

## SECOND DIVISION

[ G.R. No. 209527, February 14, 2018 ]

**THE REPUBLIC OF THE PHILIPPINES, PETITIONER, V. VIRGIE  
(VIRGEL) L. TIPAY, RESPONDENT.**

### DECISION

**REYES, JR., J:**

This is a petition for review on *certiorari*<sup>[1]</sup> brought under Rule 45 of the Rules of Court, seeking to reverse and set aside the October 9, 2013 Decision<sup>[2]</sup> of the Court of Appeals (CA) that denied the appeal of petitioner Republic of the Philippines (Republic) from the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Lupon, Davao Oriental. The trial court, in turn, granted respondent Virgie (Virgel) L. Tipay's (Virgel) petition for the correction of certain entries in his birth certificate.<sup>[4]</sup>

#### Factual Antecedents

In a petition dated February 13, 2009, Virgel sought the correction of several entries in his birth certificate. Attached to the petition are two (2) copies of his birth certificate, respectively issued by the Municipal Civil Registrar of Governor Generoso, Davao Oriental and the National Statistics Office<sup>[5]</sup> (NSO). Both copies reflect his gender as "*FEMALE*" and his first name as "*Virgie*." It further appears that the month and day of birth in the local civil registrar's copy was blank, while the NSO-issued birth certificate indicates that he was born on May 12, 1976.<sup>[6]</sup> Virgel alleged that these entries are erroneous, and sought the correction of his birth certificate as follows: (a) his gender, from "*FEMALE*" to "*MALE*;" (b) his first name, from "*VIRGIE*" to "*VIRGEL*;" and (c) his month and date of birth to "*FEBRUARY 25, 1976*."<sup>[7]</sup>

The petition was found sufficient in form and substance, and the case proceeded to trial. Aside from his own personal testimony, Virgel's mother, Susan L. Tipay, testified that she gave birth to a son on February 25, 1976, who was baptized as "*Virgel*." The Certificate of Baptism, including other documentary evidence such as a medical certificate stating that Virgel is phenotypically male, were also presented to the trial court.<sup>[8]</sup>

#### Ruling of the RTC

There was no opposition to the petition. Soon after, the RTC rendered its Decision<sup>[9]</sup> dated July 27, 2010 granting Virgel's petition:

WHEREFORE, premises considered, an Order is hereby issued: 1. Directing the Local Civil Registrar of Governor Generoso, Davao Oriental to cause the appropriate change in the Certificate of Live Birth of VIRGIE L. TIPAY upon payment of the required legal fees, particularly:

First : From: VIRGIE  
Name To: VIRGEL

Sex : From: Female  
To: MALE

Date of: From: *no entry*  
Birth of To: FEBRUARY  
Child 25, 1976

SO ORDERED.<sup>[10]</sup>

From this decision, the Republic filed a Notice of Appeal, which was given due course by the trial court.<sup>[11]</sup> The Republic, through the Office of the Solicitor General (OSG) argued that the change of Virgel's name from Virgie should have been made through a proceeding under Rule 103, and not Rule 108 of the Rules of Court. This argument was premised on the assumption that the summary procedure under Rule 108 is confined to the correction of clerical or innocuous errors, which excludes one's name or date of birth. Since the petition lodged with the RTC was not filed pursuant to Rule 103 of the Rules of Court, the Republic asserted that the trial court did not acquire jurisdiction over the case.<sup>[12]</sup>

Virgel refuted these arguments, alleging that changes of name are within the purview of Rule 108 of the Rules of Court. He further disagreed with the position of the Republic and asserted that substantial errors may be corrected provided that the proceedings before the trial court were adversarial. He also argued that the proceedings before the RTC were *in rem*, which substantially complies with the requirements of either Rule 103 or Rule 108 of the Rules of Court.<sup>[13]</sup>

### **Ruling of the CA**

The CA denied the Republic's appeal in its Decision<sup>[14]</sup> dated October 9, 2013, the dispositive of which reads:

ACCORDINGLY, the appeal is DENIED. The July 27, 2010 Decision of the [RTC], 11th Judicial Region, Branch No. 32, Lupon, Davao Oriental, in Special Proceedings Case No. 243-09 is AFFIRMED *in toto*.

SO ORDERED.<sup>[15]</sup>

In its assailed decision, the CA ruled in favor of Virgel, stating that while the correction of the entry on his gender is considered a substantial change, it is nonetheless within the jurisdiction of the trial court under Rule 108 of the Rules of Court. The CA also held that the petition filed with the trial court fully complied with the jurisdictional requirements of Rule 108 because notices were sent to the concerned local civil registrar and the OSG. Since Virgel was able to establish that he is indeed male, a fact which remains undisputed, the CA upheld the trial court's decision.<sup>[16]</sup>

As to the change of Virgel's name from "Virgie" to "Virgel," the CA did not find any reason to depart from the decision of the RTC because it was more expeditious to change the entry in the same proceeding. The CA found that the correction of Virgel's name was necessary to avoid confusion, especially since his correct gender

is male. In the same vein, the CA ruled that even if the petition with the RTC was considered a Rule 103 proceeding, the requirements under Rule 108 are substantially the same as that under Rule 103. Thus, the CA already deemed these requirements complied with.<sup>[17]</sup> Finally, regarding the month and date of Virgel's birth, the CA found the documentary evidence credible enough to establish that he was indeed born on February 25, 1976.<sup>[18]</sup>

Unsatisfied with the ruling of the CA, the Republic appealed to this Court insisting that the entries sought to be corrected are substantial changes outside the jurisdiction of the trial court. The Republic also reiterated its earlier arguments, adding that the CA should not have equated the procedural requirements under Rule 103 with that of Rule 108 of the Rules of Court.<sup>[19]</sup>

### **Ruling of the Court**

The Court denies the petition. However, this Court finds that the evidence is insufficient to establish that Virgel was born on February 25, 1976.

#### ***Rule 108 of the Rules of Court governs the procedure for the correction of substantial changes in the civil registry.***

It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 of the Rules of Court are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule.<sup>[20]</sup>

Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108 of the Rules of Court, as long as the issues are properly threshed out in **appropriate adversarial proceedings**— effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors.<sup>[21]</sup> The Court's ruling in *Republic v. Valencia*,<sup>[22]</sup> explained the adversarial procedure to be followed in correcting substantial errors in this wise:

It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. **This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding.** As a matter of fact, the opposition of the Solicitor General dated February 20, 1970 while questioning the use of Article 412 of the Civil Code in relation to Rule 108 of the Revised Rules of Court admits that "the entries sought to be corrected should be threshed out in an appropriate proceeding."

Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are-(1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to-(1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.

If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as "summary". There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.<sup>[23]</sup> (Emphasis Ours)

**Evidently, the Republic incorrectly argued that the petition for correction under Rule 108 of the Rules of Court is limited to changes in entries containing harmless and innocuous errors.**<sup>[24]</sup>

The cited cases in the petition were already superseded by much later jurisprudence.<sup>[25]</sup> Most importantly, with the enactment of Republic Act (R.A.) No. 9048<sup>[26]</sup> in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order.<sup>[27]</sup> This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108 of the Rules of Court.<sup>[28]</sup>

***The RTC was correct in taking cognizance of the petition for correction of entries in Virgel's birth certificate.***

R.A. No. 9048 defined a clerical or typographical error as a mistake committed in the performance of clerical work, which is harmless and immediately obvious to the understanding.<sup>[29]</sup> It was further amended in 2011, when R.A. No. 10172<sup>[30]</sup> was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry.<sup>[31]</sup>

Unfortunately, however, when Virgel filed the petition for correction with the RTC in 2009, R.A. No. 10172 was not yet in effect. **As such, to correct the erroneous gender and date of birth in Virgel's birth certificate, the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108 of the Rules of Court.**<sup>[32]</sup> The changes in the entries pertaining to the gender and date of birth are indisputably substantial corrections,