

IN RE: PETITION FOR THE CORRECTION OF ENTRIES IN THE BIRTH RECORD OF ROSARIO BARRETTO, KNOWN ACTUALLY AS DOMINGO BARRETTO, DOMINGO BARRETTO, PETITIONER-APPELLEE, VS. THE LOCAL ...

G.R. No. L-29060. December 10, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

The Solicitor General appealed on a question of law from the order of the Court of First Instance of Manila dated March 4, 1968, directing the local civil registrar of Manila to correct the entry under "sex" in the record of birth of Rosario Barretto by substituting the word "male" for the word "female" (Special Proceeding No. 70833). The facts are as follows:

According to Register No. 1167(f44) in the record of births of the civil register of Manila, a female child named Rosario Barreto was born on June 29, 1944 to the spouses Faustino Barreto and King Lian, both natives of Amoy, China. (Exh. A).

On the other hand, according to the Book No. IV, Folio 83 of the record of baptisms of the Parroquia de Chinos in Manila, a child born on June 29, 1944 to the spouses Faustino Sy Barretto and Diana King Luan Ty was baptized on May 21, 1950. The name of the baptized child is Domingo Sy Barretto. (Exh. F).

Domingo Barretto was registered as an alien in the Bureau of Immigration on June 23, 1958 (Exh. D). On that date, a native born certificate of residence was issued to him. It is stated in that certificate that he "is lawfully entitled to remain in the Philip-pines". (Exh. E).

In 1967 Domingo Barretto requested the local civil registrar of Manila to issue a certified copy of his birth record which he needed in connection with his application for a marriage license. He discovered that his name in the record of birth is Rosario, a female. Because of that discrepancy, he was not able to secure a license.

On May 26, 1967 he filed in the Court of First Instance of Manila a petition for the correction of the alleged erroneous entries in his birth record regarding his name and sex (Civil Case No. 69639). The petition was dismissed on July 14, 1967. His motion to reinstate the case was denied on September 25, 1967.

On September 23, 1967 Domingo Barretto filed a second petition for correction in the same court. On December 21, 1967 he amended his petition by limiting it to the correction of the entry in his birth record as to his sex.

The Solicitor General filed motions to dismiss the original and amended petitions. With respect to the amended petition, he contended that the alleged error in the entry as to the sex of the petitioner is not clerical and that its correction involves a substan-tial change which may affect his identity.

Domingo Barretto testified that he is the same person known as Rosario Barreto in the birth certificate, Exhibit A; that his father, Faustino Barretto, who died in April, 1967, was allowed to change his Chinese name Sy Sun Chit

to Faustino Barretto in a decision of the Court of First Instance of Manila dated February 9, 1951, Exhibit B; that Exhibit C is the marriage contract of his parents, Faustino Barretto and King Lian; that it was only in 1967 that he came to know that in his record of birth his name is Rosario Barretto and his sex is female; that he used in school the name Domingo Barretto; that the five children in his family in the order of their births are Pacita, Ramon, Domingo, Francisco and Alfonso, all surnamed Barretto, and that he has always been known at home and in the neighborhood as Domingo, that being his baptismal name.

King Lian testified that his son, Domingo Barretto, was born on June 29, 1944; that his father was Faustino Barretto or Sy Sun Chit; that Vicenta Royo rendered assistance during the birth of Domingo; that a midwife was present at the delivery; that she told the midwife that the name of the child was Domingo Barretto; that she came to know that his name is Rosario when he showed her his birth certificate, and that she has five children.

Vicenta Royo testified that she was a neighbor of the spouses Faustino Barretto and King Lian; that she was present at the birth of Domingo Barretto at four o'clock in the afternoon of June 29, 1944; that she held the baby and she knew he was a boy because she saw his male organ; that she has known the child Domingo since birth and up to the time he became a binatillo, and that she lost contact with him when his family transferred to another house in 1964.

The trial court granted the amended petition. It reasoned out that the error sought to be corrected was "merely typographical or clerical, and not controversial". It observed that there was an erroneous entry as to petitioner's sex because "the name Rosario is commonly used for both male and female persons".

In this appeal, the Solicitor General contends that the trial court erred in characterizing the writing of the word "female" in the record of birth of Rosario Barreto as a clerical error. He argues that the change of the sex in that birth record is a substantial alteration. He surmises that petitioner Domingo Barretto's motive in filing the petition for correction is to strengthen his claim that he is a native-born Chinese as stated in his certificate of residence, Exhibit E.

According to the Solicitor General, Exhibit E has no basis because there is no record in the civil registry of Manila that Domingo Barretto was born in this country. The record of birth (Exh. A) refers to Rosario Barreto. The Solicitor General observes that official records should not be altered if in doing so there is danger that the Government would become a party to a scheme to circumvent the laws regarding the residence of aliens in this country.

In reply, Domingo Barretto counters that there is no doubt that he is the same person who is registered as Rosario Barreto in the record of birth, Exhibit A; that the correction of the entry as to his sex would affect him only and would not enable him to exercise the rights which only citizens can exercise; that he had to amend his petition because in Manila it is the Juvenile and Domestic Relations Court that has jurisdiction over petitions for change of name (Sec. 38-A[e], Rep. Act No. 1401), and that the Solicitor General's gratuitous insinuations as to his identity and as to his motive in filing the petition are empty speculations.

The issue is whether the supposed erroneous entry as to the sex of Rosario Barreto, as indicated in the birth record, is a clerical error that may be changed by means of a petition for correction filed by one Domingo Barretto who claims to be the same person as Rosario Barreto.

We hold that the petition for correction is not warranted because under the facts of this case the alleged error is not clerical in nature. If the name in the record of birth were Domingo Barretto and his sex was indicated therein as female, it might be argued that the error would be clerical. But that is not the fact in this case. The situation is more complicated. A person named Domingo Barretto claims that he is Rosario Barreto and that the word

"female" in the latter's birth record is a mistake.

It is settled that the summary procedure for correction of entries in the civil registry under article 412 of the Civil Code and Rule 108 of the Rules of Court is confined to "innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes or obvious to the understanding" (Baybayan vs. Republic, L-20717, March 18, 1966, 16 SCRA 403, 405) or corrections that are not controversial and are supported by in-dubitable evidence (Tiong vs. Republic, L-20715, November 27, 1965, 15 SCRA 262; Lim vs. Republic, 101 Phil. 1235).

A clerical error "is one made by a clerk in transcribing or otherwise, and, of course, must be apparent on the face of the record, and capable of being corrected by reference to the record only" (7A Words and Phrases, page 8, quoting Trott vs. Birmingham Ry., Light & Power Co., 39 So. 716, 717, 144 Ala. 383).

The alleged error in this case cannot be corrected by reference to the record. There is a need to determine whether Rosario Barreto and Domingo Barretto are one and the same person and to ascertain why Domingo was registered in the record of birth as Rosario. The petition involves a controversial matter. Petitioner's evidence is not indubitable.

WHEREFORE , the lower court's order of March 4, 1968 is reversed and set aside. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, and Concepcion, Jr., JJ., concur.

Barredo, J., no part.

Martin, J., designated to sit in the Second Division.

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