether anybody else has a liability to maintain the child.

by intestacy rules unless they have been formally adopted. Equally gifts to 'children' generally will not automatically cover step-children. However, a step-child who was treated as a child of the family by a married step-parent, or who was financially maintained by a step-parent, has a potential claim under the Inheritance (Provision for Family and Dependents) Act 1975.

Conclusion

The application of the relevant legislation to step-parents is currently relatively untested, or at least relatively unreported, despite the increasing number of blended families. That may change in the future, but the success of any future applications by step-parents, or against step-parents, will, as ever, depend on what is considered to be in the child's best interests. Modern families are often complicated and can involve, to a greater or lesser extent, numerous different people. Regardless of those complexities the welfare principle remains paramount and we can expect any future litigation in this area to reflect that. ■

Dawson v Wearmouth

[1999] UKHL 18

R v P (No.2)

[2019] EWHC 2175 (Fam)

R v R

[2011] EWHC 1535 (Fam)

Re R (a minor)

[2001] EWCA Civ 1344

Re W, Re A, Re B (Change of Name)

[1999] EWCA Civ 2030