

## **VICTOR C. VELAZCO, PETITIONER-APPELLEE, VS. THE LOCAL CIVIL REGISTRAR OF SILANG CAVITE AND ALL PERSONS WHO MAY HAVE A CLAIM OR INTEREST IN THESE PROCEEDINGS, RESPONDENTS.**

Ponente: SADANG, J.

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### **SADANG, J.:**

The Office of the Solicitor General appeals to this court the Decision[1] of the Regional Trial Court of Tagaytay City, Branch 18, in Sp. Proc. Case No. TG-10-2911 (SC) which granted the petition for correction of entries in the Certificate of Live Birth of minor Jcinth Angela Reyes Barraquias.

#### **Antecedents of the Appeal**

Victor Velazco (Victor), as the paternal grandfather and guardian of the minor Jcinth Angela Reyes Barraquias (Jcinth), filed a petition for correction of entries in the Certificate of Live Birth (CLB, for brevity) of said minor. Victor alleged that: Jcinth, born on May 26, 1999, is the illegitimate daughter of his son, Virgilio Federico Lapus Velazco (Virgilio) and Jasmine Reyes Barraquias; Virgilio was born in New York City, USA and is therefore an American citizen, yet, in the CLB of Jcinth his citizenship is "Filipino"; the CLB also spells Virgilio's second name as 'Frederico' instead of 'Federico' and his middle name as 'Lapuz' instead of 'Lapus'. Victor prayed that the corresponding corrections be ordered.

Finding the petition to be sufficient in form and substance, the lower court issued an Order[2] dated March 29, 2010 setting the hearing of the petition on May 28, 2010.

On May 5, 2010, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic of the Philippines and authorized the Office of the City Prosecutor of Tagaytay City to appear in its behalf.[3]

At the scheduled hearing on May 28, 2010, there was no opposition to the petition. Petitioner offered Exhibits A to K[4] to establish the jurisdictional facts and the court ordered the reception of evidence before the Clerk of Court.[5]

During the hearing on November 26, 2010, Victor affirmed his judicial affidavit[6] in which he reiterated his allegations in his Petition. He offered in evidence Jcinth's CLB[7] and Virgilio's Certification of Birth,[8] Passport,[9] and Social Security Card.[10]

On December 29, 2010, the lower court rendered its Decision the fallo of which reads:

Upon due consideration of the verified petition, its supporting documents and the evidence presented, petitioner has sufficiently proven that the entries in the Certificate of Live Birth of minor Jcinth Angela Reyes Barraquias should be corrected:

- a) Citizenship of Father from "Filipino" to "American"
- b) First Name of the Father from "Frederico" to "FEDERICO," and
- c) Middle Name of the Father from "Lapuz" to "LAPUS."

Let a copy of this Decision be furnished to the Office of the Civil Registrar of Silang, Cavite so that the necessary

corrections may be made in the register of birth and the corresponding Certificate of Live Birth be issued to minor Jcynth Angela Reyes Barraquias containing the correct entries.

Furnish copies of this Decision to the Civil Registrar General, National Statistics Office and the Office of the Solicitor General for the corresponding corrections and entries in the birth registry.

### **SO ORDERED.[11]**

Hence, this appeal wherein the OSG raises this assignment of error:[12]

THE TRIAL COURT ERRED IN GRANTING THE CHANGE OF CITIZENSHIP OF THE FATHER OF PETITIONER IN HER PHILIPPINE CERTIFICATE OF LIVE BIRTH AS A MERE CLERICAL ERROR FROM FILIPINO TO AMERICAN BASED ON HIS AMERICAN CERTIFICATE OF BIRTH ISSUED BY THE CITY OF NEW YORK, UNITED STATES OF AMERICA.

#### **Ruling**

The appeal is not impressed with merit.

At the outset, it bears to stress that change in citizenship is substantial, hence, it may only be effected in an appropriate adversarial proceeding, not in a summary proceeding.[13] The proceedings had before the lower court under Rule 108 is an adversarial proceeding considering that parties who may have had a claim or interest therein were impleaded and notice thereof was posted and published in the manner required by the rules. Thus, the OSG entered its appearance and its deputized prosecutor participated in the case and cross-examined the petitioner.[14]

The OSG does not contest the correction of the spelling of the second name and middle name of Virgilio. It contends, however, that inasmuch as it is clear from the petition that Victor is a Filipino it logically follows that his son, Virgilio, is also a Filipino, hence, the entry in Jcynth's CLB as to Virgilio's citizenship is correct. The OSG argues that the Certificate of Birth of Virgilio issued by the City of New York is not sufficient to prove that Virgilio is only an American citizen and not also Filipino because American citizenship is based on the principle of *jus soli* while Filipino citizenship follows *jus sanguinis*, hence, Virgilio could have dual citizenship.

On the other hand, Victor argues that it was established at the trial that Virgilio was an American citizen from birth.

Virgilio's Certificate of Birth shows that he was born in Queens, New York City, United States of America (USA) on February 18, 1982. Consequently, there is merit in Victor's contention that Virgilio was an American citizen at the time of his birth because it is not disputed that American citizenship is governed by the principle of *jus soli*.

But is Virgilio also a Filipino citizen as contended by the OSG? Considering that Virgilio was born in 1982, the applicable law on his citizenship is Section 1, Article III of the 1973 Constitution which provides:

Section 1. The following are citizens of the Philippines:

- 1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- 2) Those whose fathers or mothers are citizens of the Philippines;
- 3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty five;
- (4) Those who are naturalized in accordance with law. (underscoring supplied)

The foregoing constitutional provision was explained by Fr. Joaquin Bernas, thus:

The 1935 Constitution adopted the principle of jus sanguinis as an absolute rule. Thus, the child of a Filipino citizen, whether born in the Philippines or abroad, is a Filipino citizen from the moment of birth x x x.

The 1973 Constitution preserved the principle of jus sanguinis as the basic foundation of citizenship but expanded its application by placing the Filipino woman on the same level as the male in matters of citizenship. Those whose mothers are citizens of the Philippines, even if their father is an alien, are Filipino citizens. To come under this expanded rule, however, it is essential that the mother must be Filipina at the time of the birth of the child. Moreover, the new provision is not retroactive. It applies only to those born of a Filipina mother on or after the effectivity of the 1973 Constitution. x x x.

It is also a settled rule that the principle of jus sanguinis applies only to natural filiation and not to filiation by adoption. Likewise, it is a settled rule that only legitimate children follow the citizenship of the father and that "illegitimate children are under the parental authority of the mother and follow her citizenship, not that of the illegitimate father. This rule, based on parental authority, remains unchanged by the new Constitution.[15] (underscoring supplied)

Thus, whether Virgilio followed the Filipino citizenship of his father at the time of his birth depends on whether he is a legitimate child of Victor. On this point, there is no competent evidence on record to show that Virgilio's parents, Victor and Evangeline Yang Lapus, were married at the time of his birth. During his testimony, Victor even claimed that he is single.[16] There being no evidence that Virgilio is the legitimate child of Victor, pursuant to the 1973 Constitution, he cannot follow the citizenship of his father. He follows the citizenship of his mother. Unfortunately, there is likewise no competent evidence to show that Virgilio's mother, Evangeline Yang Lapus, is a Filipino citizen. In which case, there would be no basis for this court to sustain the contention of the OSG that Virgilio is not only an American citizen but also a Filipino.

WHEREFORE, the appeal is DENIED. The Decision dated December 29, 2010 of the Regional Trial Court of Tagaytay City, Branch 18, in Sp. Proc. Case No. TG-10-2911 (SC) is AFFIRMED.

**SO ORDERED.**

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

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[1] Record, pp. 65-66.

[2] Id at 8.

[3] Id at 10-11, Exh. "K".

[4] Id at 2-4, Exh. "A"; 8, Exh. "E"; and 10-17, Exh. "K", "F", "G", "H", "I", "J", "B", "C" and "D".

[5] Order, dated May 28, 2010, id., p. 19

[6] Id at 22, Exh. "S".

[7] Id at 23-24, Exh. "R".

[8] Id at 25-27, Exh. "L", "M" and "N".

[9] Id at 28-29, Exh. "Q" and "O".

[10] Id at 30, Exh. "P".

[11] RTC-Tagaytay Decision, supra note 1 at 66.

[12] Rollo, p. 22.

[13] Republic v. Valencia, 225 Phil. 408 at 416. (1986); see also Republic of the Philippines v. Dr. Norma S. Lugsanay Uy, G.R. No. 198010, August 12, 2013.

[14] Republic of the Philippines v. Carlito I. Kho, et al., G.R. No. 170340, June 29, 2007.

[15] Joaquin G. Bernas, SJ, The 1987 Constitution of the Republic of the Philippines A Commentary, 2009 ed., pp. 632-633, citations omitted.

[16] TSN November 26, 2010, Record, p. 34.

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