

IN RE: PETITION FOR CORRECTION OF ENTRY IN THE RECORDS OF BIRTH OF ACE YADAO TORTOSA,

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MACALINO, J:

This is an Appeal under Rule 41 of the Rules of Court assailing the 3 September 2012 Decision[1] (“assailed Decision”) of the Regional Trial Court of Cabugao, Ilocos Sur, Branch 24 in SP Proc. No. 1320-KS entitled “In Re: Petition for Correction of Entry in the Records of Birth of Ace Yadao Tortosa”. The dispositive portion of the assailed Decision reads:

“WHEREFORE, premises considered, the petition is hereby GRANTED. The Civil Registrar General, National Statistics Office and the Local Civil Registrar of Sinait, Ilocos Sur are directed to correct petitioner's sex from FEMALE to MALE.

SO ORDERED.”[2]

The Facts of the Case[3]

On 23 February 2012, Petitioner-Appellee Ace Yadao Tortosa (“Petitioner-Appellee”) filed a Petition[4] for correction of his sex as it appeared in his Certificate of Live Birth- from female to male.

In his Petition, Petitioner-Appellee alleged that on 29 April 1980, he was born to Spouses Isidro Tortosa and Gloria Yadao in Sinait, Ilocos, Sur. His birth was duly registered with the Local Civil Registrar of Sinait, Ilocos Sur and with the National Statistics Office. Petitioner further alleged that he is biologically male but in his record of birth, his gender is female. Thus, he filed the above said Petition.

In order to support his allegations, Petitioner-Appellee attached to his Petition the following: (a) Certificate of Live Birth from the Local Civil Registrar of Sinait, Ilocos Sur;[5] (b) Certificate of Live Birth from the National Statistics Office;[6] (c) Medical Certificate indicating that Petitioner is biologically male;[7] (d) Voter's Certification[8] and (e) his whole body photograph.[9]

Finding the Petition to be sufficient in form and in substance, the trial court ordered the publication of the Notice of Hearing[10] in a newspaper of general circulation in Ilocos Sur, once a week for three (3) consecutive weeks.

In compliance therewith, Petitioner-Appellee caused the publication of the Notice of Hearing in Tawid News Magazine on 27 February 2012, 5 March 2012 and 12 March 2012.[11] The Solicitor General entered his appearance and authorized the Office of the Provincial Prosecutor in Cabugao, Ilocos Sur to appear in his behalf.[12]

Thereafter, Petitioner-Appellee took the witness stand to testify on matters alleged in the Petition.

Subsequently, on 3 September 2012, the trial court rendered the assailed Decision granting the Petition. The trial court ordered the Civil Registrar General and the Local Civil Registrar of Sinait, Ilocos Sur to correct Petitioner's sex from female to male.

On 18 September 2012, the Office of the Solicitor General (OSG) filed a Motion for Reconsideration[13] of the

assailed Decision which elicited a Comment[14] from Petitioner.

However, in an Order[15] dated 8 October 2012, the trial court denied Respondents-Appellants' Motion for Reconsideration.

Thus, the OSG timely interposed an appeal praying for the reversal and setting aside of the assailed Decision.[16]

On 21 June 2013, Respondents-Appellants filed their Brief.[17]

On 4 November 2013, Petitioner-Appellee filed his Brief.[18]

Meanwhile, Respondents-Appellants failed to file their Reply Brief.[19] Hence, the instant case was deemed submitted for decision without the same.[20]

The Issue

In support of the instant Appeal, Respondents-Appellants assign the following lone error allegedly committed by the trial court for our consideration:

THE TRIAL COURT ERRED IN GIVING PROBATIVE VALUE TO THE MEDICAL CERTIFICATE CONSIDERING THAT THE PHYSICIAN WHO CONDUCTED THE EXAMINATION AND ISSUED THE CORRESPONDING MEDICAL CERTIFICATE WAS NEVER PRESENTED IN COURT TO IDENTIFY THE SAME.[21]

The Court's Ruling

In granting the Petition, the trial court ratiocinated:

“In support of his petition, petitioner presented a Medical Certificate issued by Dr. Manny Roehl Allan Bumanglag of the Corpuz Clinic and Hospital, Sinait, Ilocos Sur, attesting to the fact that petitioner is “biologically male”. Also, petitioner presented a copy of his Voter Certification issued by the Office of the Election Officer of Sinait, Ilocos Sur, as well as a copy of his latest photograph showing his sex as male.

Considering the evidence presented, the Court is convinced that the petitioner is entitled to the reliefs prayed for.”

It appears that the trial court granted the Petition praying for the correction of Petitioner-Appellee's sex from female to male based on the Medical Certificate issued by Dr. Manny Roehl Allan Bumanglag (“Dr. Bumanglag”), Petitioner's Voter Certification and his latest whole body photograph.

Respondents-Appellants allege that the Medical Certificate attesting to the fact that Petitioner is “biologically male” should not have been given probative value by the trial court inasmuch as Dr. Bumanglag, the physician who issued the same, was not presented in court in order to establish his qualifications and identify the said document. According to Respondents-Appellants, there is no assurance that the Medical Certificate is authentic or that the person who issued the same is really a physician, qualified and authorized to perform the examination made upon Petitioner-Appellee.

Petitioner-Appellee, on the other hand, contends that the trial court did not err in giving probative value to the Medical Certificate. Since Petitioner-Appellee was duly represented during trial, it cannot later on question the ruling as to the admissibility of the medical certificate, since its representative, the Office of the Provincial Prosecutor in Ilocos Sur, did not even raise any objection at the time the aforementioned document was offered in evidence.

We rule that the Medical Certificate attesting to the fact that Petitioner-Appellee is biologically male should not

have been given evidentiary weight by the trial court. It appears from the records of this case that Dr. Bumanglag, the physician who conducted physical examination of Petitioner-Appellee was never presented before the trial court. Settled is the rule that since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications.[22]

True, the Office of the Provincial Prosecutor in Ilocos Sur failed to object to the admissibility of the Medical Certificate presented by Petitioner-Appellee. However, this does not mean that the Medical Certificate should be given probative value as admissibility of evidence is different from weight of evidence. As ruled by the Supreme Court in *People v. Turco*: [23]

“In *People vs. Bernaldez* (supra), the court a quo erred in giving weight to the medical certificate issued by the examining physician despite the failure of the latter to testify. While the certificate could be admitted as an exception to the hearsay rule since entries in official records (under Section 44, Rule 130, Rules of Court) constitute exceptions to the hearsay evidence rule, since it involved an opinion of one who must first be established as an expert witness, it could not be given weight or credit unless the doctor who issued it is presented in court to show his qualifications. We place emphasis on the distinction between admissibility of evidence and the probative value thereof. Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules (Section 3, Rule 128, Rules of Court) or is competent. Since admissibility of evidence is determined by its relevance and competence, admissibility is, therefore, an affair of logic and law. On the other hand, the weight to be given to such evidence, once admitted, depends on judicial evaluation within the guidelines provided in Rule 133 and the jurisprudence laid down by the Court. Thus, while evidence may be admissible, it may be entitled to little or no weight at all. Conversely, evidence which may have evidentiary weight may be inadmissible because a special rule forbids its reception (*Regalado, Remedial Law Compendium*, Vol. II, 1998 ed., p. 550).”

Inasmuch as sex refers to the biological and physiological characteristics that define men and women [24] and said characteristics may not be established by Petitioner-Appellee's Voter Certification and his latest whole body photograph alone, the trial court erred in ordering the correction of his sex as appearing in his Certificate of Live Birth, from female to male.

At any rate, Petitioner-Appellee is not left without any recourse as he can personally file a Petition under Republic Act No. 10172 [25] for the correction of his sex with the civil registry office where his birth certificate is registered.

WHEREFORE, premises considered, the instant Appeal is hereby GRANTED. Accordingly, the 3 September 2012 Decision of the Regional Trial Court of Cabugao, Ilocos Sur, Branch 24 in SP Proc. No. 1320-KS is REVERSED and SET ASIDE.

SO ORDERED.

Villon (Chairperson) and Corales, JJ., concur.

[1] Rollo, pp. 35-36.

[2] *Id.* at p. 36.

[3] As culled from the records.

[4] Original Records, pp. 2-5.

[5]Id. at p. 6.

[6] Id. at p. 7.

[7]Id. at p. 8.

[8] Id. at p. 9.

[9] Id. at p. 10.

[10] Id. at p. 11.

[11] Id. at p. 13.

[12] Id. at p. 17.

[13] Id. at pp. 44-50.

[14]Id. at pp. 53-56.

[15]Id. at pp. 58-59.

[16] Id. at pp. 60-61.

[17] Rollo, pp. 25-34.

[18]Id. at pp. 63-71.

[19]Id. at p. 81.

[20]Id.

[21] Id. at pp. 27-28.

[22] See *People v. Ugang*, G.R. No. 144036, May 7, 2002 citing *People v. Aliviano*, 335 SCRA 382 [2000]; *People v. Pastor*, G.R. No. 140208, March 12, 2002; See also *People v. Ocampo*, G.R. No. 177753, September 25, 2009.

[23] G.R. No. 137757, August 14, 2000.

[24] See NSO Administrative Order No. 01-12 (Rules and Governing the Implementation of Republic Act No. 10172 (An Act Further Authorizing the City or Municipal Civil Registrar or the Consul General to Correct Clerical or Typographical Errors in the Day and Month in the Date of Birth or Sex of a Person Appearing in the Civil Register Without Need of a Judicial Order, Amending for this Purpose Act Numbered Ninety Forty-Eight).

[25] See note 24; Rule 4.2 of R.A. No. 10172 reads:

“4.2. For correction of clerical and typographical error in the entry of sex The verified petition shall be filed, in person, with the C/MCR of the city or municipality or the Philippine Consulate, as the case may be, where the record containing the entry of sex in the birth certificate to be corrected is registered.”

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