

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. LORENA OMAPAS SALI, RESPONDENT.

G.R. No. 206023. April 03, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court (Rules) seeks to annul and set aside the February 11, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CV No. 03442, which affirmed in toto the February 23, 2010 Decision of the Regional Trial Court (RTC), Branch 14, Baybay City, Leyte, granting the Petition for Correction of Entry under Rule 108 of the Rules filed by respondent Lorena Omapas Sali (Sali).

The CA narrated the undisputed factual antecedents.

Lorena Omapas Sali filed a Verified Petition, dated November 26, 2008, for Correction of Entry under Rule 108 of the Rules of Court before the RTC with the following material averments:

1. Petitioner is a Filipino, of legal age, single and a resident [of] 941 D. Veloso St., Baybay, Leyte;
2. The respondent is located in Baybay City, Leyte and within the jurisdiction of this Honorable Court where it can be served with summons and other processes of this Honorable Court;
3. All parties herein have the capacity to sue and be sued;
4. Petitioner is the daughter of Spouses Vedasto A. Omapas and Almarina A. Albay who was born on April 24, 1968 in Baybay, Leyte. A copy of the Baptismal Certificate issued by the Parish of the Sacred Heart, Sta. Mesa, Manila is hereunto attached as Annex "A";
5. Unfortunately, in recording the facts of her birth, the personnel of the Local Civil Registrar of Baybay, Leyte[,] thru inadvertence and mistake[,] erroneously entered in the records the following: Firstly, the first name of the petitioner as "DOROTHY" instead of "LORENA" and Secondly, the date of birth of the petitioner as "June 24, 1968" instead of "April 24, 1968." A copy of the Certificate of Live Birth of Dorothy A. Omapas issued by the National Statistics Office (NSO) and Certification from the Local Civil Registrar of Baybay, Leyte are hereunto attached as Annex "B" and Annex "C" respectively.
6. The petitioner has been using the name "Lorena A. Omapas[]" and her date of birth as "April 24, 1968" for as long as she (sic) since she could remember and is known to the community in general as such;
7. To sustain petitioner's claim that the entries in her Certificate of Live Birth pertaining to her first name and date of birth should be corrected so that it will now read as "LORENA A. OMAPAS" and "April 24, 1968" respectively, attached hereto are: the Certificate of Marriage of Morsalyn [D.] Sali and Lorena A. Omapas, and a photocopy of the Postal Identity Card of the petitioner as Annex "D" and Annex "E" respectively; [and]
8. This petition is intended neither for the petitioner to escape criminal and/or civil liability, nor affect the hereditary succession of any person whomsoever but solely for the purpose of setting the records of herein petitioner straight.

[Sali] then prayed for the issuance of an order correcting her first name from "Dorothy" to "Lorena" and the date of her birth from "June 24, 1968" to ["April 24, 1968."

After [Sali] proved her compliance with the jurisdictional requirements, reception of evidence followed. The Clerk of Court was then appointed as a commissioner to receive the evidence in support of the petition. Subsequently, she rendered a Report relative thereto.

On February 23, 2010, the trial court issued the assailed Decision in favor of [Sali], the dispositive portion of which reads:

WHEREFORE, this Court, hereby resolves to GRANT this petition for correction of the erroneous entries in the Birth Certificate of Lorena A. Omapas-Sali, specifically her first name from "DOROTHY" to "LORENA" and her date of birth from "JUNE 24, 1968" to "APRIL 24, 1968", and ordering the Local Civil Registrar of Baybay City, Leyte, and the National Statistics Office to effect the foregoing correction in the birth record of Lorena A. Omapas-Sali, upon finality of this decision, and upon payment of the proper legal fees relative thereto.

Furnish copy of this decision to the Office of the Solicitor General, the Local Civil Registrar of Baybay City, Leyte, the Assistant Provincial Prosecutor, the petitioner and her counsel.

SO ORDERED.[2]

On March 24, 2010, the Republic, through the Office of the Solicitor General (OSG), appealed the RTC Decision for lack of jurisdiction on the part of the court a quo because the title of the petition and the order setting the petition for hearing did not contain Sali's aliases.

The CA denied the appeal, ruling that: (1) the records are bereft of any indication that Sali is known by a name other than "Lorena," hence, it would be absurd to compel her to indicate any other alias that she does not have; (2) Sali not only complied with the mandatory requirements for an appropriate adversarial proceeding under Rule 108 of the Rules but also gave the Republic an opportunity to timely contest the purported defective petition; and (3) the change in the first name of Sali will certainly avoid further confusion as to her identity and there is no showing that it was sought for a fraudulent purpose or that it would prejudice public interest.

Now before Us, the grounds of the petition are as follows:

I.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT APPLIED RULE 108 INSTEAD OF RULE 103, THEREBY DISPENSING WITH THE REQUIREMENT OF STATING THE RESPONDENT'S ALIASES IN THE TITLE OF THE PETITION.

II.

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN NOT HOLDING THAT THE RESPONDENT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.[3]

The Republic argues that although Sali's petition is entitled: "IN THE MATTER OF THE PETITION FOR CORRECTION OF ENTRY IN THE CERTIFICATE OF LIVE BIRTH OF DOROTHY A. OMAPAS," it is actually a petition for a change of name. The first name being sought to be changed does not involve the correction of a simple clerical, typographical or innocuous error such as a patently misspelled name, but a substantial change in Sali's first name. This considering, the applicable rule is Rule 103, which requires that the applicant's names and aliases must be stated in the title of the petition and the order setting it for hearing, and that the petition can be granted only on specific grounds provided by law. Further, assuming that a petition for correction of entries under Rule 108 is the appropriate remedy, the petition should not have been granted for

failure to exhaust administrative remedies provided for under Republic Act (R.A.) No. 9048.

The petition is partially granted.

Sali's petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108. What she seeks is the correction of clerical errors which were committed in the recording of her name and birth date. This Court has held that not all alterations allowed in one's name are confined under Rule 103 and that corrections for clerical errors may be set right under Rule 108.[4] The evidence[5] presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name. What she seeks is simply the removal of the clerical fault or error in her first name, and to set aright the same to conform to the name she grew up with.[6]

Nevertheless, at the time Sali's petition was filed, R.A. No. 9048 was already in effect.[7] Section 1 of the law states:

SECTION 1. Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname. - No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis ours)

The petition for change of first name may be allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community.[8] The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court.[9] We stressed in *Silverio v. Republic of the Philippines*: [10]

RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.[11]

Recently, the Court again said in *Onde v. Office of the Local Civil Registrar of Las Piñas City*: [12]

In *Silverio v. Republic*, we held that under R.A. No. 9048, jurisdiction over applications for change of first name is now primarily lodged with administrative officers. The intent and effect of said law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. The remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial. In *Republic v. Cagandahan*, we said that under R.A. No. 9048, the correction of clerical or typographical errors can now be made through administrative proceedings and without the need for a judicial order. The law removed from the ambit of Rule 108 of the Rules of Court the correction of clerical or typographical errors. Thus petitioner can avail of this administrative remedy for the correction of his and his mother's first name.[13]

In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. It was improper because the remedy should have been administrative, i.e., filing of the petition with

the local civil registrar concerned. For failure to exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.

On the other hand, anent Sali's petition to correct her birth date from "June 24, 1968" to "April 24, 1968," R.A. No. 9048 is inapplicable. It was only on August 15, 2012 that R.A. No. 10172 was signed into law amending R.A. No. 9048.[14] As modified, Section 1 now includes the day and month in the date of birth and sex of a person, thus:

Section 1. Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname. - No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis ours)

Considering that Sali filed her petition in 2008, Rule 108[15] is the appropriate remedy in seeking to correct her date of birth in the civil registry. Under the Rules, the following must be observed:

Sec. 3. Parties. - When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

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.

Sec. 5. Opposition. - The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

The Republic did not question the petition to correct Sali's birth date from "June 24, 1968" to "April 24, 1968." In fact, it did not contest the CA ruling that the requirements for an appropriate adversarial proceeding were satisfactorily complied with. The appellate court found:

x x x x

Here, [Sail] filed with the court a quo a verified petition for the correction of her first name from "Dorothy" to "Lorena" as well as the date of her birth from "June 24, 1968" to "April 24, 1968." In the petition, she aptly impleaded the Civil Registrar of Baybay City, Leyte as respondent. Thereafter, the trial court issued an Order fixing the time and place for the hearing of the petition. The Order for hearing was then published once a week for three consecutive weeks in a newspaper of general circulation in the province to notify the persons having or claiming any interest therein. Moreover, said Order was posted in four public and conspicuous places within the locality. Subsequently, the Civil Registrar, Solicitor General and Assistant Provincial Prosecutor were furnished copies of the Petition and Order to give them the opportunity to file their respective oppositions thereto. x x x.[16]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The February 11, 2013 Decision of the Court of Appeals in CA-G.R. CEB CV No. 03442, which affirmed in toto the February 23, 2010 Decision of the Regional Trial Court, Branch 14, Baybay City, Leyte, is **AFFIRMED WITH MODIFICATION**. The Petition for Correction of Entry in the Certificate of Live Birth of Dorothy A. Omapas with respect to her first name is **DISMISSED WITHOUT PREJUDICE** to its filing with the local civil registrar concerned.

SO ORDERED.

Carpio, (Chairperson), Mendoza, Leonen, and Martires, JJ., concur.

[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Carmelita Salandanan-Manahan and Maria Elisa Sempio-Dy, concurring; rollo, pp. 28-32.

[2] Id. at 28-30. (Citations omitted).

[3] Id. at 10.

[4] Republic v. Vergara, G.R. No. 195873 (Notice), February 23, 2015.

[5] Baptismal Certificate, Certificate of Marriage, Postal Identity Card, and Official Transcript of Records from the University of Manila, rollo, p. 9.

[6] See Republic v. Vergara, G.R. No. 195873 (Notice), February 23, 2015.

[7] R.A. No. 9048 took effect on April 22, 2001.

[8] R.A. No. 9048, Sec. 4(2).

[9] R.A. No. 9048, Sec. 7.

[10] 562 Phil. 953 (2007).

[11] Silverio v. Rep. of the Phils., supra, at 964-965.

[12] G.R. No. 197174, September 10, 2014, 734 SCRA 661 (3[rd] Division Resolution).

[13] Onde v. Office of the Local Civil Registrar of Las Piñas City, supra, at 668.

[14] Published in the Philippine Star and Manila Bulletin on August 24, 2012 (See <http://www.gov.ph/2012/08/15/republic-act-no-10172/>, last accessed on November 9, 2016).

[15] 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.

[16] Rollo, p. 31.

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