

SECOND DIVISION

[G.R. No. 166676, September 12, 2008]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JENNIFER B. CAGANDAHAN, RESPONDENT.

DECISION

QUISUMBING, J.:

This is a petition for review under Rule 45 of the Rules of Court raising purely questions of law and seeking a reversal of the Decision^[1] dated January 12, 2005 of the Regional Trial Court (RTC), Branch 33 of Siniloan, Laguna, which granted the Petition for Correction of Entries in Birth Certificate filed by Jennifer B. Cagandahan and ordered the following changes of entries in Cagandahan's birth certificate: (1) the name "Jennifer Cagandahan" changed to "Jeff Cagandahan" and (2) gender from "female" to "male."

The facts are as follows.

On December 11, 2003, respondent Jennifer Cagandahan filed a Petition for Correction of Entries in Birth Certificate^[2] before the RTC, Branch 33 of Siniloan, Laguna.

In her petition, she alleged that she was born on January 13, 1981 and was registered as a female in the Certificate of Live Birth but while growing up, she developed secondary male characteristics and was diagnosed to have Congenital Adrenal Hyperplasia (CAH) which is a condition where persons thus afflicted possess both male and female characteristics. She further alleged that she was diagnosed to have clitoral hypertrophy in her early years and at age six, underwent an ultrasound where it was discovered that she has small ovaries. At age thirteen, tests revealed that her ovarian structures had minimized, she has stopped growing and she has no breast or menstrual development. She then alleged that for all interests and appearances as well as in mind and emotion, she has become a male person. Thus, she prayed that her birth certificate be corrected such that her gender be changed from female to male and her first name be changed from Jennifer to Jeff.

The petition was published in a newspaper of general circulation for three (3) consecutive weeks and was posted in conspicuous places by the sheriff of the court. The Solicitor General entered his appearance and authorized the Assistant Provincial Prosecutor to appear in his behalf.

To prove her claim, respondent testified and presented the testimony of Dr. Michael Sionzon of the Department of Psychiatry, University of the Philippines-Philippine General Hospital. Dr. Sionzon issued a medical certificate stating that respondent's condition is known as CAH. He explained that genetically respondent is female but because her body secretes male hormones, her female organs did not develop

normally and she has two sex organs - female and male. He testified that this condition is very rare, that respondent's uterus is not fully developed because of lack of female hormones, and that she has no monthly period. He further testified that respondent's condition is permanent and recommended the change of gender because respondent has made up her mind, adjusted to her chosen role as male, and the gender change would be advantageous to her.

The RTC granted respondent's petition in a Decision dated January 12, 2005 which reads:

The Court is convinced that petitioner has satisfactorily shown that he is entitled to the reliefs prayed [for]. Petitioner has adequately presented to the Court very clear and convincing proofs for the granting of his petition. It was medically proven that petitioner's body produces male hormones, and first his body as well as his action and feelings are that of a male. He has chosen to be male. He is a normal person and wants to be acknowledged and identified as a male.

WHEREFORE, premises considered, the Civil Register of Pakil, Laguna is hereby ordered to make the following corrections in the birth [c]ertificate of Jennifer Cagandahan upon payment of the prescribed fees:

a) By changing the name from Jennifer Cagandahan to JEFF CAGANDAHAN; and

b) By changing the gender from female to MALE.

It is likewise ordered that petitioner's school records, voter's registry, baptismal certificate, and other pertinent records are hereby amended to conform with the foregoing corrected data.

SO ORDERED.^[3]

Thus, this petition by the Office of the Solicitor General (OSG) seeking a reversal of the abovementioned ruling.

The issues raised by petitioner are:

THE TRIAL COURT ERRED IN GRANTING THE PETITION CONSIDERING THAT:

I.

THE REQUIREMENTS OF RULES 103 AND 108 OF THE RULES OF COURT HAVE NOT BEEN COMPLIED WITH; AND,

II.

CORRECTION OF ENTRY UNDER RULE 108 DOES NOT ALLOW CHANGE OF "SEX" OR "GENDER" IN THE BIRTH CERTIFICATE, WHILE RESPONDENT'S MEDICAL CONDITION, i.e., CONGENITAL ADRENAL HYPERPLASIA DOES NOT MAKE HER A "MALE."^[4]

Simply stated, the issue is whether the trial court erred in ordering the correction of entries in the birth certificate of respondent to change her sex or gender, from female to male, on the ground of her medical condition known as CAH, and her name from "Jennifer" to "Jeff," under Rules 103 and 108 of the Rules of Court.

The OSG contends that the petition below is fatally defective for non-compliance with Rules 103 and 108 of the Rules of Court because while the local civil registrar is an indispensable party in a petition for cancellation or correction of entries under Section 3, Rule 108 of the Rules of Court, respondent's petition before the court *a quo* did not implead the local civil registrar.^[5] The OSG further contends respondent's petition is fatally defective since it failed to state that respondent is a *bona fide* resident of the province where the petition was filed for at least three (3) years prior to the date of such filing as mandated under Section 2(b), Rule 103 of the Rules of Court.^[6] The OSG argues that Rule 108 does not allow change of sex or gender in the birth certificate and respondent's claimed medical condition known as CAH does not make her a male.^[7]

On the other hand, respondent counters that although the Local Civil Registrar of Pakil, Laguna was not formally named a party in the Petition for Correction of Birth Certificate, nonetheless the Local Civil Registrar was furnished a copy of the Petition, the Order to publish on December 16, 2003 and all pleadings, orders or processes in the course of the proceedings,^[8] respondent is actually a male person and hence his birth certificate has to be corrected to reflect his true sex/gender,^[9] change of sex or gender is allowed under Rule 108,^[10] and respondent substantially complied with the requirements of Rules 103 and 108 of the Rules of Court.^[11]

Rules 103 and 108 of the Rules of Court provide:

Rule 103
CHANGE OF NAME

SECTION 1. *Venue*. - A person desiring to change his name shall present the petition to the Regional Trial Court of the province in which he resides, [or, in the City of Manila, to the Juvenile and Domestic Relations Court].

SEC. 2. *Contents of petition*. - A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

- (a) That the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;
- (b) The cause for which the change of the petitioner's name is sought;
- (c) The name asked for.

SEC. 3. *Order for hearing*. - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition,

shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

SEC. 4. *Hearing.* - Any interested person may appear at the hearing and oppose the petition. The Solicitor General or the proper provincial or city fiscal shall appear on behalf of the Government of the Republic.

SEC. 5. *Judgment.* - Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

SEC. 6. *Service of judgment.* - Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

Rule 108

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

SECTION 1. *Who may file petition.* - Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

SEC. 2. *Entries subject to cancellation or correction.* - Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

SEC. 3. *Parties.* - When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. *Notice and publication.* - Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the

petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition.* - The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SEC. 6. *Expediting proceedings.* - The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. *Order.* - After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

The OSG argues that the petition below is fatally defective for non-compliance with Rules 103 and 108 of the Rules of Court because respondent's petition did not implead the local civil registrar. Section 3, Rule 108 provides that the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceedings. Likewise, the local civil registrar is required to be made a party in a proceeding for the correction of name in the civil registry. He is an indispensable party without whom no final determination of the case can be had.^[12] Unless all possible indispensable parties were duly notified of the proceedings, the same shall be considered as falling much too short of the requirements of the rules.^[13] The corresponding petition should also implead as respondents the civil registrar and all other persons who may have or may claim to have any interest that would be affected thereby.^[14] Respondent, however, invokes Section 6,^[15] Rule 1 of the Rules of Court which states that courts shall construe the Rules liberally to promote their objectives of securing to the parties a just, speedy and inexpensive disposition of the matters brought before it. We agree that there is substantial compliance with Rule 108 when respondent furnished a copy of the petition to the local civil registrar.

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

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

Together with Article 376^[16] of the Civil Code, this provision was amended by Republic Act No. 9048^[17] 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, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.^[18]