



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**THE REPUBLIC OF THE  
 PHILIPPINES,**

Petitioner,

**G.R. No. 209527**

Present:

CARPIO, J.,  
*Chairperson,*  
 PERALTA,  
 PERLAS-BERNABE,  
 CAGUIOA,\* and  
 REYES, JR., JJ.

- versus -

**VIRGIE (VIRGEL) L. TIPAY,**  
 Respondent.

Promulgated:

**14 FEB 2018**

*HM Cabalagat*

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**DECISION**

**REYES, JR., J.:**

This is a petition for review on *certiorari*<sup>1</sup> brought under Rule 45 of the Rules of Court, seeking to reverse and set aside the October 9, 2013 Decision<sup>2</sup> of the Court of Appeals (CA) that denied the appeal of petitioner Republic of the Philippines (Republic) from the Decision<sup>3</sup> of the Regional Trial Court (RTC) of Lupon, Davao Oriental. The trial court, in turn, granted respondent Virgie (Virgel) L. Tipay's (Virgel) petition for the correction of certain entries in his birth certificate.<sup>4</sup>

\* On official business.

<sup>1</sup> *Rollo*, pp. 3-6.

<sup>2</sup> Penned by Associate Justice Romulo V. Borja, with Associate Justices Renato C. Francisco and Henri Jean Paul B. Inting, concurring; *id.* at 21-34.

<sup>3</sup> *Id.* at 46-49.

<sup>4</sup> *Id.* at 35-45.

*Reyes*

### Factual Antecedents

In a petition dated February 13, 2009, Virgel sought the correction of several entries in his birth certificate. Attached to the petition are two (2) copies of his birth certificate, respectively issued by the Municipal Civil Registrar of Governor Generoso, Davao Oriental and the National Statistics Office<sup>5</sup> (NSO). Both copies reflect his gender as “*FEMALE*” and his first name as “*Virgie*.” It further appears that the month and day of birth in the local civil registrar’s copy was blank, while the NSO-issued birth certificate indicates that he was born on May 12, 1976.<sup>6</sup> Virgel alleged that these entries are erroneous, and sought the correction of his birth certificate as follows: (a) his gender, from “*FEMALE*” to “*MALE*;” (b) his first name, from “*VIRGIE*” to “*VIRGEL*;” and (c) his month and date of birth to “*FEBRUARY 25, 1976*.”<sup>7</sup>

The petition was found sufficient in form and substance, and the case proceeded to trial. Aside from his own personal testimony, Virgel’s mother, Susan L. Tipay, testified that she gave birth to a son on February 25, 1976, who was baptized as “*Virgel*.” The Certificate of Baptism, including other documentary evidence such as a medical certificate stating that Virgel is phenotypically male, were also presented to the trial court.<sup>8</sup>

### Ruling of the RTC

There was no opposition to the petition. Soon after, the RTC rendered its Decision<sup>9</sup> dated July 27, 2010 granting Virgel’s petition:

WHEREFORE, premises considered, an Order is hereby issued:

1. Directing the Local Civil Registrar of Governor Generoso, Davao Oriental to cause the appropriate change in the Certificate of Live Birth of VIRGIE L. TIPAY upon payment of the required legal fees, particularly:

First Name : From: VIRGIE  
To: VIRGEL

Sex : From: Female  
To: MALE

Date of Birth of Child : From: *no entry*  
To: FEBRUARY 25, 1976

<sup>5</sup> Designated now as the Philippine Statistics Authority, pursuant to Republic Act No. 10625, or the “Philippine Statistical Act of 2013.”

<sup>6</sup> *Rollo*, p. 43.

<sup>7</sup> *Id.* at 42-43.

<sup>8</sup> *Id.* at 65-66.

<sup>9</sup> *Id.* at 80-83.

SO ORDERED.<sup>10</sup>

From this decision, the Republic filed a Notice of Appeal, which was given due course by the trial court.<sup>11</sup> The Republic, through the Office of the Solicitor General (OSG) argued that the change of Virgel's name from Virgie should have been made through a proceeding under Rule 103, and not Rule 108 of the Rules of Court. This argument was premised on the assumption that the summary procedure under Rule 108 is confined to the correction of clerical or innocuous errors, which excludes one's name or date of birth. Since the petition lodged with the RTC was not filed pursuant to Rule 103 of the Rules of Court, the Republic asserted that the trial court did not acquire jurisdiction over the case.<sup>12</sup>

Virgel refuted these arguments, alleging that changes of name are within the purview of Rule 108 of the Rules of Court. He further disagreed with the position of the Republic and asserted that substantial errors may be corrected provided that the proceedings before the trial court were adversarial. He also argued that the proceedings before the RTC were *in rem*, which substantially complies with the requirements of either Rule 103 or Rule 108 of the Rules of Court.<sup>13</sup>

### Ruling of the CA

The CA denied the Republic's appeal in its Decision<sup>14</sup> dated October 9, 2013, the dispositive of which reads:

ACCORDINGLY, the appeal is DENIED. The July 27, 2010 Decision of the [RTC], 11<sup>th</sup> Judicial Region, Branch No. 32, Lupon, Davao Oriental, in Special Proceedings Case No. 243-09 is AFFIRMED *in toto*.

SO ORDERED.<sup>15</sup>

In its assailed decision, the CA ruled in favor of Virgel, stating that while the correction of the entry on his gender is considered a substantial change, it is nonetheless within the jurisdiction of the trial court under Rule 108 of the Rules of Court. The CA also held that the petition filed with the trial court fully complied with the jurisdictional requirements of Rule 108 because notices were sent to the concerned local civil registrar and the OSG. Since Virgel was able to establish that he is indeed male, a fact which remains undisputed, the CA upheld the trial court's decision.<sup>16</sup>

<sup>10</sup> Id. at 48-49.

<sup>11</sup> Id. at 12.

<sup>12</sup> Id. at 55.

<sup>13</sup> Id. at 67-76.

<sup>14</sup> Id. at 21-34.

<sup>15</sup> Id. at 33.

<sup>16</sup> Id. at 27-28.



As to the change of Virgel's name from "*Virgie*" to "*Virgel*," the CA did not find any reason to depart from the decision of the RTC because it was more expeditious to change the entry in the same proceeding. The CA found that the correction of Virgel's name was necessary to avoid confusion, especially since his correct gender is male. In the same vein, the CA ruled that even if the petition with the RTC was considered a Rule 103 proceeding, the requirements under Rule 108 are substantially the same as that under Rule 103. Thus, the CA already deemed these requirements complied with.<sup>17</sup> Finally, regarding the month and date of Virgel's birth, the CA found the documentary evidence credible enough to establish that he was indeed born on February 25, 1976.<sup>18</sup>

Unsatisfied with the ruling of the CA, the Republic appealed to this Court insisting that the entries sought to be corrected are substantial changes outside the jurisdiction of the trial court. The Republic also reiterated its earlier arguments, adding that the CA should not have equated the procedural requirements under Rule 103 with that of Rule 108 of the Rules of Court.<sup>19</sup>

### **Ruling of the Court**

The Court denies the petition. However, this Court finds that the evidence is insufficient to establish that Virgel was born on February 25, 1976.

***Rule 108 of the Rules of Court governs the procedure for the correction of substantial changes in the civil registry.***

It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 of the Rules of Court are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule.<sup>20</sup>

Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108 of the Rules of Court, as long as the issues

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<sup>17</sup> Id. at 28-32.

<sup>18</sup> Id. at 32-33.

<sup>19</sup> Id. at 13-15.

<sup>20</sup> *Republic v. Mercadera*, 652 Phil. 195, 207 (2010), citing *Chua Wee, et al. v. Republic*, 148 Phil. 422, 428 (1971).

*Meyer*

are properly threshed out in **appropriate adversarial proceedings**—effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors.<sup>21</sup> The Court's ruling in *Republic v. Valencia*,<sup>22</sup> explained the adversarial procedure to be followed in correcting substantial errors in this wise:

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.** As a matter of fact, the opposition of the Solicitor General dated February 20, 1970 while questioning the use of Article 412 of the Civil Code in relation to Rule 108 of the Revised Rules of Court admits that “the entries sought to be corrected should be threshed out in an appropriate proceeding.”

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Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are—(1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to—(1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.

If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as “summary”. There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.<sup>23</sup> (Emphasis Ours)

**Evidently, the Republic incorrectly argued that the petition for correction under Rule 108 of the Rules of Court is limited to changes in entries containing harmless and innocuous errors.**<sup>24</sup> The cited cases in the petition were already superseded by much later jurisprudence.<sup>25</sup> Most

<sup>21</sup> See *Wong, etc., et al. v. Republic, et al.*, 201 Phil. 69, 78-79 (1982).

<sup>22</sup> 225 Phil. 408 (1986).

<sup>23</sup> *Id.* at 413.

<sup>24</sup> *Rollo*, p. 14.

<sup>25</sup> See *Republic v. Olaybar*, 726 Phil. 378, 383 (2014); *Lee v. CA*, 419 Phil. 392, 403 (2001).

*Meyer*

importantly, with the enactment of Republic Act (R.A.) No. 9048<sup>26</sup> in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order.<sup>27</sup> This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108 of the Rules of Court.<sup>28</sup>

***The RTC was correct in taking cognizance of the petition for correction of entries in Virgel's birth certificate.***

R.A. No. 9048 defined a clerical or typographical error as a mistake committed in the performance of clerical work, which is harmless and immediately obvious to the understanding.<sup>29</sup> It was further amended in 2011, when R.A. No. 10172<sup>30</sup> was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry.<sup>31</sup>

Unfortunately, however, when Virgel filed the petition for correction with the RTC in 2009, R.A. No. 10172 was not yet in effect. **As such, to correct the erroneous gender and date of birth in Virgel's birth certificate, the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108 of the Rules of Court.**<sup>32</sup> The changes in the entries pertaining to the gender and date of birth are indisputably substantial corrections, outside the contemplation of a clerical or typographical error that may be corrected administratively.

The records of this case show that Virgel complied with the procedural requirements under Rule 108 of the Rules of Court. He impleaded the local civil registrar of Governor Generoso, Davao Oriental,

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<sup>26</sup> AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES. Approved on March 22, 2001.

<sup>27</sup> R.A. No. 9048, Section 1.

<sup>28</sup> Re: *Final Report on the Judicial Audit at the RTC of Paniqui, Tarlac*, 562 Phil. 597 (2007).

<sup>29</sup> R.A. No. 9048, Section 2(3).

<sup>30</sup> AN ACT FURTHER AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT. Approved on August 15, 2012.

<sup>31</sup> Id. at Section 1.

<sup>32</sup> *Republic v. Cagandahan*, 586 Phil. 637, 643-644 (2008).

*Meyer*

the Solicitor General, and the Provincial Prosecutor of Davao Oriental as parties to his petition for correction of entries.<sup>33</sup> The RTC then issued an order, which set the case for hearing on July 10, 2009. In compliance with Rule 108, Section 4 of the Rules of Court, the order was published for three (3) consecutive weeks in a newspaper of general circulation in the province of Davao Oriental. Additionally, the local civil registrar and the OSG were notified of the petition through registered mail.<sup>34</sup>

The OSG entered its appearance and deputized the Office of the Provincial Prosecutor of Mati, Davao City for purposes of the proceedings before the RTC. Accordingly, the prosecutor assigned to the case was present during the hearing but opted not to cross-examine Virgel or his mother after their respective testimonies. There was also no opposition filed against the petition of Virgel before the RTC.<sup>35</sup>

From the foregoing, it is clear that the parties who have a claim or whose interests may be affected were notified and granted an opportunity to oppose the petition. Two sets of notices were sent to potential oppositors—through registered mail for the persons named in the petition, and through publication, for all other persons who are not named but may be considered interested or affected parties.<sup>36</sup> A hearing was scheduled for the presentation of Virgel's testimonial and documentary evidence, during which time, the deputized prosecutor of the OSG was present, and allowed to participate in the proceedings. While none of the parties questioned the veracity of Virgel's allegations, much less present any controverting evidence before the trial court,<sup>37</sup> **the RTC proceedings were clearly adversarial in nature. It dutifully complied with the requirements of Rule 108 of the Rules of Court.**

Notably, the Republic does not assail whether the proceedings before the trial court were adversarial, but merely insists on the erroneous premise that a Rule 108 proceeding is limited to the correction of harmless, clerical or typographical errors in the civil registry.<sup>38</sup> Having established that the proper recourse for the correction of substantial changes in the civil registry is Rule 108 of the Rules of Court, the Court cannot sustain the Republic's assertion on this matter. The Court has long settled in *Republic v. Olaybar*<sup>39</sup> that as long as the procedural requirements in Rule 108 were observed, substantial corrections and changes in the civil registry, such as those involving the entries on sex and date of birth, may already be effected, viz.:

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<sup>33</sup> Rollo, p. 35.

<sup>34</sup> Id. at 27.

<sup>35</sup> Id.

<sup>36</sup> *Republic v. Coseteng-Magpayo*, 656 Phil. 550, 560 (2011).

<sup>37</sup> *Republic v. CA*, 286 Phil. 811, 815 (1992).

<sup>38</sup> Rollo, p. 14.

<sup>39</sup> 726 Phil. 378 (2014).



Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, then the procedure to be adopted is summary. 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. Since the promulgation of *Republic v. Valencia* in 1986, the Court has repeatedly ruled that “even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding.” **An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party’s case, and where the evidence has been thoroughly weighed and considered.**

It is true that in special proceedings, formal pleadings and a hearing may be dispensed with, and the remedy [is] granted upon mere application or motion. **However, a special proceeding is not always summary.** The procedure laid down in Rule 108 is not a summary proceeding *per se*. It requires publication of the petition; it mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction; it also requires the civil registrar and any person in interest to file their opposition, if any; and it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. **Thus, as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register.**<sup>40</sup> (Emphases Ours)

Since the Republic was unable to substantiate its arguments, or even cite a specific rule of procedure that Virgel failed to follow, the Court has no reason to depart from the factual findings of the RTC, as affirmed by the CA. Furthermore, in the absence of evidence refuting Virgel’s assertion that he is indeed phenotypically male, the correction of the entry on Virgel’s sex in his birth certificate, from “*FEMALE*” to “*MALE*,” was correctly granted.

With respect to the change of his name to “*Virgel*,” the Court does not agree with the CA that the requirements under Rule 103 of the Rules of Court may be substituted with that of Rule 108. These remedies are distinct and separate from one another, and compliance with one rule cannot serve as a fulfillment of the requisites prescribed by the other.<sup>41</sup> Nonetheless, the Court has settled in *Republic v. Mercadera*<sup>42</sup> that changes in one’s name are not necessarily confined to a petition filed under Rule 103 of the Rules of Court. Rule 108, Section 2 of the Rules of Court include “changes of name” in the enumeration of entries in the civil register that may be cancelled or corrected. Thus, the name “*Virgie*” may be corrected to “*Virgel*,” as a

<sup>40</sup> Id. at 385-386.

<sup>41</sup> *Republic v. Coseteng-Magpayo*, supra note 36, at 557-558, citing *Republic v. Judge Belmonte*, 241 Phil. 966, 969 (1988).

<sup>42</sup> 652 Phil. 195 (2010)





necessary consequence of the substantial correction on Virgel's gender, and to allow the record to conform to the truth.

With respect to the date of Virgel's birth, the Court again disagrees with the CA that the alleged date (*i.e.*, February 25, 1976) is undisputed. The NSO copy of Virgel's birth certificate indicates that he was born on May 12, 1976, a date obviously different from that alleged in the petition for correction.<sup>43</sup> As a public document, the date of birth appearing in the NSO copy is presumed valid and *prima facie* evidence of the facts stated in it. Virgel bore the burden of proving its supposed falsity.<sup>44</sup>

Virgel failed to discharge this burden. The police clearance presented to the trial court corroborates the entry in the NSO copy, indicating Virgel's date of birth as May 12, 1976.<sup>45</sup> The Court is also unconvinced by the other documentary evidence supposedly showing that Virgel was born on February 25, 1976 because the information indicated in the identification card from the Bureau of Internal Revenue and the Member Data Record from the Philippine Health Insurance Corporation, were all supplied by Virgel.<sup>46</sup> These are self-serving information, which do not suffice to overcome the presumption of validity accorded to the date of birth reflected in the NSO copy of Virgel's birth certificate.

**WHEREFORE**, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated October 9, 2013 of the Court of Appeals in CA-G.R. CV No. 02286 is **AFFIRMED**, only insofar as the corrections of the following entries in the birth certificate are concerned: (a) first name, from "*Virgie*" to "*Virgel*;" and (b) gender, from "*FEMALE*" to "*MALE*."

**SO ORDERED.**

  
**ANDRES B. REYES, JR.**  
Associate Justice

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<sup>43</sup> *Rollo*, p. 43.

<sup>44</sup> *Baldos v. CA, et al.*, 638 Phil. 601, 608 (2010).

<sup>45</sup> *Rollo*, p. 32.

<sup>46</sup> *Id.*

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(On official business)

**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice