THIRD DIVISION

[G.R. No. 216425, November 11, 2020]

ANACLETO BALLAHO ALANIS HI, PETITIONER, V. COURT OF APPEALS, CAGAYAN DE ORO CITY, AND HON. GREGORIO Y. DE LA PENA III, PRESIDING JUDGE, BR. 12, REGIONAL TRIAL COURT OF ZAMBOANGA CITY, RESPONDENTS,

D E C I S I O N

LEONEN, J.:

Reading Article 364 of the Civil Code together with the State's declared policy to ensure the fundamental equality of women and men before the law,[1] a legitimate child is entitled to use the surname of either parent as a last name.

This Court resolves the Petition for Certiorari[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which affirmed the Regional Trial Court Orders[5] denying Anacleto Ballaho Alanis Ill's appeal to change his name to Abdulhamid Ballaho.

Petitioner filed a Petition before the Regional Trial Court of Zamboanga City, Branch 12, to change his name.[6] He alleged that he was born to Mario Alanis y Cimafranca and Jarmila Imelda Ballaho y Al-Raschid,[7] and that the name on his birth certificate was "Anacleto Ballaho Alanis III."[8] However, he wished to remove his father's surname "Alanis III," and instead use his mother's maiden name "Ballaho," as it was what he has been using since childhood and indicated in his school records.[9] He likewise wished to change his first name from "Anacleto" to "Abdulhamid" for the same reasons.[10]

During trial, petitioner testified that his parents separated when he was five years old. His father was based in Maguindanao while his mother was based in Basilan. His mother testified that she single-handedly raised him and his siblings.[11]

As summarized by the Regional Trial Court, petitioner presented the following in evidence to support his claim that the requested change would avoid confusion:

> ... a.) petitioner's photograph in what appears to be a page of a yearbook; b.) another photograph of the petitioner appearing in the editorial staff of ND Beacon where he appears to be the assistant editor-in-chief; c.) the high school diploma of the petitioner certifying that he finished his high school education at Notre Dame of Parang in Parang, Maguindanao; d.) another copy of the editorial of the ND Beacon where petitioner's name appears as one of its editorial staff; e.) another copy of the editorial of ND Beacon where the name of the petitioner appears as the editor-in-chief; f.) a certificate of participation issued to the petitioner

> by the Department of [E]ducation, Culture and Sports; g.) a CAP College Foundation, Inc., diploma issued in the name of petitioner; h.) another CAP College Foundation, Inc., diploma issued in the name of petitioner; i.) a [WJestern Mindanao State University student identification card in the name of petitioner; j.) a non-professional driver[']s license issued in the name of petitioner; k.) the Community Tax Certificate of petitioner[.] [12]

In its April 9, 2008 Order,[13] the Regional Trial Court denied the Petition, holding that petitioner failed to prove any of the grounds to warrant a change of name.[14] It noted that the mere fact that petitioner has been using a different name and has become known by it is not a valid ground for change of name. It also held that to allow him to drop his last name was to disregard the surname of his natural and legitimate father,[15]in violation of the Family Code and Civil Code, which provide that legitimate children shall principally use their fathers' surnames.[16]

The Regional Trial Court acknowledged that confusion could exist here, but found that granting his petition would create more confusion:

> Although it may appear that confusion may indeed arise as to the identity of the petitioner herein who has accordingly used the name Abdulhamid Ballaho in all his records and is known to the community as such person and not Anacleto Ballaho Alanis III, his registered full name is his Certificate of Live Birth, this Court believes that the very change of name sought by the petitioner in this petition would even create more confusion since if so granted by this Court, such change sought after could trigger much deeper inquiries regarding her parentage and/or paternity, bearing in mind that he is the legitimate eldest child of the spouses Mario Alanis y Cimafranca and Jarmila Imelda Ballaho y Al-Raschid[.][17]

Thus, the trial court concluded that, instead of seeking to change his name in his birth certificate, petitioner should have had the other private and public records corrected to conform to his true and correct name:

> Time and again, this Court has consistently ruled that, in similar circumstances, the proper remedy for the petitioner is to instead cause the proper correction of his private and public records to conform to his true and correct first name and surname, which in this case is Anacleto Ballaho Alanis, III and not to change his said official, true and correct name as appearing in his Certificate of Live Birth simply because either he erroneously and inadvertently or even purposely or deliberately used an incorrect first name and surname in his private and public records.[18]

The dispositive portion of the Order reads:

> WHEREFORE, in view of the foregoing, and finding no legal, proper, justified and reasonable grounds to allow the change of name of the herein petitioner from Anacleto Ballaho Alanis III as appearing in his Certificate of Live Birth to Abdulhamid Ballaho as prayed for by the petitioner in his petition dated February 1, 2007 the above-entitled petition is hereby DENIED and ordered DISMISSED for lack of merit. No

cost.

SO ORDERED. [19]

Petitioner moved for reconsideration, but the Regional Trial Court denied this in a June 2, 2008 Order.[20]

It appears that on May 2, 2008, a month before the trial court rendered this Order, petitioner's counsel, Atty. Johny Boy Dialo (Atty. Dialo), had figured in a shooting incident and failed to report for work. Thus, petitioner was only able to file a notice of appeal on September 2, 2008—months after Atty. Dialo's law office had received the Order, beyond the filing period. He invoked his counsel's excusable neglect for a belated appeal, alleging the shooting incident.[21]

Thereafter, with a new counsel, petitioner filed a Record on Appeal and Notice of Appeal on September 3, 2008,[22] reiterating his counsel's excusable negligence.[23] He added that he was set to take the Bar Examinations and had to come home from his review, only to find out after checking with Atty. Dialo's law office that he had lost the case and the appeal period had lapsed.[24] However, the Record and Notice of Appeal were denied in the Regional Trial Court's September 16, 2008 Order for having been filed out of time.[25]

Thus, petitioner filed a Petition for Certiorari[26] before the Court of Appeals, providing the same reason to explain his failure to timely appeal.

In its May 26, 2014 Decision,[27] the Court of Appeals denied the Petition, holding that petitioner failed to show any reason to relax or disregard the technical rules of procedure.[28] It noted that the trial court did not gravely err in denying petitioner's Record on Appeal for having been filed out of time.[29]

Petitioner moved for reconsideration, which was also denied in the Court of Appeals' December 15, 2014 Resolution.[30] Thus, he filed this Petition for Certiorari.[31]

Petitioner insists that the serious indisposition of his counsel after being shot and receiving death threats is excusable negligence for a belated appeal, it not being attended by any carelessness or inattention.[32] Delving on the substantive issue, petitioner maintains that he has the right to use his mother's surname despite his legitimate status, as recognized in *Alfon v. Republic?*[33]

In its Comment,[34] the Office of the Solicitor General argued that this Petition should be dismissed outright for being the wrong remedy, and that the proper course was to file a petition for review on certiorari.[35] Further, it argues that the Court of Appeals did not gravely abuse its discretion in upholding the trial court's ruling.[36] It points out that since Atty. Dialo's law office has more than one lawyer, and it had admittedly received the Order,[37] the belated appeal was unjustified. Further, petitioner was already a law graduate when he filed the first Petition, and was expected to be more vigilant of his case's progress.[38] Thus, the Office of the Solicitor General finds no "exceptionally meritorious" reason to warrant a liberal

interpretation of technical rules. In any case, petitioner's reason is not among the grounds to warrant a change in name.[39]

In his Reply,[40] petitioner failed to address the argument that a petition for certiorari is the wrong remedy to assail the Court of Appeals' dismissal of his Petition for Certiorari. He only reiterated the Court of Appeals should have discarded technicalities, because jurisprudence on Article 364 of the Civil Code is settled in his favor.[41]

After this Court had given due course to the Petition, the parties filed their respective memoranda.[42]

The issues for this Court's resolution are:

First, whether or not the Petition should be dismissed for petitioner's failure to show grave abuse of discretion on the part of the Court of Appeals;

Second, whether or not legitimate children have the right to use their mothers' surnames as their surnames; and

Finally, whether or not petitioner has established a recognized ground for changing his name.

This Court grants the Petition.

I

The Petition was filed under Rule 65 of the Rules of Court, but petitioner did not even attempt to show any grave abuse of discretion on the part of the Court of Appeals. On this ground alone, the Petition may be dismissed.

It is not disputed that the Record on Appeal was filed out of time. The Court of Appeals could have relaxed the rules for perfecting an appeal, but was not required, by law, to review it.

The Court of Appeals found no reason to warrant any relaxation of the rules, after appreciating the following circumstances: (1) petitioner did not adduce evidence to prove the alleged shooting of his former counsel;[43] (2) petitioner was represented by counsel belonging to a law office which had more than one associate;44 and (3) petitioner was a law graduate and should have been more vigilant.[45]

This Court cannot sidestep the rule on reglementary periods for appealing decisions, except in the most meritorious cases.[46]

Petitioner claims that the circumstances surrounding the failure to file the appeal are bereft of carelessness or inattention on the part of counsel, and thus, constitute excusable negligence.

This is unconvincing. In *Sublay v. National Labor Relations Commission*[47] the petitioner filed an appeal out of time because the counsel on record did not inform

her or her other counsel that a decision had been rendered in her case. This Court affirmed the denial of her appeal for having been filed out of time, explaining that:

> The unbroken stream of *judicial dicta* is that clients are bound by the action of their counsel in the conduct of their case. Otherwise, if the lawyer's mistake or negligence was admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned.[48] (Citation omitted)

This Court noted in Sublay that the petitioner was represented by more than one lawyer. The decision she wished to appeal had been duly served on one of her lawyers on record, who failed to inform the more active counsel. This Court ruled that the petitioner was bound by the negligence of her counsel:

> Lastly, petitioner's claim for judicial relief in view of her counsel's alleged negligence is incongruous, to say the least, considering that she was represented by more than one (1) lawyer. Although working merely as a collaborating counsel who entered his appearance for petitioner as early as May 1996, i.e., more or less six (6) months before the termination of the proceedings a quo, Arty. Alikpala had the bounden duty to monitor the progress of the case. A lawyer has the responsibility of monitoring and keeping track of the period of time left to file an appeal. He cannot rely on the courts to appraise him of the developments in his case and warn him against any possible procedural blunder. Knowing that the lead counsel was no longer participating actively in the trial of the case several months before its resolution, Atty. Alikpala who alone was left to defend petitioner should have put himself on guard and thus anticipated the release of the Labor Arbiter's decision. Petitioner's lead counsel might have been negligent but she was never really deprived of proper representation. This fact alone militates against the grant of this petition. [49]

Here, petitioner failed to respond to the assertion that Atty. Dialo's law office, Dialo Darunday & Associates Law Office, is a law firm with more than one lawyer, as well as legal staff, who must have been aware that Atty. Dialo was not reporting to office or receiving his mail sent there. Moreover, Atty. Dialo stopped reporting to office on May 2, 2008, whereas the law firm received the June 2, 2008 Order more than a month later, on June 12, 2008. Without any response to this point, this Court cannot automatically excuse the law office and assume that it could not adjust to Atty. Dialo's absence.

The law firm was certainly negligent in how it dealt with the Order. Given the other circumstances of this case, petitioner would ordinarily be bound by this negligence. Consequently, petitioner had the burden to sufficiently establish, by alleging and arguing, that this case is so meritorious that it warrants the relaxation of the procedural rules. This, petitioner did not bother to do.

Nonetheless, in the exercise of its equity jurisdiction,[50] this Court may choose to apply procedural rules more liberally to promote substantial justice. Thus, we delve into the substantial issues raised by petitioner.

II