

THIRD DIVISION

[G.R. No. 111455, December 23, 1998]

**MARISSA A. MOSSESGELD, PETITIONER, VS. COURT OF APPEALS
AND CIVIL REGISTRAR GENERAL, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The case is an appeal via certiorari under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals^[1] affirming that of the Regional Trial Court, Pasig, Branch 69, dismissing the petition of the putative father, later substituted by the unwed mother, to compel the local civil registrar of Mandaluyong, Metro Manila,^[2] to register the certificate of live birth of petitioner's illegitimate child using the surname of the presumed father.

On December 2, 1989, petitioner Marissa Alfaro Mossesgeld, single, 31 years of age, gave birth to a baby boy at the Medical City General Hospital, Mandaluyong, Metro Manila.^[3] It was the third time that she delivered a child.^[4] The presumed father, one Eleazar Siriban Calasan, 42 years old, a lawyer, married, and a resident of 8632 San Jose St. Guadalupe Nuevo, Makati, Metro Manila, signed the birth certificate of the child as the informant, indicating therein the child's first name as Jonathan, middle name as Mossesgeld, and last name as Calasan. Both the presumed father, Eleazar S. Calasan and the mother Marissa A. Mossesgeld, accomplished the dorsal side of the certificate of live birth stating that the information contained therein were true and correct. In addition, lawyer Calasan executed an affidavit admitting paternity of the child.^[5]

On December 6, 1989, due to the refusal of the person in charge at the hospital to placing the presumed father's surname as the child's surname in the certificate of live birth, petitioner himself submitted the certificate to the office of the local civil registrar of Mandaluyong, for registration.

On December 28, 1989, the municipal treasurer of Mandaluyong, as officer in charge of the office of the local civil registrar, rejected the registration on the basis of Circular No. 4, dated October 11, 1988, of the Civil Registrar General, providing that under Article 176 of the Family Code of the Philippines, illegitimate children born on or after August 3, 1988, shall use the surname of their mother.^[6]

On October 9, 1990, lawyer Eleazar S. Calasan personally went to the Local Civil Registrar of Mandaluyong to inquire about the status of the registration of his illegitimate child's certificate of birth, but was furnished with a copy of the letter dated January 17, 1990, of the Civil Registrar General denying registration of the certificate of live birth of petitioner's illegitimate child using the father's surname, for it is contrary to law.^[7]

On November 7, 1990, lawyer Eleazar S. Calasan filed with the Regional Trial Court, Pasig, Branch 69, a petition for mandamus to compel the Local Civil Registrar of Mandaluyong, Metro Manila, to register the certificate of live birth of his alleged illegitimate son using his surname.^[8]

On October 29, 1991, the lower court denied the petition, ruling that illegitimate children must use the surname of their mothers, regardless of whether or not they had been acknowledged by their fathers in the record of birth.^[9]

On November 21, 1991, petitioner Calasan filed a motion for reconsideration of the denial. In the meantime, on December 9, 1991, he filed a motion for leave to amend petition and to admit amended petition, substituting the child's mother Marissa A. Mossesgeld as the petitioner.^[10]

On February 11, 1992, the lower court granted the motion for leave to amend petition.^[11] However, on June 3, 1992, the lower court denied the motion for reconsideration.

In due time, petitioner interposed an appeal to the Court of Appeals.

On July 23, 1993, the Court of Appeals rendered decision affirming the judgment appealed from.^[12]

Hence, this petition.

The issue raised is whether mandamus lies to compel the Local Civil Registrar to register a certificate of live birth of an illegitimate child using the alleged father's surname where the latter admitted paternity.

We deny the petition.

Article 176 of the Family Code of the Philippines^[13] provides that "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." This is the rule regardless of whether or not the father admits paternity. Consequently, the Local Civil Registrar correctly refused to register the certificate of live birth of petitioner's illegitimate child using the surname of the alleged father, even with the latter's consent. Of course, the putative father, though a much married man, may legally adopt his own illegitimate child.^[14] In case of adoption, the child shall be considered a legitimate child of the adopter, entitled to use his surname.^[15]

The Family Code has effectively repealed the provisions of Article 366 of the Civil Code of the Philippines giving a natural child acknowledged by both parents the right to use the surname of the father. The Family Code has limited the classification of children to legitimate and illegitimate,^[16] thereby eliminating the category of acknowledged natural children and natural children by legal fiction.^[17]

Consequently, we rule that mandamus will not lie to compel the local civil registrar to register the certificate of live birth of an illegitimate child using the father's