

TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 03594, April 24, 2014]

**LESELDA M. PAGUNTALAN, PETITIONER-APPELLEE, VS. THE
LOCAL CIVIL REGISTRAR, RESPONDENT, REPUBLIC OF THE
PHILIPPINES, OPPOSITOR-APPELLANT.**

DECISION

HERNANDO, J:

Before Us is an appeal^[1] from the Decision^[2] dated June 25, 2010 rendered by the Regional Trial Court (RTC), Branch 43 of Tanjay City, Negros Oriental in Sp. Proc. No. 361 in the Matter of Correction of Entry of Name from Leselda Cuevas Macay to Leselda Rivas Macay, Date of Birth from March 17, 1974 to March 17, 1975 and Name of Mother from Porferia Velarde Cuevas to Porferia Velarde Rivas in the Records of Birth of Leselda Cuevas Macay. The dispositive portion of the assailed Decision states:

On the basis of the foregoing, the Court finds that the allegations in the petition are true and correct. The Local Civil Registrar of Tanjay City is hereby directed to correct the following erroneous entries in the Birth record of Leselda Cuevas Macay, to wit:

a. The name of petitioner from LESELDA CUEVAS MACAY to **LESELDA RIVAS MACAY;**

c. and the name of mother from PORFERIA VELARDE CUEVb. date of birth from MARCH 17, 1974 to **MARCH 17, 1975;** AS to **PORFERIA VELARDE RIVAS.**

No other corrections are allowed.

The Antecedents:

Petitioner alleged that she had been using in good faith the name Leselda Rivas Macay, and that her mother's name is Porferia Velarde Rivas and her date of birth, March 17, 1975. As evidence thereof, petitioner adduced several documents, such as, Baptismal Certificate^[3], her sibilings' Certificate of Live Birth^[4], her mother's Birth Certificate^[5], her Official Transcript of Records^[6] and Midwife's Certificate^[7] as well as the Marriage Contract^[8] of her parents.

However, in petitioner's Certificate of Live Birth^[9], the reflected entries therein are the following: (1) *Leselda Cuevas Macay* when it should have been *Leselda Rivas Macay*; (2) date of birth was entered as *March 17, 1974* instead of *March 17, 1975*; and (3) name of her mother appeared as *Porferia Velarde Cuevas* instead of *Porferia Velarde Rivas*.

Since the correction of the above-mentioned erroneous entries in her records requires judicial order, petitioner, thus, filed the corresponding Petition before the Regional Trial Court (RTC) of Negros Oriental on March 3, 2010. She asserted that the filing thereof was not intended to evade any criminal or civil liability but only for purposes of making her records straight and to prevent further confusion as to her identity.

After finding the petition to be sufficient in form and substance, the RTC issued an Order dated March 4, 2010 setting the Petition for initial hearing on June 3, 2010 at 8:30 in the morning.

The said Order of the trial court was thereafter published^[10] in Negros Chronicle, a weekly newspaper of general circulation in Negros Oriental and Siquijor and the cities of Dumaguete, Bais, Canlaon, Tanjay and Bayawan, in its March 21, 28 and April 4, 2010 issues.

On March 15, 2010, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic and deputized the Office of the City Prosecutor of Dumaguete City to assist it in the proceedings and to appear in all the hearings of the case in its behalf.

On June 3, 2010, the trial court issued an Order^[11] authorizing the Clerk of Court for the reception of petitioner's evidence. Thereafter, reception of evidence ensued. Petitioner Leselda M. Paguntalan testified to substantiate the material allegations in her petition. The City Prosecutor, on the other hand, acting in behalf of the Republic of the Philippines, did not present any evidence to controvert those of the petitioner.

On June 25, 2010, the RTC rendered a Decision granting the Petition and ordered that the necessary corrections be effected.

Hence, on July 22, 2010, the Republic, through the OSG, appealed the June 25, 2010 Decision of the RTC anchored on a lone assignment of error:

The Assigned Error^[12]:

The court *a quo* erred in granting petitioner-appellee's petition considering that the entries sought to be corrected in her Certificate of Live Birth can only be granted in an adversarial proceeding where her mother, an indispensable party, must be notified and impleaded as party to the case.

Court's Ruling:

The petition is impressed with merit.

In essence, the OSG argues that the desired corrections sought by petitioner are substantial in nature and not mere clerical or innocuous errors. Hence, the petition could only be granted in an appropriate adversarial proceeding where the indispensable party must be notified and impleaded.

Indisputably, it has been settled in a number of cases starting with *Republic v. Valencia*^[13], 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.^[14] The Supreme Court, in said case of *Republic v. Valencia* had this to say, thus:

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.

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Accordingly, when a Petition for Cancellation or Correction of Entries in the Civil Registry under Rule 108 of the Rules of Court is filed, it can either be effected by way of a summary or adversary proceeding.

If the correction sought to be made in the civil register is clerical, then the procedure to be adopted is summary.^[15] If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary.^[16]

In the present case, before We can ascertain if indeed appellee availed of the appropriate remedy, there must first be a determination of whether or not the corrections sought by her are substantial in nature. Substantial or contentious alterations may be allowed only in adversarial proceedings, in which all interested parties are impleaded and due process is properly observed.^[17] Otherwise, summary proceeding would suffice.

Summary proceeding may only be used to correct clerical, spelling, typographical and other innocuous errors in the civil registry. A clerical error is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing, or a harmless change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent.^[18]

Here, appellee sought the correction of her middle name, mother's name and the date of her birth.

We recall that there are decided cases where the Supreme Court recognized the mistakes in the name as harmless error. These cases were cited in *Republic v. Mercadera*^[19] where the High Court declared that:

Indeed, there are decided cases involving mistakes similar to *Mercadera's* case which recognize the same a harmless error. In *Yu v. Republic*, it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely to the righting of a clerical error." In *Labayo-Rowe v. Republic*, it was held that the change of petitioner's name from "Beatriz Labayo/Beatriz Labayu" to "Emperatriz Labayo" was a mere innocuous

alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters "ch" for the letter "d," so that what appears as "Midael" as given name would read "Michael." In the latter case, this Court, with the agreement of the Solicitor General, ruled that the error was plainly clerical, such that, "changing the name of the child from `Midael C. Mazon' to `Michael C. Mazon' cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme (*tugma*) and tone (*tono, tunog, himig*)." (Citations omitted)

In the *Mercadera* case, the Supreme Court likewise allowed the correction of the name "Marilyn" to "Merlyn", it stated:

In this case, the use of the letter "a" for the letter "e," and the deletion of the letter "i," so that what appears as "Marilyn" would read as "Merlyn" is patently a rectification of a name that is clearly misspelled. The similarity between "Marilyn" and "Merlyn" may well be the object of a mix- up that blemished Mercadera's Certificate of Live Birth until her adulthood, thus, her interest to correct the same.

In the present case, however, it is Our considered view that unlike in the above-mentioned cases, the names sought to be corrected in the present case could hardly qualify and considered as mere clerical error of an innocuous or harmless nature. Rather, the amendment sought are substantial and controversial which should be dealt with in a regular adversarial proceeding, instead of a summary proceeding.

Firstly, it must be stressed that unlike in the above-cited cases where the names sought to be corrected involved only the first and given names which generally do not affect substantial matters, the rectifications sought by appellee in the present case pertain to a surname. Although the change may not affect her legitimacy, it nevertheless involves her status in relation to her parents, particularly to her mother. This likewise holds true with respect to her date of birth. Necessarily, her mother must be impleaded or at least be notified of appellee's petition and allowed to be heard before the proposed changes in the birth certificate are effected.

Secondly, it is well to note that Cuevas and Rivas are entirely two different surnames. While the two may probably sound alike or similar because of their last syllables, it would nonetheless be highly specious to make a conclusive finding absent conclusive proof that the surname "Cuevas" that was entered in appellee's birth certificate as her middle name and her mother's maiden surname, actually referred to "Rivas". Consequently, the possibility that the change from "Cuevas" to "Rivas" would only create further confusion instead of making the records straight and aright cannot just be discounted.

Also, contrary to the belief of appellee, the pieces of documentary evidence that she adduced do not appear to establish indisputably that the errors were merely clerical or innocuous in nature to warrant summary rectifications or changes thereof. It is noteworthy that those several documents also contain some erroneous entries and discrepancies which concededly created more doubts and uncertainties.

This notwithstanding, it bears stressing that this is not to say that the errors reflected in appellee's certificate of live birth could not be rectified. Rather, the correction of erroneous entries could be done but the same must be threshed out in