

FIRST DIVISION

[G.R. NO. 174689, October 19, 2007]

**ROMMEL JACINTO DANTES SILVERIO, PETITIONER, VS.
REPUBLIC OF THE PHILIPPINES, RESPONDENT.**

DECISION

CORONA, J.:

When God created man, He made him in the likeness of God; He created them male and female. (Genesis 5:1-2)

Amihan gazed upon the bamboo reed planted by Bathala and she heard voices coming from inside the bamboo. "Oh North Wind! North Wind! Please let us out!" the voices said. She pecked the reed once, then twice. All of a sudden, the bamboo cracked and slit open. Out came two human beings; one was a male and the other was a female. Amihan named the man "Malakas" (Strong) and the woman "Maganda" (Beautiful). (The Legend of Malakas and Maganda)

When is a man a man and when is a woman a woman? In particular, does the law recognize the changes made by a physician using scalpel, drugs and counseling with regard to a person's sex? May a person successfully petition for a change of name and sex appearing in the birth certificate to reflect the result of a sex reassignment surgery?

On November 26, 2002, petitioner Rommel Jacinto Dantes Silverio filed a petition for the change of his first name and sex in his birth certificate in the Regional Trial Court of Manila, Branch 8. The petition, docketed as SP Case No. 02-105207, impleaded the civil registrar of Manila as respondent.

Petitioner alleged in his petition that he was born in the City of Manila to the spouses Melecio Petines Silverio and Anita Aquino Dantes on April 4, 1962. His name was registered as "Rommel Jacinto Dantes Silverio" in his certificate of live birth (birth certificate). His sex was registered as "male."

He further alleged that he is a male transsexual, that is, "anatomically male but feels, thinks and acts as a female" and that he had always identified himself with

girls since childhood.^[1] Feeling trapped in a man's body, he consulted several doctors in the United States. He underwent psychological examination, hormone treatment and breast augmentation. His attempts to transform himself to a "woman" culminated on January 27, 2001 when he underwent sex reassignment surgery^[2] in Bangkok, Thailand. He was thereafter examined by Dr. Marcelino Reysio-Cruz, Jr., a plastic and reconstruction surgeon in the Philippines, who issued a medical certificate attesting that he (petitioner) had in fact undergone the procedure.

From then on, petitioner lived as a female and was in fact engaged to be married. He then sought to have his name in his birth certificate changed from "Rommel Jacinto" to "Mely," and his sex from "male" to "female."

An order setting the case for initial hearing was published in the People's Journal Tonight, a newspaper of general circulation in Metro Manila, for three consecutive weeks.^[3] Copies of the order were sent to the Office of the Solicitor General (OSG) and the civil registrar of Manila.

On the scheduled initial hearing, jurisdictional requirements were established. No opposition to the petition was made.

During trial, petitioner testified for himself. He also presented Dr. Reysio-Cruz, Jr. and his American fiancé, Richard P. Edel, as witnesses.

On June 4, 2003, the trial court rendered a decision^[4] in favor of petitioner. Its relevant portions read:

Petitioner filed the present petition not to evade any law or judgment or any infraction thereof or for any unlawful motive but solely for the purpose of making his birth records compatible with his present sex.

The sole issue here is whether or not petitioner is entitled to the relief asked for.

The [c]ourt rules in the affirmative.

Firstly, the [c]ourt is of the opinion that granting the petition would be more in consonance with the principles of justice and equity. With his sexual [re-assignment], petitioner, who has always felt, thought and acted like a woman, now possesses the physique of a female. Petitioner's misfortune to be trapped in a man's body is not his own doing and should not be in any way taken against him.

Likewise, the [c]ourt believes that no harm, injury [or] prejudice will be caused to anybody or the community in granting the petition. On the contrary, granting the petition would bring the much-awaited happiness on the part of the petitioner and her [fiancé] and the realization of their dreams.

Finally, no evidence was presented to show any cause or ground to deny the present petition despite due notice and publication thereof. Even the

State, through the [OSG] has not seen fit to interpose any [o]pposition.

WHEREFORE, judgment is hereby rendered GRANTING the petition and ordering the Civil Registrar of Manila to change the entries appearing in the Certificate of Birth of [p]etitioner, specifically for petitioner's first name from "Rommel Jacinto" to **MELY** and petitioner's gender from "Male" to **FEMALE**.^[5]

On August 18, 2003, the Republic of the Philippines (Republic), thru the OSG, filed a petition for certiorari in the Court of Appeals.^[6] It alleged that there is no law allowing the change of entries in the birth certificate by reason of sex alteration.

On February 23, 2006, the Court of Appeals^[7] rendered a decision^[8] in favor of the Republic. It ruled that the trial court's decision lacked legal basis. There is no law allowing the change of either name or sex in the certificate of birth on the ground of sex reassignment through surgery. Thus, the Court of Appeals granted the Republic's petition, set aside the decision of the trial court and ordered the dismissal of SP Case No. 02-105207. Petitioner moved for reconsideration but it was denied.^[9] Hence, this petition.

Petitioner essentially claims that the change of his name and sex in his birth certificate is allowed under Articles 407 to 413 of the Civil Code, Rules 103 and 108 of the Rules of Court and RA 9048.^[10]

The petition lacks merit.

A PERSON'S FIRST NAME CANNOT BE CHANGED ON THE GROUND OF SEX REASSIGNMENT

Petitioner invoked his sex reassignment as the ground for his petition for change of name and sex. As found by the trial court:

Petitioner filed the present petition not to evade any law or judgment or any infraction thereof or for any unlawful motive but **solely for the purpose of making his birth records compatible with his present sex**. (emphasis supplied)

Petitioner believes that after having acquired the physical features of a female, he became entitled to the civil registry changes sought. We disagree.

The State has an interest in the names borne by individuals and entities for purposes of identification.^[11] A change of name is a privilege, not a right.^[12] Petitions for change of name are controlled by statutes.^[13] In this connection, Article 376 of the Civil Code provides:

ART. 376. No person can change his name or surname without judicial authority.

This Civil Code provision was amended by RA 9048 (Clerical Error Law). In particular, Section 1 of RA 9048 provides:

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.

RA 9048 now governs the change of first name.^[14] 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.^[15] It likewise lays down the corresponding venue,^[16] form^[17] and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.

RA 9048 likewise provides the grounds for which change of first name may be allowed:

SECTION 4. *Grounds for Change of First Name or Nickname.* – The petition for change of first name or nickname may be allowed in any of the following cases:

- (1) The petitioner finds the first name or nickname to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;
- (2) The new first name or nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community; or
- (3) The change will avoid confusion.

Petitioner's basis in praying for the change of his first name was his sex reassignment. He intended to make his first name compatible with the sex he thought he transformed himself into through surgery. However, a change of name does not alter one's legal capacity or civil status.^[18] RA 9048 does not sanction a change of first name on the ground of sex reassignment. Rather than avoiding confusion, changing petitioner's first name for his declared purpose may only create grave complications in the civil registry and the public interest.

Before a person can legally change his given name, he must present proper or reasonable cause or any compelling reason justifying such change.^[19] In addition, he must show that he will be prejudiced by the use of his true and official name.^[20] In this case, he failed to show, or even allege, any prejudice that he might suffer as a result of using his true and official name.

In sum, the petition in the trial court in so far as it prayed for the change of

petitioner's first name was not within that court's primary jurisdiction as the petition should have been filed with the local civil registrar concerned, assuming it could be legally done. It was an improper remedy because the proper remedy was administrative, that is, that provided under RA 9048. It was also filed in the wrong venue as the proper venue was in the Office of the Civil Registrar of Manila where his birth certificate is kept. More importantly, it had no merit since the use of his true and official name does not prejudice him at all. For all these reasons, the Court of Appeals correctly dismissed petitioner's petition in so far as the change of his first name was concerned.

NO LAW ALLOWS THE CHANGE OF ENTRY IN THE BIRTH CERTIFICATE AS TO SEX ON THE GROUND OF SEX REASSIGNMENT

The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes.^[21] In this connection, Article 412 of the Civil Code provides:

ART. 412. No entry in the civil register shall be changed or corrected without a judicial order.

Together with Article 376 of the Civil Code, this provision was amended by RA 9048 in so far as *clerical or typographical* errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, RA 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors.^[22] Rule 108 now applies only to substantial changes and corrections in entries in the civil register.^[23]

Section 2(c) of RA 9048 defines what a "clerical or typographical error" is:

SECTION 2. *Definition of Terms.* – As used in this Act, the following terms shall mean:

xxx xxx xxx

- (3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no **correction must involve the change of** nationality, age, status or **sex** of the petitioner. (emphasis supplied)

Under RA 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.

The entries envisaged in Article 412 of the Civil Code and correctable under Rule