

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. TRINIDAD R.A. CAPOTE, RESPONDENT.

G.R. NO. 157043. February 02, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the Court of Appeals (CA) decision[2] dated January 13, 2003 in CA-G.R. CV No. 66128, which affirmed the decision of the Regional Trial Court (RTC), Branch 23 of San Juan, Southern Leyte dated September 14, 1999 granting a petition for change of name.

Respondent Trinidad R. A. Capote filed a petition for change of name of her ward from Giovanni N. Gallamaso to Giovanni Nadores on September 9, 1998. In Special Proceeding No. R-481,[3] Capote as Giovanni's guardian ad litem averred:

xxx xxx xxx

- [Respondent] is a Filipino citizen, of legal age, married, while minor GIOVANNI N. GALLAMASO, is also a Filipino citizen, sixteen (16) years old and both are residents of San Juan, Southern Leyte where they can be served with summons and other court processes;

- [Respondent] was appointed guardian [ad litem] of minor Giovanni N. Gallamaso by virtue of a court order in Special [Proc.] No. R-459, dated [August 18, 1998] xxx xxx authorizing her to file in court a petition for change of name of said minor in accordance with the desire of his mother [who is residing and working abroad];

- Both [respondent] and minor have permanently resided in San Juan, Southern Leyte, Philippines for more than fifteen (15) years prior to the filing of this instant petition, the former since 1970 while the latter since his birth [in 1982];

- The minor was left under the care of [respondent] since he was yet nine (9) years old up to the present;

- Minor GIOVANNI N. GALLAMASO is the illegitimate natural child of Corazon P. Nadores and Diosdado Gallamaso. [He] was born on July 9, 1982 [,] prior to the effectivity of the New Family Code and as such, his mother used the surname of the natural father despite the absence of marriage between them; and [Giovanni] has been known by that name since birth [as per his birth certificate registered at the Local Civil Register of San Juan, Southern Leyte];

- The father, Diosdado Gallamaso, from the time [Giovanni] was born and up to the present, failed to take up his responsibilities [to him] on matters of financial, physical, emotional and spiritual concerns. [Giovanni's pleas] for attention along that line [fell] on deaf ears xxx xxx xxx;

- [Giovanni] is now fully aware of how he stands with his father and he desires to have his surname changed to that of his mother's surname;

- [Giovanni's] mother might eventually petition [him] to join her in the United States and [his] continued use of

the surname Gallamaso, the surname of his natural father, may complicate [his] status as natural child; and

- The change of name [from] GIOVANNI N. GALLAMASO to GIOVANNI NADORES will be for the benefit of the minor.

xxx xxx xxx[4]

Respondent prayed for an order directing the local civil registrar to effect the change of name on Giovanni's birth certificate. Having found respondent's petition sufficient in form and substance, the trial court gave due course to the petition.[5] Publication of the petition in a newspaper of general circulation in the province of Southern Leyte once a week for three consecutive weeks was likewise ordered.[6] The trial court also directed that the local civil registrar be notified and that the Office of the Solicitor General (OSG) be sent a copy of the petition and order.[7]

Since there was no opposition to the petition, respondent moved for leave of court to present her evidence ex parte before a court-appointed commissioner. The OSG, acting through the Provincial Prosecutor, did not object; hence, the lower court granted the motion.

After the reception of evidence, the trial court rendered a decision ordering the change of name from Giovanni N. Gallamaso to Giovanni Nadores.[8]

From this decision, petitioner Republic of the Philippines, through the OSG, filed an appeal with a lone assignment of error: the court a quo erred in granting the petition in a summary proceeding.

Ruling that the proceedings were sufficiently adversarial in nature as required, the CA affirmed the RTC decision ordering the change of name.[9]

In this petition, the Republic contends that the CA erred in affirming the trial court's decision which granted the petition for change of name despite the non-joinder of indispensable parties.[10] Petitioner cites Republic of the Philippines v. Labrador[11] and claims that the purported parents and all other persons who may be adversely affected by the child's change of name should have been made respondents to make the proceeding adversarial.[12]

We deny the petition.

"The subject of rights must have a fixed symbol for individualization which serves to distinguish him from all others; this symbol is his name." [13] Understandably, therefore, no person can change his name or surname without judicial authority.[14] This is a reasonable requirement for those seeking such change because a person's name necessarily affects his identity, interests and interactions. The State must be involved in the process and decision to change the name of any of its citizens.

The Rules of Court provides the requirements and procedure for change of name. Here, the appropriate remedy is covered by Rule 103,[15] a separate and distinct proceeding from Rule 108 on mere cancellation and correction of entries in the civil registry (usually dealing only with innocuous or clerical errors thereon).[16]

The issue of non-joinder of alleged indispensable parties in the action before the court a quo is intertwined with the nature of the proceedings there. The point is whether the proceedings were sufficiently adversarial.

Summary proceedings do not extensively address the issues of a case since the reason for their conduct is expediency. This, according to petitioner, is not sufficient to deal with substantial or contentious issues allegedly resulting from a change of name, meaning, legitimacy as well as successional rights.[17] Such issues are ventilated only in adversarial proceedings wherein all interested parties are impleaded and due process is observed.[18]

When Giovanni was born in 1982 (prior to the enactment and effectivity of the Family Code of the Philippines),[19] the pertinent provision of the Civil Code then as regards his use of a surname, read:

Art. 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent. (emphasis ours)

Based on this provision, Giovanni should have carried his mother's surname from birth. The records do not reveal any act or intention on the part of Giovanni's putative father to actually recognize him. Meanwhile, according to the Family Code which repealed, among others, Article 366 of the Civil Code:

Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. xxx xxx xxx (emphasis ours)

Our ruling in the recent case of *In Re: Petition for Change of Name and/or Correction/Cancellation of Entry in Civil Registry of Julian Lin Carulasan Wang*[20] is enlightening:

Our laws on the use of surnames state that legitimate and legitimated children shall principally use the surname of the father. The Family Code gives legitimate children the right to bear the surnames of the father and the mother, while illegitimate children shall use the surname of their mother, unless their father recognizes their filiation, in which case they may bear the father's surname.

Applying these laws, an illegitimate child whose filiation is not recognized by the father bears only a given name and his mother's surname, and does not have a middle name. The name of the unrecognized illegitimate child therefore identifies him as such. It is only when the illegitimate child is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public document or private handwritten instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged child.[21]

The foregoing discussion establishes the significant connection of a person's name to his identity, his status in relation to his parents and his successional rights as a legitimate or illegitimate child. For sure, these matters should not be taken lightly as to deprive those who may, in any way, be affected by the right to present evidence in favor of or against such change.

The law and facts obtaining here favor Giovanni's petition. Giovanni availed of the proper remedy, a petition for change of name under Rule 103 of the Rules of Court, and complied with all the procedural requirements. After hearing, the trial court found (and the appellate court affirmed) that the evidence presented during the hearing of Giovanni's petition sufficiently established that, under Art. 176 of the Civil Code, Giovanni is entitled to change his name as he was never recognized by his father while his mother has always recognized him as her child. A change of name will erase the impression that he was ever recognized by his father. It is also to his best interest as it will facilitate his mother's intended petition to have him join her in the United States. This Court will not stand in the way of the reunification of mother and son.

Moreover, it is noteworthy that the cases cited by petitioner[22] in support of its position deal with cancellation or correction of entries in the civil registry, a proceeding separate and distinct from the special proceedings for change of name. Those cases deal with the application and interpretation of Rule 108 of the Rules of Court while this case was correctly filed under Rule 103. Thus, the cases cited by petitioner are irrelevant and have no bearing on respondent's case. While the OSG is correct in its stance that the proceedings for change of name should be adversarial, the OSG cannot void the proceedings in the trial court on account of its own failure to participate therein. As the CA correctly ruled:

The OSG is correct in stating that a petition for change of name must be heard in an adversarial proceeding.

Unlike petitions for the cancellation or correction of clerical errors in entries in the civil registry under Rule 108 of the Rules of Court, a petition for change of name under Rule 103 cannot be decided through a summary proceeding. There is no doubt that this petition does not fall under Rule 108 for it is not alleged that the entry in the civil registry suffers from clerical or typographical errors. The relief sought clearly goes beyond correcting erroneous entries in the civil registry, although by granting the petition, the result is the same in that a corresponding change in the entry is also required to reflect the change in name. In this regard, [appellee] Capote complied with the requirement for an adversarial proceeding by posting in a newspaper of general circulation notice of the filing of the petition. The lower court also furnished the OSG a copy thereof. Despite the notice, no one came forward to oppose the petition including the OSG. The fact that no one opposed the petition did not deprive the court of its jurisdiction to hear the same nor does it make the proceeding less adversarial in nature. The lower court is still expected to exercise its judgment to determine whether the petition is meritorious or not and not merely accept as true the arguments propounded. Considering that the OSG neither opposed the petition nor the motion to present its evidence ex parte when it had the opportunity to do so, it cannot now complain that the proceedings in the lower court were not adversarial enough.[23] (emphasis supplied)

A proceeding is adversarial where the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it.[24] Respondent gave notice of the petition through publication as required by the rules.[25] With this, all interested parties were deemed notified and the whole world considered bound by the judgment therein. In addition, the trial court gave due notice to the OSG by serving a copy of the petition on it. Thus, all the requirements to make a proceeding adversarial were satisfied when all interested parties, including petitioner as represented by the OSG, were afforded the opportunity to contest the petition.

WHEREFORE, the petition is hereby DENIED and the January 13, 2003 decision of the Court of Appeals in CA-G.R. CV No. 66128 AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] This is a petition filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ruben T. Reyes and Edgardo F. Sundiam of the Seventh Division of the Court of Appeals; rollo, pp. 18-23.

[3] In the matter of the petition for change of name from Giovanni N. Gallamaso to Giovanni Nadores, Trinidad R.A. Capote v. The Local Civil Registrar of San Juan, Southern Leyte.

[4] Annex "B," rollo, pp. 24-26.

[5] Annex "C," rollo, p. 28.

[6] Id.

[7] Id.

[8] Annex "D," rollo, pp. 30-32.

[9] Annex "A," rollo, pp. 18-23.

[10] Petition, rollo, p. 9.

[11] 364 Phil. 934 (1999).

[12] Id.

[13] Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 1 (1990), Central Professional Books, Inc., Quezon City, Philippines, p. 672.

[14] CIVIL CODE, Art. 376. There is now a new law allowing change of name through administrative proceedings. Please see RA 9048 and AO No. 1 S. 2001. With the amendment by RA 9048, a person desiring to change his first name does not need to file the petition with the RTC. The petition shall now be filed with the local civil registry office of the city or municipality where the record sought to be corrected or charged is kept.

[15] Regalado, REMEDIAL LAW COMPENDIUM 2 (2001), National Book Store, Manila, Philippines, p. 167.

[16] Id., at 189 citing *Ansaldo v. Republic*, 102 Phil. 1046 (1958).

[17] Petition, rollo, p. 10.

[18] *Republic of the Philippines v. Labrador*, 364 Phil. 934 (1999):

What is meant by "appropriate adversary proceeding?" "[A]dversary proceedings" [may be defined] as follows:

"One having opposing parties, contested, as distinguished from an ex parte application, one [in] which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. xxx xxx."(citations omitted)

[19] Executive Order No. 209, known as the Family Code of the Philippines, took effect on August 3, 1988.

[20] G.R. No. 159966, 30 March 2005, 454 SCRA 155.

[21] Id., at 163 citing CIVIL CODE, Arts. 174, 176 and 364; and Republic Act No. 9255, "An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Art. 176 of the Family Code." See *Leonardo v. Court of Appeals, et al.*, G.R. No. 125329, 10 September 2003, 410 SCRA 446 and *Mossesgeld v. Court of Appeals*, 360 Phil. 646 (1998).

Article 176 of the Family Code, as amended by RA 9255, reads:

Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (emphasis ours)

[22] *Leonor v. Court of Appeals*, 326 Phil. 74 (1996) and *Republic v. Labrador*, supra.

[23] Supra note 2.

[24] Cf. *Republic v. Labrador*, supra.

[25] Cf. Sec. 3, Rule 103, Rules of Court.

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