

THIRTEENTH DIVISION

[CA-G.R. CV NO. 100064, March 31, 2015]

**IN RE: PETITION FOR CORRECTION OF ENTRY IN THE
CERTIFICATE OF LIVE BIRTH OF RENELLE JENZEN S. DEL
ROSARIO,**

**RENELLE JENZEN S. DEL ROSARIO, PETITIONER-APPELLEE, VS.
THE LOCAL CIVIL REGISTRAR OF QUEZON CITY AND THE
ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE
NATIONAL STATISTICS OFFICE (NSO), RESPONDENTS,**

THE REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

DECISION

CORALES, J.:

This is an appeal^[1] from the July 9, 2012 Decision^[2] and October 31, 2012 Order^[3] of the Regional Trial Court (RTC), Branch 224, Quezon City in Special Civil Action No. 11-69955. The assailed decision granted petitioner-appellee Renelle Jenzen S. Del Rosario's (Renelle Jenzen) petition for correction of entry while the challenged order denied the motion for reconsideration filed by the Republic of the Philippines (Republic).

The Antecedents

On September 15, 2011, Renelle Jenzen sought before the RTC the correction of her gender as it appeared in the Certificate of Live Birth.^[4] She alleged that she was born male on July 27, 1988 in Quezon City but registered as female in the Certificate of Live Birth.^[5]

Finding the petition to be sufficient in form and substance, the RTC ordered the posting of the notice of hearing and the publication of the same in a newspaper of general circulation in Metro Manila for three (3) consecutive weeks.^[6]

Renelle Jenzen complied with the jurisdictional requirement of publication^[7] while the Office of the Solicitor General (OSG) entered its appearance and authorized the City Prosecutor of Quezon City to appear on its behalf.^[8]

To prove her claim, Renelle Jenzen testified during the *ex-parte* presentation of evidence before the Branch Clerk of Court.^[9] She later on submitted a Formal Offer of Evidence^[10] of the following documents: her Secondary Student's Permanent Record at St. Jude College;^[11] the medical certificate^[12] issued by Dr. Yvonne C. Bernales-Mariano (Dr. Bernales-Mariano) which states that the "patient has been examined and found to be anatomically and phenotypically male in gender"; and a

driver's license. However, a copy of the driver's license did not form part of the records.

The Ruling of the RTC

On July 9, 2012, the RTC rendered a Decision^[13] granting the petition for cancellation/correction of entry based on the following ratiocination:

X X X

The Court, after a careful evaluation of the evidence as well as the circumstances of the instant Petition, holds that the Petitioner was able to establish his claim by preponderance of evidence, which warrants the granting of the relief being prayed for. The Court notes that the Petitioner filed the instant Petition for the purpose of correcting his gender reflected in his Birth Certificate. The documents presented by the petitioner affirm his claim that he is male (Exhibits "I", "J", and "L"). Petitioner's claim was further bolstered by the Medical Certificate (Exhibit "K") presented by the petitioner, the original of which was attached to the Formal Offer of Evidence filed by the petitioner on March 21, 2012. The relief sought for by the petitioner is specifically sanctioned under Section 2, Rule 108 of the Revised Rules of Court, which states that:

X X X

Accordingly, therefore, the Petition is hereby GRANTED. As prayed for, the Civil Registrar of Quezon City is hereby ordered to correct the Certificate of Live Birth of Renell (sic) Jenzen S. Del Rosario under Registry No. 2006-74477 by changing his gender found in item No. 2, from "female" to "male".

SO ORDERED.

The OSG, representing the Republic, moved for reconsideration^[14] but the RTC denied the same through its October 31, 2012 Order.^[15]

Hence, the instant appeal with the following assignment of errors:^[16]

I

THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR CORRECTION OF ENTRY IN THE ABSENCE OF THE TESTIMONY OF THE DOCTOR WHO EXAMINED THE APPELLEE.

II

THE TRIAL COURT ERRED IN GRANTING THE PETITION BECAUSE THERE IS AN ADMINISTRATIVE REMEDY AVAILABLE TO THE APPELLEE.

The OSG harps on the inadmissibility and lack of probative value of the medical certificate which was not identified in court by Dr. Bernales-Mariano. It also assails the sufficiency of the evidence presented by Renelle Jenzen to establish her real

gender. It adds that with the passage of Republic Act (R.A.) No. 9048,^[17] as amended by RA No. 10172, change of sex of a person due to a patent clerical or typographical error can be corrected by the concerned city or municipal civil registrar or consul general without need of judicial order, but Renelle Jenzen did not avail of this administrative remedy, thus, her petition should have been outrightly dismissed.^[18]

Renelle Jenzen counters that the OSG neither opposed her petition nor objected to the formal offer of evidence, hence, it already waived the issue on the admissibility of the medical certificate pursuant to Section 1, Rule 9 of the Rules of Court. She defends the applicability of Rule 108 of the Rules of Court arguing that her petition was filed on September 12, 2011 or before R.A. No. 10172 was approved on August 15, 2012.^[19]

This Court's Ruling

The appeal is meritorious.

Rule 108 of the Rules of Court: Applicable

The jurisdiction of the court is determined by the law in force at the time the action was filed. Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate to actions pending before its enactment. Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a pending case prior to the enactment of a statute.^[20]

It is beyond cavil that at the time Renelle Jenzen filed her petition for correction of entry on September 12, 2011, R.A. No. 9048 has not yet been amended. In the leading case of *Republic v. Silverio*,^[21] the Supreme Court clarified that correction of entry in the civil registry involving change of sex remains a substantial change governed by Rule 108 of the Rules of Court, not a mere clerical or typographical error under R.A. No. 9048. Accordingly, the RTC acquired jurisdiction over the petition upon Renelle Jenzen's compliance with the requirements under Rule 108 of the Rules of Court, thereby vesting it with authority to dispose the case on the merits until it is terminated. This jurisdiction is not affected by the enactment of R.A. No. 10172 on August 15, 2012, amending certain provisions of R.A. No. 9048, which authorized the city or municipal civil registrar or the consul general to correct clerical or typographical errors in the day and month in the date of birth or sex of a person appearing in the civil register without need of a judicial order. Notably, there is nothing in R.A. No. 10172 which provides for the retroactive application of the law or indicates the transfer of pending petition for correction of entry with the RTC to the city or municipal civil registrar. Thus, the general rule enunciated above is the controlling doctrine and R.A No. 10172 finds no application herein.

Renelle Jenzen's Petition: Not Supported by Preponderance of Evidence

We agree with the OSG's postulate that the medical certificate issued by Dr. Bernales-Mariano is a hearsay evidence because the doctor was not presented in