

**MA. CRISTINA TORRES BRAZA, PAOLO JOSEF T. BRAZA AND
JANELLE ANN T. BRAZA, PETITIONERS, VS. THE CITY CIVIL
REGISTRAR OF HIMAMAYLAN CITY, NEGROS OCCIDENTAL, MINOR
PATRICK ALVIN TI...**

G.R. No. 181174. December 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Ma. Cristina Torres (Ma. Cristina) and Pablo Sicad Braza, Jr. (Pablo), also known as "Pablito Sicad Braza," were married[1] on January 4, 1978. The union bore Ma. Cristina's co-petitioners Paolo Josef[2] and Janelle Ann[3] on May 8, 1978 and June 7, 1983, respectively, and Gian Carlo[4] on June 4, 1980.

Pablo died[5] on April 15, 2002 in a vehicular accident in Bandung, West Java, Indonesia.

During the wake following the repatriation of his remains to the Philippines, respondent Lucille Titular (Lucille) began introducing her co-respondent minor Patrick Alvin Titular Braza (Patrick) as her and Pablo's son. Ma. Cristina thereupon made inquiries in the course of which she obtained Patrick's birth certificate[6] from the Local Civil Registrar of Himamaylan City, Negros Occidental with the following entries:

Name of Child: PATRICK ALVIN CELESTIAL
TITULAR

Date of Birth: 01 January 1996

Mother: Lucille Celestial Titular

Father: Pablito S. Braza

Date Received at the

Local Civil Registrar: January 13, 1997

Annotation: "Late Registration"

Annotation/Remarks: "Acknowledge (sic) by the father Pablito Braza on January 13, 1997"

Remarks: Legitimated by virtue of subsequent marriage of parents on April 22, 1998 at Manila. Henceforth, the child shall be known as Patrick Alvin Titular Braza (Emphasis and underscoring supplied)

Ma. Cristina likewise obtained a copy[7] of a marriage contract showing that Pablo and Lucille were married on April 22, 1998, drawing her and her co-petitioners to file on December 23, 2005 before the Regional Trial Court of Himamaylan City, Negros Occidental a petition[8] to correct the entries in the birth record of Patrick in the Local Civil Register.

Contending that Patrick could not have been legitimated by the supposed marriage between Lucille and Pablo, said marriage being bigamous on account of the valid and subsisting marriage between Ma. Cristina and Pablo, petitioners prayed for (1) the correction of the entries in Patrick's birth record with respect to his legitimation, the name of the father and his acknowledgment, and the use of the last name "Braza"; 2) a directive to Leon, Cecilia and Lucille, all surnamed Titular, as guardians of the minor Patrick, to submit Patrick to DNA testing to determine

his paternity and filiation; and 3) the declaration of nullity of the legitimation of Patrick as stated in his birth certificate and, for this purpose, the declaration of the marriage of Lucille and Pablo as bigamous.

On Patrick's Motion to Dismiss for Lack of Jurisdiction, the trial court, by Order[9] of September 6, 2007, dismissed the petition without prejudice, it holding that in a special proceeding for correction of entry, the court, which is not acting as a family court under the Family Code, has no jurisdiction over an action to annul the marriage of Lucille and Pablo, impugn the legitimacy of Patrick, and order Patrick to be subjected to a DNA test, hence, the controversy should be ventilated in an ordinary adversarial action.

Petitioners' motion for reconsideration having been denied by Order[10] of November 29, 2007, they filed the present petition for review.

Petitioners maintain that the court a quo may pass upon the validity of marriage and questions on legitimacy even in an action to correct entries in the civil registrar. Citing *Cariño v. Cariño*, [11] *Lee v. Court of Appeals* [12] and *Republic v. Kho*, [13] they contend that even substantial errors, such as those sought to be corrected in the present case, can be the subject of a petition under Rule 108.[14]

The petition fails. In a special proceeding for correction of entry under Rule 108 (Cancellation or Correction of Entries in the Original Registry), the trial court has no jurisdiction to nullify marriages and rule on legitimacy and filiation.

Rule 108 of the Rules of Court vis a vis Article 412 of the Civil Code[15] charts the procedure by which an entry in the civil registry may be cancelled or corrected. The proceeding contemplated therein may generally be used only to correct clerical, spelling, typographical and other innocuous errors in the civil registry. A clerical error is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing, or a harmless change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent. Substantial or contentious alterations may be allowed only in adversarial proceedings, in which all interested parties are impleaded and due process is properly observed.[16]

The allegations of the petition filed before the trial court clearly show that petitioners seek to nullify the marriage between Pablo and Lucille on the ground that it is bigamous and impugn Patrick's filiation in connection with which they ask the court to order Patrick to be subjected to a DNA test.

Petitioners insist, however, that the main cause of action is for the correction of Patrick's birth records[17] and that the rest of the prayers are merely incidental thereto.

Petitioners' position does not lie. Their cause of action is actually to seek the declaration of Pablo and Lucille's marriage as void for being bigamous and impugn Patrick's legitimacy, which causes of action are governed not by Rule 108 but by A.M. No. 02-11-10-SC which took effect on March 15, 2003, and Art. 171[18] of the Family Code, respectively, hence, the petition should be filed in a Family Court as expressly provided in said Code.

It is well to emphasize that, doctrinally, validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack such as the petition filed before the court a quo.

Petitioners' reliance on the cases they cited is misplaced.

Cariño v. Cariño was an action filed by a second wife against the first wife for the return of one-half of the death benefits received by the first after the death of the husband. Since the second wife contracted marriage with the husband while the latter's marriage to the first wife was still subsisting, the Court ruled on the validity of the two marriages, it being essential to the determination of who is rightfully entitled to the death benefits.

In *Lee v. Court of Appeals*, the Court held that contrary to the contention that the petitions filed by the therein petitioners before the lower courts were actions to impugn legitimacy, the prayer was not to declare that the petitioners are illegitimate children of Keh Shiok Cheng as stated in their records of birth but to establish that they are not the latter's children, hence, there was nothing to impugn as there was no blood relation at all between

the petitioners and Keh Shiok Cheng. That is why the Court ordered the cancellation of the name of Keh Shiok Cheng as the petitioners' mother and the substitution thereof with "Tiu Chuan" who is their biological mother. Thus, the collateral attack was allowed and the petition deemed as adversarial proceeding contemplated under Rule 108.

In *Republic v. Kho*, it was the petitioners themselves who sought the correction of the entries in their respective birth records to reflect that they were illegitimate and that their citizenship is "Filipino," not Chinese, because their parents were never legally married. Again, considering that the changes sought to be made were substantial and not merely innocuous, the Court, finding the proceedings under Rule 108 to be adversarial in nature, upheld the lower court's grant of the petition.

It is thus clear that the facts in the above-cited cases are vastly different from those obtaining in the present case.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., concur.

[1] Marriage Contract, records, p. 8.

[2] Certificate of Live Birth, *id.* at 9.

[3] *Id.* at 10.

[4] *Id.* at 11.

[5] Report of Death, *id.* at 14-15.

[6] *Id.* at 16-17.

[7] Certificate of Marriage, *id.* at 19-20.

[8] *Id.* at 1-7.

[9] Penned by Presiding Judge Nilo M. Sarsaba; *id.* at 93-101.

[10] Penned by Presiding Judge Nilo M. Sarsaba; *id.* at 122-123.

[11] G.R. No. 132529, February 2, 2001, 351 SCRA 127.

[12] G.R. No. 118387, October 11, 2001, 367 SCRA 110.

[13] G.R. No. 170340, June 29, 2007, 526 SCRA 177.

[14] SEC. 2. Entries subject to cancellation or correction. "Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or

recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) change of name.

[15] Art. 412 of the Civil Code. No entry in a civil registrar shall be changed or corrected without a judgment order.

[16] Republic v. Benemerito, G.R. No. 146963. March 15, 2004, 425 SCRA 488.

[17] See p. 11 of petition, rollo, p. 21.

[18] Art. 171.

"The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

"(1) If the husband should die before the expiration of the period fixed for bringing this action;

"(2) If he should die after the filing of the complaint, without having desisted therefrom; or

"(3) If the child was born after the death of the husband."

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