

## SECOND DIVISION

[ G.R. No. 177728, July 31, 2009 ]

**JENIE SAN JUAN DELA CRUZ AND MINOR CHRISTIAN DELA CRUZ  
"AQUINO," REPRESENTED BY JENIE SAN JUAN DELA CRUZ,  
PETITIONERS, VS. RONALD PAUL S. GRACIA, IN HIS CAPACITY  
AS CITY CIVIL REGISTRAR OF ANTIPOLO CITY, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

For several months in 2005, then 21-year old petitioner Jenie San Juan Dela Cruz (Jenie) and then 19-year old Christian Dominique Sto. Tomas Aquino (Dominique) lived together as husband and wife without the benefit of marriage. They resided in the house of Dominique's parents Domingo B. Aquino and Raquel Sto. Tomas Aquino at Pulang-lupa, Dulumbayan, Teresa, Rizal.

On September 4, 2005, Dominique died.<sup>[1]</sup> After almost two months, or on November 2, 2005, Jenie, who continued to live with Dominique's parents, gave birth to her herein co-petitioner minor child Christian Dela Cruz "Aquino" at the Antipolo Doctors Hospital, Antipolo City.

Jenie applied for registration of the child's birth, using Dominique's surname Aquino, with the Office of the City Civil Registrar, Antipolo City, in support of which she submitted the child's *Certificate of Live Birth*,<sup>[2]</sup> *Affidavit to Use the Surname of the Father*<sup>[3]</sup> (AUSF) which she had executed and signed, and *Affidavit of Acknowledgment* executed by Dominique's father Domingo Butch Aquino.<sup>[4]</sup> Both affidavits attested, *inter alia*, that during the lifetime of Dominique, he had continuously acknowledged his yet unborn child, and that his paternity had never been questioned. Jenie attached to the AUSF a document entitled "AUTOBIOGRAPHY" which Dominique, during his lifetime, wrote in his own handwriting, the pertinent portions of which read:

AQUINO, CHRISTIAN DOMINIQUE S.T.

#### AUTOBIOGRAPHY

I'M CHRISTIAN DOMINIQUE STO. TOMAS AQUINO, 19 YEARS OF AGE TURNING 20 THIS COMING OCTOBER 31, 2005.<sup>[5]</sup> I RESIDE AT PULANG-LUPA STREET BRGY. DULUMBAYAN, TERESA, RIZAL. I AM THE YOUNGEST IN OUR FAMILY. I HAVE ONE BROTHER NAMED JOSEPH BUTCH STO. TOMAS AQUINO. MY FATHER'S NAME IS DOMINGO BUTCH AQUINO AND MY MOTHER'S NAME IS RAQUEL STO. TOMAS AQUINO. x x x.

x x x x

AS OF NOW I HAVE MY WIFE NAMED JENIE DELA CRUZ. WE MET EACH OTHER IN OUR HOMETOWN, TEREZA RIZAL. AT FIRST WE BECAME GOOD FRIENDS, THEN WE FELL IN LOVE WITH EACH OTHER, THEN WE BECAME GOOD COUPLES. **AND AS OF NOW SHE IS PREGNANT AND FOR THAT WE LIVE TOGETHER** IN OUR HOUSE NOW. THAT'S ALL.<sup>[6]</sup>  
(Emphasis and underscoring supplied)

By letter dated November 11, 2005,<sup>[7]</sup> the City Civil Registrar of Antipolo City, Ronald Paul S. Gracia (respondent), denied Jenie's application for registration of the child's name in this wise:

7. Rule 7 of Administrative Order No. 1, Series of 2004 (Implementing Rules and Regulations of Republic Act No. 9255 ["An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose, Article 176 of Executive Order No. 209, otherwise Known as the `Family Code of the Philippines"']) provides that:

Rule 7. Requirements for the Child to Use the Surname of the Father

7.1 For Births Not Yet Registered

7.1.1 The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.

7.1.2 If admission of paternity is made through a private handwritten instrument, the child shall use the surname of the father, provided the registration is supported by the following documents:

- a. AUSF<sup>[8]</sup>
- b. Consent of the child, if 18 years old and over at the time of the filing of the document.
- c. Any two of the following documents showing clearly the paternity between the father and the child:
  1. Employment records
  2. SSS/GSIS records
  3. Insurance
  4. Certification of membership in any organization
  5. Statement of Assets and Liability
  6. Income Tax Return (ITR)

In summary, the child cannot use the surname of his father because he was born out of wedlock and the father unfortunately died prior to his birth and has no more capacity to acknowledge his paternity to the child

(either through the back of Municipal Form No. 102 - Affidavit of Acknowledgment/Admission of Paternity - or the Authority to Use the Surname of the Father). (Underscoring supplied)

Jenie and the child promptly filed a complaint<sup>[9]</sup> for injunction/registration of name against respondent before the Regional Trial Court of Antipolo City, docketed as SCA Case No. 06-539, which was raffled to Branch 73 thereof. The complaint alleged that, *inter alia*, the denial of registration of the child's name is a violation of his right to use the surname of his deceased father under **Article 176 of the Family Code, as amended by Republic Act (R.A.) No. 9255,**<sup>[10]</sup> which provides:

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, **or when an admission in a public document or private handwritten instrument** is made by the father. *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis and underscoring supplied)

They maintained that the Autobiography executed by Dominique constitutes an admission of paternity in a "private handwritten instrument" within the contemplation of the above-quoted provision of law.

For failure to file a responsive pleading or answer despite service of summons, respondent was declared in default.

Jenie thereupon presented evidence *ex-parte*. She testified on the circumstances of her common-law relationship with Dominique and affirmed her declarations in her AUSF that during his lifetime, he had acknowledged his yet unborn child.<sup>[11]</sup> She offered Dominique's handwritten Autobiography (Exhibit "A") as her documentary evidence-in-chief.<sup>[12]</sup> Dominique's lone brother, Joseph Butch S.T. Aquino, also testified, corroborating Jenie's declarations.<sup>[13]</sup>

By Decision<sup>[14]</sup> of April 25, 2007, the trial court dismissed the complaint "for lack of cause of action" as the Autobiography was unsigned, citing paragraph 2.2, Rule 2 (Definition of Terms) of **Administrative Order (A.O.) No. 1, Series of 2004 (the Rules and Regulations Governing the Implementation of R.A. 9255)** which defines "private handwritten document" through which a father may acknowledge an illegitimate child as follows:

2.2 Private handwritten instrument - an instrument executed in the handwriting of the father and duly signed by him where he expressly recognizes paternity to the child. (Underscoring supplied)

The trial court held that even if Dominique was the author of the handwritten Autobiography, the same does not contain any express recognition of paternity.

Hence, this direct resort to the Court via Petition for Review on Certiorari raising this purely legal issue of:

WHETHER OR NOT THE UNSIGNED HANDWRITTEN STATEMENT OF THE DECEASED FATHER OF MINOR CHRISTIAN DELA CRUZ CAN BE CONSIDERED AS A RECOGNITION OF PATERNITY IN A "PRIVATE HANDWRITTEN INSTRUMENT" WITHIN THE CONTEMPLATION OF ARTICLE 176 OF THE FAMILY CODE, AS AMENDED BY R.A. 9255, WHICH ENTITLES THE SAID MINOR TO USE HIS FATHER'S SURNAME.<sup>[15]</sup> (Underscoring supplied)

Petitioners contend that Article 176 of the Family Code, as amended, does not expressly require that the private handwritten instrument containing the putative father's admission of paternity must be signed by him. They add that the deceased's handwritten Autobiography, though unsigned by him, is sufficient, for the requirement in the above-quoted paragraph 2.2 of the Administrative Order that the admission/recognition must be "duly signed" by the father is void as it "unduly expanded" the earlier-quoted provision of Article 176 of the Family Code.<sup>[16]</sup>

Petitioners further contend that the trial court erred in not finding that Dominique's handwritten Autobiography contains a "clear and unmistakable" recognition of the child's paternity.<sup>[17]</sup>

In its Comment, the Office of the Solicitor General (OSG) submits that respondent's position, as affirmed by the trial court, is in consonance with the law and thus prays for the dismissal of the petition. It further submits that Dominique's Autobiography "merely acknowledged Jenie's pregnancy but not [his] paternity of the child she was carrying in her womb."<sup>[18]</sup>

Article 176 of the Family Code, as amended by R.A. 9255, permits an illegitimate child to use the surname of his/her father if the latter had expressly recognized him/her as his offspring through the record of birth appearing in the civil register, **or** through an admission made in a public or private handwritten instrument. The recognition made in any of these documents is, in itself, a consummated act of acknowledgment of the child's paternity; hence, no separate action for judicial approval is necessary.<sup>[19]</sup>

Article 176 of the Family Code, as amended, does not, indeed, explicitly state that the private handwritten instrument acknowledging the child's paternity must be signed by the putative father. This provision must, however, be read in conjunction with related provisions of the Family Code which require that recognition by the father must bear his signature, thus:

Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.