

IN RE: PETITION FOR CORRECTION OF ENTRY IN THE CERTIFICATE OF LIVE BIRTH OF RENELLE JENZEN S. DEL ROSARIO,

Ponente: CORALES, J.

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CORALES, J.:

This is an appeal[1] from the July 9, 2012 Decision[2] and October 31, 2012 Order[3] of the Regional Trial Court (RTC), Branch 224, Quezon City in Special Civil Action No. 11-69955. The assailed decision granted petitioner-appellee Renelle Jenzen S. Del Rosario's (Renelle Jenzen) petition for correction of entry while the challenged order denied the motion for reconsideration filed by the Republic of the Philippines (Republic).

The Antecedents

On September 15, 2011, Renelle Jenzen sought before the RTC the correction of her gender as it appeared in the Certificate of Live Birth.[4] She alleged that she was born male on July 27, 1988 in Quezon City but registered as female in the Certificate of Live Birth.[5]

Finding the petition to be sufficient in form and substance, the RTC ordered the posting of the notice of hearing and the publication of the same in a newspaper of general circulation in Metro Manila for three (3) consecutive weeks.[6]

Renelle Jenzen complied with the jurisdictional requirement of publication[7] while the Office of the Solicitor General (OSG) entered its appearance and authorized the City Prosecutor of Quezon City to appear on its behalf.[8]

To prove her claim, Renelle Jenzen testified during the ex-parte presentation of evidence before the Branch Clerk of Court.[9] She later on submitted a Formal Offer of Evidence[10] of the following documents: her Secondary Student's Permanent Record at St. Jude College;[11] the medical certificate[12] issued by Dr. Yvonne C. Bernales-Mariano (Dr. Bernales-Mariano) which states that the "patient has been examined and found to be anatomically and phenotypically male in gender"; and a driver's license. However, a copy of the driver's license did not form part of the records.

The Ruling of the RTC

On July 9, 2012, the RTC rendered a Decision[13] granting the petition for cancellation/correction of entry based on the following ratiocination:

x x x

The Court, after a careful evaluation of the evidence as well as the circumstances of the instant Petition, holds that the Petitioner was able to establish his claim by preponderance of evidence, which warrants the granting of the relief being prayed for. The Court notes that the Petitioner filed the instant Petition for the purpose of correcting his gender reflected in his Birth Certificate. The documents presented by the petitioner affirm his claim that he is male (Exhibits "I", "J", and "L"). Petitioner's claim was further bolstered by the Medical Certificate (Exhibit "K") presented by the petitioner, the original of which was attached to the Formal Offer of

Evidence filed by the petitioner on March 21, 2012. The relief sought for by the petitioner is specifically sanctioned under Section 2, Rule 108 of the Revised Rules of Court, which states that:

x x x

Accordingly, therefore, the Petition is hereby GRANTED. As prayed for, the Civil Registrar of Quezon City is hereby ordered to correct the Certificate of Live Birth of Renell (sic) Jenzen S. Del Rosario under Registry No. 2006-74477 by changing his gender found in item No. 2, from “female” to “male”.

SO ORDERED.

The OSG, representing the Republic, moved for reconsideration[14] but the RTC denied the same through its October 31, 2012 Order.[15]

Hence, the instant appeal with the following assignment of errors:[16]

I

THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR CORRECTION OF ENTRY IN THE ABSENCE OF THE TESTIMONY OF THE DOCTOR WHO EXAMINED THE APPELLEE.

II

THE TRIAL COURT ERRED IN GRANTING THE PETITION BECAUSE THERE IS AN ADMINISTRATIVE REMEDY AVAILABLE TO THE APPELLEE.

The OSG harps on the inadmissibility and lack of probative value of the medical certificate which was not identified in court by Dr. Bernales-Mariano. It also assails the sufficiency of the evidence presented by Renelle Jenzen to establish her real gender. It adds that with the passage of Republic Act (R.A.) No. 9048,[17] as amended by RA No. 10172, change of sex of a person due to a patent clerical or typographical error can be corrected by the concerned city or municipal civil registrar or consul general without need of judicial order, but Renelle Jenzen did not avail of this administrative remedy, thus, her petition should have been outrightly dismissed.[18]

Renelle Jenzen counters that the OSG neither opposed her petition nor objected to the formal offer of evidence, hence, it already waived the issue on the admissibility of the medical certificate pursuant to Section 1, Rule 9 of the Rules of Court. She defends the applicability of Rule 108 of the Rules of Court arguing that her petition was filed on September 12, 2011 or before R.A. No. 10172 was approved on August 15, 2012.[19]

This Court's Ruling

The appeal is meritorious.

Rule 108 of the Rules of Court: Applicable

The jurisdiction of the court is determined by the law in force at the time the action was filed. Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate to actions pending before its enactment. Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a pending case prior to the enactment of a statute.[20]

It is beyond cavil that at the time Renelle Jenzen filed her petition for correction of entry on September 12, 2011, R.A. No. 9048 has not yet been amended. In the leading case of Republic v. Silverio,[21] the Supreme Court clarified that correction of entry in the civil registry involving change of sex remains a substantial change

governed by Rule 108 of the Rules of Court, not a mere clerical or typographical error under R.A. No. 9048. Accordingly, the RTC acquired jurisdiction over the petition upon Renelle Jenzen's compliance with the requirements under Rule 108 of the Rules of Court, thereby vesting it with authority to dispose the case on the merits until it is terminated. This jurisdiction is not affected by the enactment of R.A. No. 10172 on August 15, 2012, amending certain provisions of R.A. No. 9048, which authorized the city or municipal civil registrar or the consul general to correct clerical or typographical errors in the day and month in the date of birth or sex of a person appearing in the civil register without need of a judicial order. Notably, there is nothing in R.A. No. 10172 which provides for the retroactive application of the law or indicates the transfer of pending petition for correction of entry with the RTC to the city or municipal civil registrar. Thus, the general rule enunciated above is the controlling doctrine and R.A. No. 10172 finds no application herein.

Renelle Jenzen's Petition: Not Supported by Preponderance of Evidence

We agree with the OSG's postulate that the medical certificate issued by Dr. Bernales-Mariano is a hearsay evidence because the doctor was not presented in court to identify the medical report or to confirm its contents. Since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications. An unverified and unidentified private document cannot be accorded probative value because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Being a mere hearsay evidence, the failure to present the author of the medical certificate renders its contents suspect and of no probative value.[22]

The OSG's failure to timely object on the presentation of the medical certificate only amounts to a waiver of its right to object to the admissibility of the document as evidence. The lack of objection may make any incompetent evidence admissible but admissibility of evidence should not be equated with weight of evidence. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[23] Under our existing law and settled jurisprudence, a hearsay evidence, whether objected to or not, has no probative value.[24]

To reiterate, the medical certificate issued by Dr. Bernales-Mariano is a hearsay evidence which has no probative value notwithstanding the OSG's failure to object on its admissibility. It was erroneously considered by the RTC in deciding Renelle Jenzen's petition for correction of entry from female to male.

In the same vein, the uncorroborated testimony of Renelle Jenzen, her Secondary Student's Permanent Record at St. Jude College, and her driver's license taken as a whole, do not sufficiently establish her cause of action for correction of entry from female to male. It is worthy to note that the driver's license was not submitted before the RTC and do not form part of the records while the Secondary Student's Permanent Record at St. Jude College pertains only to her high school records. We cannot conclude from the foregoing evidence whether Renelle Jenzen was actually born male and that the declaration in her Certificate of Live Birth was only due to typographical error. Without any sufficient basis to substantiate her bare allegation regarding her gender, the Court has no other option but to dismiss the petition for correction of entry. Basic is the rule that he who alleges must prove.[25]

WHEREFORE, the appeal is GRANTED. The July 9, 2012 Decision and October 31, 2012 Order of the Regional Trial Court, Branch 224, Quezon City in Special Civil Action No. 11-69955 are REVERSED and SET ASIDE. Accordingly, the petition for correction of entry filed by petitioner-appellee Renelle Jenzen S. Del Rosario is

hereby DISMISSED for lack of evidence.

SO ORDERED.

Villon, J., Chairperson and Zalameda, JJ., concur.

[1] See Notice of Appeal in relation to the January 11, 2013 Order giving due course to said appeal, records, pages 48-50 and 51, respectively.

[2] Penned by Presiding Judge Tita Marilyn Payoyo-Villordon, rollo, pages 24-25.

[3] Records, pages 46-47.

[4] Ibid., page 5.

[5] See Petition for Cancellation/Correction of Entry in the Civil Registry, *ibid.*, pages 1-4.

[6] See October 24, 2011 Order, *ibid.*, pages 15-16.

[7] See Metro Profile Publisher's Affidavit, *ibid.*, page 29.

[8] See Notice of Appearance, *ibid.*, pages 18-19.

[9] See TSN, Renelle Jenzen S. Del Rosario, February 8, 2012, pages 4-10.

[10] Records, pages 25-27.

[11] Ibid., page 8.

[12] Ibid., page 7.

[13] *Supra*, at note 2.

[14] See Motion for Reconsideration (of the Decision dated July 9, 2012), records, pages 37-42.

[15] *Supra*, at note 3.

[16] See Brief for the Appellant, rollo, pages 11-21.

[17] An Act Authorizing The City Or Municipal Civil Registrar Or The Consul General To Correct A Clerical Or Typographical Error In An Entry And/Or Change Of First Name Or Nickname In The Civil Register Without Need Of A Judicial Order, Amending For This Purpose Articles 376 And 412 Of The Civil Code Of The Philippines

[18] See Brief for the Appellant, *supra*, at note 16.

[19] See Brief for Petitioner-Appellee, rollo, pages 50-58.

[20] See *People v. Court of Appeals*, G.R. No. 154557. February 13, 2008, citing *People v. Velasco*, G.R. No. 110592. January 23, 1996; See also *Philippine National Bank v. Tezano, Jr.*, G.R. No. 173615. October 16, 2009.

[21] G.R. No. 174689. October 22, 2007.

[22] See *Dr. Huang v. Philippine Hoteliers, Inc.*, G.R. No. 180440. December 5, 2012; See also *People v. Cabasag*, G.R. No. 140762. September 10, 2003.

[23] *Heirs of Lourdes Saez Sabanpan v. Comorposa*, G.R. No. 152807. August 12, 2003.

[24] Dr. Huang v. Philippine Hoteliers, Inc., *supra*, at note 22. See also De La Torre v. Court of Appeals, G.R. No. 102786. August 14, 1998.

[25] See Reyes-Rayel v. Philippine Luen Thai Holdings, G.R. No. 174893. July 11, 2012.

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