

IN RE: IN THE MATTER OF THE PETITION FOR THE CORRECTION OF ENTRIES IN THE CERTIFICATE OF LIVE BIRTH OF MISHCA KOLLEEN ALPAY DAZO, MICHAEL KENNETH AMBAY DAZO, PETITIONER-APPELLEE,

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before Us is an appeal of the Decision dated January 18, 2012 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 11 of Manila, in Sp. Proc. No. 11-125520. The dispositive portion of the appealed Decision reads:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered directing the Office of the Civil Registrar of Manila, and all persons who shall be affected by herein proceedings to cause the correction of the erroneous entries in the Certificate of Live Birth of petitioner's daughter MISHCA KOLLEEN ALPAY DAZO, to wit:

a) Entry No. 1 – Name: MISHCA KOLLEEN ALDAY DAZO it should be MISHCA KOLLEEN ALPAY DAZO;

b) Entry No. 6 - Mother's Name: ROCHELLE GABRIEL ALDAY it should be MA. ROCHELLE GABRIEL ALPAY;

c) Entry No. 13 – Father's Name: MICHAEL JENNETH AMBAY DAZO it should be MICHAEL KENNETH AMBAY DAZO;

d) Entry No. 18 – the Date and Place of Marriage: July 15, 1995, Pangasinan should be deleted.

Let copies of this order be furnished all offices concerned for their information and guidance.

SO ORDERED.” (Rollo, pp. 35-36)

The antecedents:

In a petition (Records, pp. 1-4) filed on April 13, 2011, petitioner-appellee Michael Kenneth Ambay Dazo (hereinafter appellee) sought the correction of entries in the certificate of live birth of his daughter Mishca Kolleen Alpay Dazo (hereinafter Mishca). He pointed out that Mishca's middle name was erroneously entered as “ALDAY” instead of “ALPAY.” He further asserted that the name of Mishca's mother was incorrectly entered as “ROCHELLE GABRIEL ALDAY” which should be corrected to “MA. ROCHELLE GABRIEL ALPAY.” Another entry that was allegedly erroneous is appellee's name as what is reflected in the certificate of live birth is “MICHAEL JENNETH AMBAY DAZO” instead of “MICHAEL KENNETH AMBAY DAZO.” Finally, appellee sought the deletion of Entry No. 18 which pertains to date and place of marriage because there was no marriage at all.

The RTC found the petition to be sufficient in form and substance. Hence, in an Order (Rollo, p. 7) dated May 4,

2011, the RTC set the initial hearing on July 14, 2011 at 8:30 in the morning. The RTC also directed the publication of the said notice in a newspaper of general circulation, once a week for three (3) consecutive weeks.

Pursuant to the May 4, 2011 directive, the notice was published in Respondents Weekly Newspaper, on May 24, 31 and June 7, 2011. (Records, pp. 16-24) On June 7, 2011, an Affidavit of Publication (Records, p. 15) was subsequently executed by Sharon Espenilla-Ancheta, publisher of Respondents Weekly Newspaper.

Meanwhile, in a Notice of Appearance dated May 19, 2011, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic of the Philippines (Records, p. 11) and deputized the Office of the City Prosecutor of Manila to assist the OSG in all the hearings of the case. (Records, p. 12)

On September 22, 2011, the RTC issued an Order (Records, p. 40) admitting all the documentary exhibits presented and offered for markings by the appellee.

On January 18, 2012, the RTC rendered the challenged decision. (Rollo, pp. 34-36) It held that the pieces of evidence presented by appellee have clearly established that the erroneous entries in Mishca's certificate of live birth have to be corrected so as to reflect Mishca's correct middle name, her mother's correct maiden name and appellee's correct name. The RTC also ordered the deletion of the entries pertaining to date and place of marriage on the strength of the Certification issued by the National Statistics Office dated July 15, 2011 that appellee's name does not appear in its National Indices of Marriage. The dispositive part of the assailed decision was quoted in the prefatory portion of this Decision.

Unconvinced of the RTC's decision, the OSG now comes before this Court via the instant appeal, raising the following issues-

“I

WHETHER OR NOT THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR CORRECTION OF ENTRIES DESPITE PETITIONER'S FAILURE TO IMPLEAD ALL THE INDISPENSABLE PARTIES[;] [AND]

II

WHETHER OR NOT THE TRIAL COURT ERRED IN GRANTING THE PETITION IN A SUMMARY PROCEEDING.” (Rollo, p. 27)

Simply put, the issue to be resolved is whether or not the RTC erred in granting appellee's petition.

The OSG essentially argues that the desired corrections in Mishca's birth certificate, particularly the deletion of “July 15, 1995, Pangasinan” as date and place of marriage of her parents, cannot be considered as simply involving clerical or harmless errors. It asserts that the deletion of the entries pertaining to date and place of marriage is a substantial change as it would affect Mishca's filiation to her father as well as her legitimate status. Hence, the petition for correction cannot be granted except in an appropriate and adversarial proceeding where indispensable parties are properly impleaded, pursuant to Section 3, Rule 108 of the Revised Rules of Court.

The appeal is impressed with merit.

Article 412 of the Civil Code provides that “no entry in the civil register shall be changed or corrected without a judicial order.” Together with Article 376 of the Civil Code which provides that “no person can change his name or surname without judicial authority,” Article 412 was amended by Republic Act No. 9048 (R. A. No. 9048)[1] insofar as clerical or typographical errors are involved. Pursuant to R. A. No. 9048, the correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, R. A. No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors.

Rule 108 now applies only to substantial changes and corrections in entries in the civil register. (Silverio vs. Republic of the Philippines, 537 SCRA 373, 388 [2007])

R. A. No. 9048 defines clerical or typographical error in this wise:

“Section 2. Definition of Terms. - As used in this Act, the following terms shall mean:

xxx xxx xxx

“Clerical or typographical error” refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, however, That no correction must involve the change of nationality, age, status or sex of the petitioner.” (Emphasis supplied)

Measured against the aforequoted definition, the correction of Mishca's middle name from “ALDAY” to “ALPAY,” the erroneous entry of the middle name of Mishca's mother as “ROCHELLE GABRIEL ALDAY” instead of “ROCHELLE GABRIEL ALPAY” and the error in appellee's name which is reflected as “MICHAEL JENNETH AMBAY DAZO” instead of “MICHAEL KENNETH AMBAY DAZO” are merely clerical errors.

However, it is significant to note that in defining a clerical or typographical error, R. A. 9048 further states that such error “can be corrected or changed only by reference to other existing record or records.” A judicious evaluation of the evidentiary records reveal that appellee failed to present existing records to prove that the middle name of Mishca's mother is indeed “ALPAY” and not “ALDAY.” Worse, he even failed to offer his very own birth certificate to support his allegation that his first name is “MICHAEL KENNETH” and not “MICHAEL JENNETH.” Rule 8.1 of OCRG ADMINISTRATIVE ORDER NO. 1-01 (Rules and Regulations Governing the Implementation of Republic Act No. 9048) explicitly provides:

“8.1. The petition for the correction of clerical or typographical error shall be supported with the following documents:

xxx xxx xxx

8.1.2. At least two (2) public or private documents showing the correct entry or entries upon which the correction or change shall be based;

xxx xxx xxx.” (Emphasis supplied)

For appellee's failure to submit such supporting documents as provided under the aforequoted provision, the RTC certainly had no basis in ordering the correction of the erroneous entries in Mishca's birth certificate as regards her middle name, her mother's middle name and appellee's first name.

Worse, the RTC erred in granting the correction pertaining to Entry No. 18 indicating the date and place of marriage, in a summary proceeding. The deletion of “July 15, 1995, Pangasinan” as date and place of marriage cannot be considered as merely involving a clerical error but a substantial change. Indubitably, the deletion of said entry on the allegation that appellee and Mishca's mother never got married would certainly affect Mishca's status in relation to her parents. It seeks to change her legitimacy to that of illegitimacy. Since such change is substantial in nature, Rule 108 of the Revised Rules of Court is the applicable law and Section 3 thereof which mandates that all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding, must be strictly observed. (Republic vs. Coseteng-Magpayo, 641 SCRA 533, 546 [2011]) Here, appellee's petition is fatally flawed for failure to implead Mishca's mother and her paternal grandparents as indispensable parties, as required under Section 3, Rule 108 of the Revised Rules of Court.

On this point, the emphatic ruling of the Supreme Court in *Emperatriz Labayo-Rowe v. Republic of the Philippines* (168 SCRA 294, 301-302 [1988]) is highly instructive, thus:

“The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from "legitimate" to "illegitimate." Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules "shall not diminish, increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, without observing the proper proceedings as earlier mentioned, said rule would thereby become an unconstitutional exercise which would tend to increase or modify substantive rights. This situation is not contemplated under Article 412 of the Civil Code.”

WHEREFORE, premises considered, instant appeal is GRANTED. The appealed Decision dated January 18, 2012 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 11 of Manila, in Sp. Proc. No. 11-125520 is REVERSED AND SET ASIDE.

SO ORDERED.

Lopez, M. V., and Inting, S. B., JJ., concur.

[1] 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 (otherwise known as the Clerical Error Law); Approved on March 22, 2001 and published in the Official Gazette, Vol. 97 No. 26, page 3903 on July 25, 2001.

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