

IN THE MATTER OF THE CORRECTION OF ENTRY IN THE CERTIFICATE OF LIVE BIRTH OF MIKEE MALINAO, RE: IN THE ENTRY OF HER “SEX” FROM “MALE” TO “FEMALE”,

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GALAPATE-LAGUILLES, J:

Assailed in this appeal[1] is the Decision[2] of the Regional Trial Court of Malolos, Bulacan dated October 4, 2012 in SPC No. 77-M-2012 granting the petition for the correction of an entry in the Certificate of Live Birth of Mikee Malinao, i.e., correction of petitioner's gender from “male” to “female”.

The facts are undisputed.

On April 17, 2012, Mikee Malinao, a minor represented by her grandmother Clarita S. Malinao, filed a petition for the correction of an entry in her Certificate of Live Birth pertaining to her gender which erroneously refers to her as a “male”. In the petition, Mikee maintained that she is female by birth and has not undergone any sex change. Attached to the petition are the following documents: (1) a medical certificate[3] issued by Dr. Isabel Flores of the Ospital ng Lungsod ng San Jose del Monte, Bulacan stating that the examination conducted on Mikee yielded this result: “PE- Female looking external genitalia adolescent [sic] female”; (2) Certification[4] from the Girl Scouts of the Philippines (GSP) signed the GSP Coordinator of Bagong Buhay Elementary School stating that Mikee was a member of the GSP in 2009 and 2010; (3) Mikee's identification card[5] as a girl scout; (4) Elementary School Permanent Record[6] indicating that Mikee's sex is “babae”; (5) Certification[7] issued by Francisco G. Lizarondo, Principal of Citrus High School, dated March 27, 2012, affirming that Mikee was then enrolled at Citrus High School. In the same certification, the pronoun “her” was used to refer to Mikee, and (6) Mikee's whole body picture.[8]

During trial, the above-mentioned documents were formally offered[9] in evidence. At the witness stand, Mikee reiterated that she has not undergone any sex change. When asked what her sexual preference was, Mikee answered, “Male, ma'am”.

In a Decision dated October 4, 2012, the RTC ruled that the pieces of evidence submitted to it are sufficient to grant the petition to change Mikee Malinao's sex from “Male” to “Female”, thus:

X X X

Mikee Malinao testified that she is the petitioner in the present case. However, considering that she is still a minor[,] she is represented herein by her grandmother Clarita S. Malinao. She also stated that when she tried to secure a visa for Japan, she discovered that there is an erroneous entry in her Certificate of Live Birth (Exhibit “I”), particularly the entry pertaining to her gender (Exhibit “I-1”). It is stated therein that she is of male gender but in truth and in fact she is of female gender. This fact is evidenced by a medical certificate issued by Dr. Isabel Flores of the Ospital ng Lungsod ng San Jose del Monte, Bulacan (Exhibit “J”), Certification from the Girl Scout of the Philippines signed by Marilyn Cayabyab, Girl Scout Coordinator of Bagong Buhay Elementary School (Exhibit “K”), her identification card as a girl scout (Exhibit “K-1”), her form 137 (Exhibit “L”), Certification issued by Francisco G. Lizarondo, Principal of Citrus High School (Exhibit “M”), and her whole body picture (Exhibit “N”).

Cross-examined, petitioner stated that she did not undergo any operation to change her genitalia and her sexual preference is male.

x x x

On the basis of the foregoing testimonial evidence as well as the documentary exhibits marked and offered in evidence, this Court finds the instant petition meritorious. Consequently, the same is hereby GRANTED.

x x x

SO ORDERED.

The Republic filed a Motion for Reconsideration[10] of the Decision. The motion was denied in an Order[11] dated January 14, 2013; thus, this appeal arguing that the RTC erred in giving probative value to the medical certificate issued by Dr. Isabel Flores considering that the said doctor was never presented in court to identify the same.

The appeal is bereft of merit.

Objection to a documentary evidence must be made at the time it is formally offered.[12] Evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[13] Indeed, when an otherwise incompetent evidence is presented and accepted without any objection on the part of the other party, the latter is bound thereby and the court is obliged to grant it the probatory value it deserves.[14] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[15]

In this case, even if Dr. Flores was not presented to identify the medical certificate, the oppositor-appellant nevertheless failed to make a timely objection when the certificate was formally offered in evidence. The certificate was subsequently admitted[16] by the trial court. Consequently, it became property of the case, and all the parties are considered amenable to any favorable or unfavorable effects resulting from the evidence.[17] Further, the non-presentation of the physician was never raised before the trial court. Settled is the rule that issues not raised below cannot be resolved on review in higher courts. A question that was never raised in the court below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice, and due process.[18]

At any rate, even if we do not consider the medical certificate, the other pieces of evidence are considerably sufficient to establish Mikee's gender as "female". The RTC gave weight to the testimonial evidence, Mikee's school records and pictures submitted in court and concluded that indeed, Mikee is a female. We thus adopt the totality of the findings of the RTC for indeed, as borne by the records of the case, Mikee has always looked like a girl, has always lived as a girl, and has forever been regarded as one by the people around her. To be sure, for all interests and appearances, Mikee's gender has been convincingly established as "female".

Time and again, we generally accord utmost respect and great weight to the factual findings of the trial court, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked, or the significance of which has been misinterpreted, that if considered would have affected the result of the case.[19] We find no such oversight in the RTC's appreciation of the facts or such a misinterpretation thereof, as would otherwise provide a clear showing that the RTC erred in granting Mikee's petition.

FOR THESE REASONS, the appeal is DENIED. The ruling of the Regional Trial Court of Malolos, Bulacan, Branch 78 dated October 4, 2012 is AFFIRMED.

SO ORDERED.

Punzalan Castillo, M.P., Chairperson and Macalino, F.S., J.J., concur.

[1] Rollo, pp. 17-24.

[2] Records, pp. 94-96.

[3] Id. at 11.

[4] Id. at 10.

[5] Id. at 9.

[6] Id. at 13.

[7] Id. at 12.

[8] Id. at 14.

[9] Id. at 86-87.

[10] Id. at 100-105.

[11] Id. at 117-119.

[12] Patricio Obonan Baniaga vs. Philippine Episcopal Church, UDK-13672.

[13] Interpacific Transit Inc. v. Aviles, G.R. No. 86062. June 6, 1990.

[14] Ibid.

[15] Ibid.

[16] Records, p. 93, Order dated August 24, 2012.

[17] Patricio Obonan Baniaga vs. Philippine Episcopal Church, supra.

[18] Villanueva and Ever Pawnshop v. Spouses Salvador, G.R. No. 139436. January 25, 2006.

[19] S.C. Megaworld Construction and Development Corporation v. Engr. Luis U. Parada, G.R. No. 183804. September 11, 2013.

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