

IN THE MATTER OF THE CHANGE OF NAMES OF DIONESIO DIVINAGRACIA, JR., AND BOMBI ROBERTO DIVINAGRACIA TO DIONESIO NALDOZA AND BOMBI ROBERTO NALDOZA, RESPECTIVELY, ZOSIMA NALDOZA, A...

G.R. No. L-55538. March 15, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether two minors should be allowed to discontinue using their father's surname and should use only their mother's surname.

Zosima Naldoza was married to Dionesio Divinagracia on May 30, 1970. They begot two children named Dionesio, Jr. and Bombi Roberto who were born on October 23, 1970 and July 22, 1973, respectively.

Zosima's husband left her after she confronted him with his previous marriage with another woman. He never returned to the conjugal abode. He allegedly swindled Congressman Maglana in the sum of P50,000, one Galagar in the sum of P10,000, also Eloy Gallentes and other persons.

The classmates of Dionesio, Jr. and Bombi Roberto allegedly teased them about their father being a swindler. Two criminal cases for estafa were filed in court against the father.

Desirous of obliterating any connection between her two minor children and their scapegrace father, Zosima, on August 10, 1978, filed in the Court of First Instance of Bohol a petition wherein she prayed that the surname of her two children be changed from Divinagracia to Naldoza, her surname (Special Proceeding No. 768). After due publication and hearing, the trial court dismissed the petition.

The trial court did not consider as sufficient grounds for change of surname the circumstances that the children's father was a swindler, that he had abandoned them and that his marriage to Zosima was a second marriage which, however, had not been annulled nor declared bigamous. It reasoned that the children's adoption of their mother's surname would give a false impression of family relationship.

From that decision, Zosima Naldoza appealed to this Court under Republic Act No. 5440. Appellant's seven assignments of error may be reduced to the question of whether there is a justification for the two children to drop their father's surname and use their mother's surname only.

The minors Dionesio, Jr. and Bombi Roberto, who are presumably legitimate, are supposed to bear principally the surname Divinagracia, their father's surname (Art. 364, Civil Code).

To allow them, at their mother's behest, to bear only their mother's surname (which they are entitled to use together with their father's surname) and to discard altogether their father's surname, thus removing the prima-facie evidence of their paternal provenance or ancestry, is a serious matter in which, ordinarily, the minors and their father should be consulted. The mother's desire should not be the sole consideration.

The change of name is allowed only when there are proper and reasonable causes for such change (Sec. 5, Rule 103, Rules of Court). Where, as in this case, the petitioners are minors, the courts should take into account whether the change of name would redound their welfare or would prejudice them.

Where the petitioner, a legitimate daughter of a Filipino mother and a Japanese, elected Philippine citizenship, and her older brother and sister were using their mother's surname, and the petitioner felt embarrassed in using her Japanese father's surname (Oshita) because of the ill-feeling harbored by some Filipinos against the Japanese, and there was no showing that her desire to use the maternal surname (Bartolome) was motivated by any fraudulent purpose or that the change of surname would prejudice public interest, her petition to change her surname from Oshita to Bartolome was granted (Oshita vs. Republic, L-21180, March 31, 1967, 19 SCRA 700).

Where the petitioner's name in the civil registry is Maria Estrella Veronica Primitiva Duterte, Duterte being the surname of her father Filomeno, who was married to her mother, Estrella Alfon, but the petitioner since infancy has used the name Estrella S. Alfon, particularly in the school and voting records, there is reasonable ground for allowing her to change her surname from Duterte to Alfon. Such a change would avoid confusion (Alfon vs. Republic, G. R. No. 51201, May 29, 1980, 97 SCRA 858).

The instant case is easily distinguishable from the Oshita and Alfon cases where the petitioners were already of age.

We hold that the trial court did not err in denying the petition for change of name. The reasons adduced for eliminating the father's surname are not substantial enough to justify the petition.

To allow the change of surname would cause confusion as to the minors' parentage and might create the impression that the minors are illegitimate since they would carry the maternal surname only. That would be inconsistent with their legitimate status as indicated in their birth records (Exh. C and D).

As was said in *In re Epstein*, 200 N.Y.S.897, "the child should, and in the course of time must, know of his parentage." If, when he fully appreciates the circumstances and is capable of selecting a name for himself, he wants to use his mother's surname only and to avoid using his father's surname, then he should be the one to apply for a change of surname. See *Anno.*, 53 ALR2d 914.

WHEREFORE, the lower court's decision is affirmed. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos, De Castro, Ericta, and Escolin, JJ., concur.

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