

**ROSENDO ALBA, MINOR, REPRESENTED BY HIS MOTHER AND
NATURAL GUARDIAN, ARMI A. ALBA, AND ARMI A. ALBA, IN HER
PERSONAL CAPACITY, PETITIONERS, VS. COURT OF APPEALS AND
ROSENDO C. H...**

G.R. No. 164041. July 29, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for certiorari[1] are the February 27, 2004 decision[2] and the May 14, 2004 resolution[3] of the Court of Appeals in CA-G.R. SP No. 61883, which dismissed petitioner's original action for annulment of judgment[4] of the Regional Trial Court of Manila, Branch 37, and denied the motion for reconsideration, respectively.

The antecedent facts show that on October 21, 1996, private respondent Rosendo C. Herrera filed a petition[5] for cancellation of the following entries in the birth certificate of "Rosendo Alba Herrera, Jr.", to wit: (1) the surname "Herrera" as appended to the name of said child; (2) the reference to private respondent as the father of Rosendo Alba Herrera, Jr.; and (3) the alleged marriage of private respondent to the child's mother, Armi A. Alba (Armi) on August 4, 1982 in Mandaluyong City. He claimed that the challenged entries are false and that it was only sometime in September 1996 that he learned of the existence of said birth certificate.

Private respondent alleged that he married only once, i.e., on June 28, 1965 with Ezperanza C. Santos and never contracted marriage with Armi nor fathered Rosendo Alba Herrera, Jr. In support thereof, he presented certifications from the Civil Registrar of Mandaluyong City[6] and the National Statistics Office,[7] both stating that they have no record of marriage between private respondent and Armi.

On November 12, 1996, private respondent filed an amended petition,[8] impleading Armi and "all the persons who have or claim any interest in th[e] petition." [9]

On November 27, 1996, the trial court issued an Order setting the petition for hearing on January 24, 1997, and directed the publication and service of said order to Armi at her address appearing in the birth certificate which is No. 418 Arquiza St., Ermita, Manila, and to the Civil Registrar of the City of Manila and the Solicitor General. The full text of the order, reads:

In a verified Amended Petition for Correction of Entry, the Petitioner prays, inter alia, that the following entries appearing in the subject Certificate of Live Birth be deleted:

- All informations having reference to him as the father of the child mentioned therein;
- The surname "Herrera" appended to the child's name;
- His alleged marriage with the natural mother of the child.

Finding the Petition to be sufficient in form and substance, let the Petition be set for hearing on January 24,

1997 at nine o'clock in the morning before this Branch at Rooms 447-449, Fourth Floor, Manila City Hall. All interested parties are hereby notified of the said hearing and are ordered to show cause why the Petition should not be granted.

Let a copy of this Order be published at the expense of the Petitioner, once a week for three (3) consecutive weeks, in a newspaper of general circulation in the City of Manila, and raffled pursuant to P.D. 1079.

Furnish the Office of the Solicitor General and the Office of the Local Civil Registrar of the City of Manila with copies of the Petition and of this Order.

Let the same be likewise furnished the Private Respondent Armi Alba Herrera at the address indicated in the subject Certificate of Live Birth.

SO ORDERED.[10]

On January 13, 1997, before the scheduled January 24, 1997 hearing, the trial court issued an Amended Order[11] with substantially the same contents, except that the hearing was re-scheduled to February 26, 1997. A copy of said Amended Order was published in "Today", a newspaper of general circulation in Manila in its January 20, 27, and February 3, 1997 issues. Copies thereof were also sent to Armi at No. 418 Arquiza St., Ermita, Manila, on January 17, 1997, the Local Civil Registrar of Manila and the Solicitor General.

At the scheduled hearing on February 26, 1997, the counsel from the Office of the Solicitor General appeared but filed no opposition to the petition. Armi, on the other hand was not present. The return of the notice sent to her had the following notation:

This is to certify that on January 17, 1997, the undersigned [process server] personally served a copy of the Amended Order in Sp. Proc. No. 96-80512 dated January 13, 1997 to the private respondent, Armi Alba Herrera at . . . 418 Arquiza St., Ermita, Manila, but failed and unavailing for reason that (sic), private respondent is no longer residing at said given address.[12]

On April 1, 1997, the court a quo rendered a decision which became final and executory on June 2, 1997.[13] The dispositive portion thereof, states:

ACCORDINGLY, and pursuant to Rule 108 of the Revised Rules of Court, judgment is hereby rendered ordering the correction of the entries in the Certificate of Live Birth of Rosendo Alba Herrera, Jr., in such a way that the entry under the name of the child, the surname Herrera, Jr.[.] is ordered deleted, and the child shall be known as ROSENDO ALBA; and that the entry under the date and place of marriage, the date August 4, 1982, Mandaluyong, MM is likewise ordered deleted or cancelled.

Let a copy of this Decision be furnished the Local Civil Registrar of Manila for proper correction and entry.

SO ORDERED.[14]

Private respondent filed a motion[15] for amendment of the decretal portion of the decision to include the cancellation of all entries having reference to him as the father of petitioner minor. This was granted in the August 11, 1997 order of the trial court as follows:

ACCORDINGLY, and pursuant to Rule 108 of the Revised Rules of Court, judgment is hereby rendered ordering the correction of the entries in the Certificate of Live Birth of Rosendo Alba Herrera, Jr., in such a way that the entries under the name of the child, the surname Herrera, Jr., and the name of the father Rosendo Caparas Herrera are ordered deleted, and the child shall be known as ROSENDO ALBA; and the entry under the date and place of marriage, the date August 4, 1982, Mandaluyong, MM is likewise ordered deleted or cancelled.

SO ORDERED.[16]

On November 24, 2000, Armi and petitioner minor filed a petition for annulment of judgment before the Court of Appeals on the grounds of extrinsic fraud and lack of jurisdiction over their person. She allegedly came to know of the decision of the trial court only on February 26, 1998, when San Beda College, where her son was enrolled as a high school student, was furnished by private respondent with a copy of a court order directing the change of petitioner minor's surname from Herrera to Alba.

Armi averred that private respondent was aware that her address is at Unit 302 Plaza Towers Condominium, 1175 Lorenzo Guerrero St., Ermita, Manila, because such was her residence when she and private respondent cohabited as husband and wife from 1982 to 1988; and her abode when petitioner minor was born on March 8, 1985. Even after their separation, private respondent continued to give support to their son until 1998; and that Unit 302 was conveyed to her by private respondent on June 14, 1991 as part of his support to petitioner minor. According to Armi, her address i.e., No. 418 Arquiza St., Ermita, Manila, as appearing in the birth certificate of their son, was entered in said certificate through the erroneous information given by her sister, Corazon Espiritu. She stressed that private respondent knew all along that No. 418 Arquiza St., is the residence of her sister and that he deliberately caused the service of notice therein to prevent her from opposing the petition.

In his answer, private respondent denied paternity of petitioner minor and his purported cohabitation with Armi. He branded the allegations of the latter as "false statements coming from a polluted source." [17]

On February 27, 2004, the Court of Appeals dismissed the petition holding, among others, that petitioner failed to prove that private respondent employed fraud and purposely deprived them of their day in court. It further held that as an illegitimate child, petitioner minor should bear the surname of his mother. [18] Petitioners filed a motion for reconsideration but was denied.

Hence, the instant petition.

Under Section 2, Rule 47 of the 1997 Revised Rules of Civil Procedure, judgments may be annulled on the grounds of lack of jurisdiction and extrinsic fraud. [19]

Whether or not the trial court acquired jurisdiction over the person of petitioner and her minor child depends on the nature of private respondent's action, that is, in personam, in rem or quasi in rem. An action in personam is lodged against a person based on personal liability; an action in rem is directed against the thing itself instead of the person; while an action quasi in rem names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation. [20]

Hence, petitions directed against the "thing" itself or the res, [21] which concerns the status of a person, [22] like a petition for adoption, [23] annulment of marriage, [24] or correction of entries in the birth certificate, [25] as in the instant case, are actions in rem.

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. [26] The service of summons or notice to the defendant is not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements. [27]

In the case at bar, the filing with the trial court of the petition for cancellation vested the latter jurisdiction over the res. Substantial corrections or cancellations of entries in civil registry records affecting the status or legitimacy of

a person may be effected through the institution of a petition under Rule 108 of the Revised Rules of Court, with the proper Regional Trial Court.[28] Being a proceeding in rem, acquisition of jurisdiction over the person of petitioner is therefore not required in the present case. It is enough that the trial court is vested with jurisdiction over the subject matter.

The service of the order at No. 418 Arquiza St., Ermita, Manila and the publication thereof in a newspaper of general circulation in Manila, sufficiently complied with the requirement of due process, the essence of which is an opportunity to be heard. Said address appeared in the birth certificate of petitioner minor as the residence of Armi. Considering that the Certificate of Birth bears her signature, the entries appearing therein are presumed to have been entered with her approval. Moreover, the publication of the order is a notice to all indispensable parties, including Armi and petitioner minor, which binds the whole world to the judgment that may be rendered in the petition. An in rem proceeding is validated essentially through publication.[29] The absence of personal service of the order to Armi was therefore cured by the trial court's compliance with Section 4, Rule 108, which requires notice by publication, thus:

SEC. 4. Notice and publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

In *Barco v. Court of Appeals*, the trial court granted a petition for correction/change of entries in a minor's birth certificate to reflect the name of the minor's real father as well as to effect the corresponding change of her surname. In seeking to annul said decision, the other children of the alleged father claimed that they are indispensable parties to the petition for correction, hence, the failure to implead them is a ground to annul the decision of the trial court. The Court of Appeals denied the petition which was sustained by this Court on the ground, inter alia, that while petitioner is indeed an indispensable party, the failure to implead her was cured by the publication of the order of hearing. Thus -

Undoubtedly, Barco is among the parties referred to in Section 3 of Rule 108. Her interest was affected by the petition for correction, as any judicial determination that June was the daughter of Armando would affect her ward's share in the estate of her father. It cannot be established whether Nadina knew of Mary Joy's existence at the time she filed the petition for correction. Indeed, doubt may always be cast as to whether a petitioner under Rule 108 would know of all the parties whose interests may be affected by the granting of a petition. For example, a petitioner cannot be presumed to be aware of all the legitimate or illegitimate offsprings of his/her spouse or paramour. The fact that Nadina amended her petition to implead Francisco and Gustilo indicates earnest effort on her part to comply with Section 3 as quoted above.

Yet, even though Barco was not impleaded in the petition, the Court of Appeals correctly pointed out that the defect was cured by compliance with Section 4, Rule 108, which requires notice by publication, thus:

Section 4. Upon the filing of the petition, the court shall, by order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

The purpose precisely of Section 4, Rule 108 is to bind the whole world to the subsequent judgment on the petition. The sweep of the decision would cover even parties who should have been impleaded under Section 3, Rule 108, but were inadvertently left out. The Court of Appeals correctly noted:

The publication being ordered was in compliance with, and borne out by the Order of January 7, 1985. The actual publication of the September 22, 1983 Order, conferred jurisdiction upon the respondent court to try and decide the case. While "nobody appeared to oppose the instant petition" during the December 6, 1984 hearing,

that did not divest the court from its jurisdiction over the case and of its authority to continue trying the case. For, the rule is well-settled, that jurisdiction, once acquired continues until termination of the case.

Verily, a petition for correction is an action in rem, an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. An in rem proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.[30]

Furthermore, extrinsic fraud, which was private respondent's alleged concealment of Armi's present address, was not proven. Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party. Here, Armi contended that private respondent is aware of her present address because they lived together as husband and wife in the condominium unit from 1982 to 1988 and because private respondent continued to give support to their son until 1998. To prove her claim, she presented (1) private respondent's title over the condominium unit; (2) receipts allegedly issued to private respondent for payment of homeowner's or association dues; (2) a photocopy of a January 14, 1991 deed of sale of the subject unit in favor of Armi; and (3) the subsequent title issued to the latter. However, these documents only tend to prove private respondent's previous ownership of the unit and the subsequent transfer thereof to Armi, but not the claimed live-in relationship of the parties. Neither does the sale prove that the conveyance of the unit was part of private respondent's support to petitioner minor. Indeed, intimate relationships and family relations cannot be inferred from what appears to be an ordinary business transaction.

Although the January 14, 1991 deed of sale[31] stated that Armi resides at 1175 L. Guerrero St., Ermita, Manila, the same is not sufficient to prove that private respondent has knowledge of Armi's address because the former objected to the offer of the deed for being a mere photocopy.[32] The counsel for petitioners even admitted that they do not have the original of the deed and that per certification of the Clerk of Court, the Notary Public who notarized the deed of sale did not submit a copy of the notarized document as required by the rules.[33] The deed cannot thus be the basis of ascribing knowledge of Armi's address to private respondent inasmuch as the authenticity thereof was neither admitted by private respondent nor proven by petitioners.

While Armi presented the alleged love letters/notes from private respondent, they were only attached as annexes to the petition and not formally offered as evidence before the Court of Appeals. More importantly, said letters/notes do not have probative value because they were mere photocopies and never proven to be an authentic writing of private respondent. In the same vein, the affidavits[34] of Armi and her sister, Corazon Espiritu, are of no evidentiary weight. The basic rule of evidence is that unless the affiants themselves are placed on the witness stand to testify on their affidavits, such affidavits must be rejected for being hearsay. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination.[35] Inasmuch as Armi and her sister were not presented before the Court of Appeals to affirm the veracity of their affidavits, the same are considered hearsay and without probative value.

Ei incumbit probatio qui dicit, non qui negat. He who asserts, not he who denies, must prove.[36] Armi's claim that private respondent is aware of her present address is anchored on the assertion of a live-in relationship and support to her son. Since the evidence presented by Armi is not sufficient to prove the purported cohabitation and support, it follows that private respondent's knowledge of Armi's address was likewise not proven. Thus, private respondent could not have deliberately concealed from the court that which was not shown to be known to him. The Court of Appeals therefore correctly dismissed the petition for annulment of judgment on the ground of

failure to establish extrinsic fraud.

The proper remedy of a party aggrieved by a decision of the Court of Appeals in an action to annul a judgment of a Regional Trial Court is a petition for review on certiorari under Rule 45 of the Revised Rules of Civil Procedure, where only questions of law may be raised. The resort of petitioner to the instant civil action for certiorari under Rule 65 is therefore erroneous. The special civil action of certiorari will not be allowed as a substitute for failure to timely file a petition for review under Rule 45, which should be instituted within 15 days^[37] from receipt of the assailed decision or resolution. The wrong choice of remedy thus provides another reason to dismiss this petition.^[38]

Finally, petitioner failed to establish the merits of her petition to annul the trial court's decision. In an action for annulment of judgment, the petitioner must convince the court that something may indeed be achieved should the assailed decision be annulled.^[39] Under Article 176^[40] of the Family Code as amended by Republic Act (RA) No. 9255, which took effect on March 19, 2004, 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. In *Wang v. Cebu Civil Registrar*,^[41] it was held that an illegitimate child whose filiation is not recognized by the father, bears only a given name and his mother's surname. The name of the unrecognized illegitimate child identifies him as such. It is only when said child is recognized that he may use his father's surname, reflecting his status as an acknowledged illegitimate child.

In the present case, it is clear from the allegations of Armi that petitioner minor is an illegitimate child because she was never married to private respondent. Considering that the latter strongly asserts that he is not the father of petitioner minor, the latter is therefore an unrecognized illegitimate child. As such, he must bear the surname of his mother.

In sum, the substantive and procedural aspects of the instant controversy do not warrant the annulment of the trial court's decision.

WHEREFORE, the petition is DISMISSED. The February 27, 2004 decision and the May 14, 2004 resolution of the Court of Appeals in CA-G.R. SP No. 61883 are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by now Associate Justice of the Supreme Court, Justice Cancio C. Garcia with Associate Justices Renato C. Dacudao and Danilo B. Pine, concurring. (Rollo, pp. 43-67).

[3] Rollo, pp. 88-89.

[4] Penned by Judge Vicente A. Hidalgo, Rollo, pp. 122-125.

[5] Rollo, pp. 97-103.

[6] Dated October 7, 1996, CA Rollo, p. 375.

[7] Dated October 16, 1996, CA Rollo, p. 376.

[8] CA Rollo, p. 365-372.

[9] Id. at 365.

[10] Rollo, pp. 189-190.

[11] Id. at 104-106.

[12] Id. at 191, dorsal side (emphasis supplied).

[13] Id. at 129.

[14] Id. at 125.

[15] Filed on July 8, 1997, Rollo, pp. 130-133.

[16] Rollo, p. 134.

[17] CA Rollo, p. 119.

[18] The decretal portion thereof, provides:

"WHEREFORE, the instant petition is hereby DENIED and is accordingly DISMISSED for lack of merit." (CA Rollo, p. 674)

[19] SEC. 2. Grounds for annulment.—The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (n)

[20] Ramos v. Ramos, G.R. No. 144294, 11 March 2003, 399 SCRA 43, 47-48.

[21] Valmonte v. CA, 322 Phil. 96, 106 (1996).

[22] Republic v. Elepano, G.R. No. 92542, 15 October 1991, 202 SCRA 748, 751.

[23] In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, G.R. No. 148311, 31 March 2005.

[24] Romualdez-Licaros v. Licaros, 449 Phil. 824, 835 (2003).

[25] Barco v. Court of Appeals, G.R. No. 120587, 20 January 2004, 420 SCRA 162, 173.

[26] Macahilig v. Heirs of Grace M. Magalit, G.R. No. 141423, 15 November 2000, 344 SCRA 838, 851.

[27] Gomez v. Court of Appeals, G.R. No. 127692, 10 March 2004, 425 SCRA 98, 104.

[28] Barco v. Court of Appeals, supra at 174-175; 177-178.

[29] Id., p. 173.

[30] Supra, note 25 at 172-174 (emphasis supplied).

[31] CA Rollo, pp. 52-53. The photocopy marked as Exhibit "C" cannot be found in the CA Rollo. At any rate, petitioners admitted that the deed of sale they offered was not a duplicate original or certified true copy but a mere photocopy (TSN, 7 November 2001, CA Rollo, pp. 526-527).

[32] Comment on Formal Offer of Exhibits, CA Rollo, p. 316.

[33] TSN, 20 November 2001, CA Rollo, pp. 555-557.

[34] CA Rollo, pp. 108-109; 37-42.

[35] Dela Torre v. Court of Appeals, 381 Phil. 819, 829 (2000).

[36] Sps. Boyboy v. Atty. Yabut, Jr., 449 Phil. 664, 666 (2003).

[37] Sec. 2 of Rule 45 states:

SEC. 2. Time for filing; extension.—The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

[38] Linzag v. CA, 353 Phil. 506, 524 (1998).

[39] Regalado, Remedial Law Compendium, Vol. I, Sixth Revised Edition, p. 560.

[40] Article 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 his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

[41] Wang v. Cebu Civil Registrar, G.R. No. 159966, 30 March 2005.

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