

ELAINE A. MOORE, PETITIONER AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.

G.R. No. 18407. June 26, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Elaine A. Moore filed a petition before the Court of First Instance of Rizal praying that her child by a former marriage, William Michael Velarde, be permitted to change his name so as to read William Michael Velarde Moore.

After publishing the petition as required by law, trial was held during which the parties submitted a stipulation of facts. Thereafter, the trial court issued an order denying the petition, whereupon petitioner interposed the present appeal.

Petitioner is an American citizen formerly married to Joseph P. Velarde, also an American citizen, out of whose wedlock a child by a name William Michael Velarde was born. This child, now 14 years old, was born on January 19, 1947 at Los Angeles, California, U.S.A.

The marriage of petitioner to Velarde was subsequently dissolved by a decree of divorce issued by the Superior Court of the State of California on May 31, 1949. After said decree became final, petitioner contracted a second marriage with Don C. Moore on September 29, 1956 at Los Angeles, California, U.S.A., and thereafter the minor lived continuously with the spouses up to the present time. He was supported by Moore who has always treated him with love and affection as if he were his true father. In view of this harmonious relation it is petitioner's desire that the minor be able to use the name Moore after his family name Velarde.

The government opposes the petition and now poses the following issues: (1) whether under our laws a minor may be permitted to adopt and use the surname of the second husband of his mother; (2) whether justifiable reasons exist to allow such change of name; and (3) whether petitioner, as mother of the minor, has the authority or personality to ask for such a change.

Anent the first issue, the government sustain a negative stand for the reason that our laws do not authorize a legitimate child to use the surname of a person who is not his father, for, as a matter of fact, Article 364 of the Civil Code specifically provides that legitimate children shall principally use the surname of their father. Mention is also made on Article 369 of the same Code which provides that in case of annulment of a voidable marriage the children conceived before the annulment shall principally use the surname of the father, and considering by analogy the effect of a decree of divorce, it is concluded that the children who are conceived before such a decree should also be understood as carrying the surname of the real father, which, in this case, is Velarde.

We find tenable this observation of government's counsel. Indeed, if a child born out of a lawful wedlock be allowed to bear the surname of the second husband of mother, should the first husband die or be separated by a decree of divorce, there may result a confusion as to his real paternity. In the long run the change may redound to

the prejudice of the child in the community.

While the purpose which may have animated petitioner is plausible and may run along the feeling of cordiality and spiritual relationship that pervades among the members of the Moore family, our hand is deterred by a legal barrier which we cannot at present overlook or brush aside.

Another factor to be reckoned with is the fact that the child concerned is still a minor who for the present cannot fathom what would be his feeling when he comes to a mature age. Any way, if that time comes, he may decide the matter for himself and take such action as our law may permit. For the present we deem the action taken by petitioner premature.

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J.B.L. Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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