



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

IN THE MATTER OF PETITION  
FOR CANCELLATION OF  
CERTIFICATES OF LIVE BIRTH  
OF YUHARES JAN BARCELOTE  
TINITIGAN AND AVEE KYNNA  
NOELLE BARCELOTE TINITIGAN

G.R. No. 222095

Present:

CARPIO, J., Chairperson,  
PERALTA,  
MENDOZA,  
LEONEN, and  
MARTIRES, JJ.

JONNA KARLA BAGUIO BARCELOTE,  
Petitioner,

- versus -

REPUBLIC OF THE PHILIPPINES,  
RICKY O. TINITIGAN, and LOCAL  
CIVIL REGISTRAR, DAVAO CITY,  
Respondents.

Promulgated:

07 AUG 2017

*[Handwritten signature]*

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DECISION

CARPIO, J.:

The Case

This petition for review<sup>1</sup> assails the 5 March 2015 Decision<sup>2</sup> and the 3 December 2015 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 03223-MIN reversing the 28 February 2013 Decision<sup>4</sup> of the Regional Trial Court of Davao City, Branch 15 (RTC) in SPC. PROC. No. 12,007-12.

<sup>1</sup> *Rollo*, pp. 10-32. Under Rule 45 of the 1997 Rules of Civil Procedure.

<sup>2</sup> Id. at 36-53. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting and Pablito A. Perez concurring.

<sup>3</sup> Id. at 54-55.

<sup>4</sup> Id. at 56-59. Penned by Judge Ridgway M. Tanjili.

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### The Facts

In an Amended Petition<sup>5</sup> dated 20 September 2012 filed before the RTC, petitioner Jonna Karla Baguio Barcelote (Barcelote) stated the following facts:

On 24 June 2008, she bore a child out of wedlock with a married man named Ricky O. Tinitigan (Tinitigan) in her relative's residence in Sibulan, Santa Cruz, Davao del Sur. She was not able to register the birth of their child, whom she named Yohan Grace Barcelote, because she did not give birth in a hospital. To hide her relationship with Tinitigan, she remained in Santa Cruz, Davao del Sur while Tinitigan lived with his legitimate family in Davao City and would only visit her. On 24 August 2011, she bore another child with Tinitigan, whom she named as Joshua Miguel Barcelote. Again, she did not register his birth to avoid humiliation, ridicule, and possible criminal charges. Thereafter, she lost contact with Tinitigan and she returned to Davao City.

When her first child needed a certificate of live birth for school admission, Barcelote finally decided to register the births of both children. She, then, returned to Santa Cruz, Davao del Sur to register their births. The Local Civil Registrar of Santa Cruz approved the late registration of the births of Yohan Grace Barcelote and Joshua Miguel Barcelote, with Registry Nos. 2012-1344 and 2012-1335, respectively, after submitting proof that the National Statistics Office (NSO) has no record of both births on file.

However, upon submission of the copies of the late registration of the births to the NSO, Barcelote was informed that there were two certificates of live birth (subject birth certificates) with the same name of the mother and the years of birth of the children in their office. The subject birth certificates registered by the Local Civil Registrar of Davao City state the following:

1. Birth Certificate with Registry No. 2008-21709:
  - a. Name: Avee Kyna Noelle Barcelote Tinitigan;
  - b. Date of Birth: June 4, 2008;
  - c. Place of Birth: EUP Family Care Clinic, Holy Cross Agdao Davao City;
  - d. Informant: Ricky O. Tinitigan.
2. Birth Certificate with Registry No. 2011-28329:
  - a. Name: Yuhares Jan Barcelote Tinitigan;
  - b. Date of Birth: August 14, 2011;<sup>6</sup>
  - c. Place of Birth: EUP Family Care Clinic, Holy Cross Agdao Davao City;
  - d. Informant: Ricky O. Tinitigan.

<sup>5</sup> Id. at 69-72.

<sup>6</sup> Omitted in the Amended Petition but stated in the Original Petition dated 23 May 2012.

Thus, Barcelote filed a petition with the RTC for the cancellation of the subject birth certificates registered by Tinitigan without her knowledge and participation, and for containing erroneous entries.

After complying with the jurisdictional requirements, Barcelote was allowed to present evidence *ex parte*. In her testimony, Barcelote reiterated her allegations in the petition and emphasized that the subject birth certificates were registered by her children's biological father, Tinitigan, without her knowledge. She also testified that the subject birth certificates reflected wrong entries, but she did not present any other evidence.

### **The Ruling of the RTC**

On 28 February 2013, the RTC ruled in favor of Barcelote and ordered the cancellation of the subject birth certificates, to wit:

WHEREFORE, premises considered, the petition is hereby GRANTED. Accordingly, the registration of the Certificate of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, respectively intended for Joshua Miguel Barcelote and Yohan Grace Barcelote, by their putative father Ricky Tinitigan at the Local Civil Registrar of Davao City without the con[s]ent or knowledge of their mother, herein petitioner, Jonna Karla Baguio Barcelote, is hereby ordered cancelled.

The Civil Registrar of the Office of the Local Civil Registry of Davao City is directed/ordered to cause the cancellation of:

[i] the birth certificate of Avee Kynna Noelle Barcelote Tinitigan under Registry No. 2008-21709, and


[ii] the certificate of live birth of Yuhares Jan Barcelote Tinitigan under Registry No. 2011-28329.

SO ORDERED.<sup>7</sup>

The RTC ruled that the subject birth certificates are legally infirm, because they were registered unilaterally by Tinitigan without the knowledge and signature of Barcelote in violation of Section 5, Act No. 3753. The RTC also held that the subject birth certificates contain void and illegal entries, because the children use the surname of Tinitigan, contrary to the mandate of Article 176 of the Family Code stating that illegitimate children shall use the surname of their mother.

Moreover, the RTC found that it is not for the best interest of the children to use the surname of their father, for there is always a possibility that the legitimate children or wife may ask the illegitimate children to refrain from using the surname of their father. The RTC further held that the

<sup>7</sup> *Rollo*, p. 59.



subject birth certificates are not reflective of the correct personal circumstances of the children because of the glaring differences in the names and other vital information entered in it.

### **The Ruling of the CA**

On 5 March 2015, the CA reversed and set aside the decision of the RTC. The CA ruled that the registrations of the children's births, caused by Tinitigan and certified by a registered midwife, Erlinda Padilla, were valid under Act No. 3753, and such registrations did not require the consent of Barcelote. The CA further ruled that the children can legally and validly use the surname of Tinitigan, since Republic Act No. (RA) 9255, amending Article 176 of the Family Code, allows illegitimate children to use the surname of their father if the latter had expressly recognized them through the record of birth appearing in the civil register, such as in this case where Barcelote admitted that Tinitigan personally registered the children's births and affixed his surname on the subject birth certificates.

Moreover, the CA found that Barcelote failed to discharge the burden of proving the falsity of the entries in the subject birth certificates and to adduce evidence that the information she provided in the late registration are the true personal circumstances of her children.

The dispositive portion of the decision states:

FOR THESE REASONS, the Decision dated 28 February 201[3] of the Regional Trial Court, Branch 15, Davao City is REVERSED and SET ASIDE. The Amended Petition docketed as Special Proceedings No. 12,007-12 for cancellation of certificates of live birth of her children, registered as Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan in the records of the Local Civil Registrar of Davao City is DISMISSED for lack of merit.

SO ORDERED.<sup>8</sup>

In a Resolution dated 3 December 2015, the CA denied the motion for reconsideration.<sup>9</sup>

Hence, this present petition.

### **The Issues**

Barcelote raises the following issues for resolution:

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<sup>8</sup> Id. at 52.

<sup>9</sup> Id. at 54-55.

## I.

The CA erred in not cancelling the certificates of live birth for YUHARES JAN BARCELOTE TINITIGAN and AVEE KYNNA BARCELOTE TINITIGAN.

A. Under the Family Code, illegitimate children shall use the surname and shall be under the parental authority of their mother. Being the mother with parental authority, [Barcelote]'s choice of names for her children upon birth should prevail.

B. The CA gravely erred and abused its discretion when it ruled that the RTC did not have basis for its ruling that the certificates of birth registered by [Tinitigan] are not reflective of the true and correct personal circumstances of the [children].

C. The CA misinterpreted the provisions of Act No. 3753, otherwise known as the Law on Registry of Civil Status. It is clear under this law that in case of an illegitimate child, the birth certificate must be signed and sworn to by the mother. Since the certificates of live birth registered by [Tinitigan] were not signed by [Barcelote], the same are void.

D. The cancellation of the certificates of live birth, registered by a father who is married to another and who abandoned his illegitimate children, is for the interest and welfare of [the children.]

## II.

In the alternative, the CA was incorrect in dismissing the petition for cancellation on the procedural ground that [Barcelote] could have filed a petition for correction of entries under Rule 108 of the Rules of Court. In this case, the petition for cancellation was filed under Rule 108 of the Rules of Court, which governs both "Petition for Cancellation or Correction of Entries in the Civil Registry". Under this rule, even substantial errors in a civil register may be corrected and the true facts established, provided the party aggrieved by the error avail of the appropriate adversary proceeding, which [Barcelote] did. Instead of dismissing the petition outright, considering that the jurisdictional requirements for correction [have] also been complied with, at the very least, the CA should have treated the petition for cancellation as one for correction and ordered the necessary corrections, especially as to the names of [the children].<sup>10</sup>

### The Ruling of the Court

We grant the petition.

Prior to its amendment, Article 176 of the Family Code<sup>11</sup> reads:

**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. The legitime of each illegitimate child shall

<sup>10</sup> Id. at 16-17.

<sup>11</sup> Took effect on 3 August 1988.

consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (Emphasis supplied)

This has been implemented in the National Statistics Office Administrative Order No. 1-93 or the Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration (IRR of Act No. 3753),<sup>12</sup> to wit:

RULE 23. Birth Registration of Illegitimate children. — (1) Children conceived or born during the marriage of the parents are legitimate. Children conceived and born outside a valid marriage unless otherwise provided in the Family Code are illegitimate.

(2) An illegitimate child born before 3 August 1988 and acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, the illegitimate child shall carry the surname of the acknowledging parent. If no parent acknowledged the child, he shall carry the surname of the mother.

(3) The name/s of the acknowledging parent/s, shall be indicated in the Certificate of Live Birth.

(4) **An illegitimate child born on or after 3 August 1988 shall bear the surname of the mother.** (Emphasis supplied)

Upon the effectivity of RA 9255,<sup>13</sup> the provision that illegitimate children shall use the surname and shall be under the parental authority of their mother was retained, with an added provision that they may use the surname of their father if their filiation has been expressly recognized by their father. Thus, Article 176 of the Family Code, as amended by RA 9255, provides:

**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 their 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 supplied)

In *Grande v. Antonio*,<sup>14</sup> we held that “the use of the word ‘may’ in [Article 176 of the Family Code, as amended by RA 9255] readily shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. The word ‘may’ is permissive and operates to confer discretion upon the illegitimate children.”<sup>15</sup> Thus, the Revised Implementing Rules and Regulations (IRR) of RA 9255, which

<sup>12</sup> Dated 18 December 1992.

<sup>13</sup> Approved on 24 February 2004.

<sup>14</sup> 727 Phil. 448 (2014).

<sup>15</sup> Id. at 455.

apply to all illegitimate children born during the effectivity of RA 9255, state:

Rule 8. Effects of Recognition

8.1 As a rule, an illegitimate child not acknowledged by the father shall use the surname of the mother.

8.2 Illegitimate child acknowledged by the father shall use the surname of the mother if no [Affidavit to Use the Surname of the Father] (AUSF) is executed.

8.3 An illegitimate child aged 0-6 years old acknowledged by the father shall use the surname of the father, if the mother or the guardian, in the absence of the mother, executes the AUSF.

8.4 An illegitimate child aged 7 to 17 years old acknowledged by the father shall use the surname of the father if the child executes an AUSF fully aware of its consequence as attested by the mother or guardian.

8.5 Upon reaching the age of majority, an illegitimate child acknowledged by the father shall use the surname of his father provided that he executes an AUSF without need of any attestation.

The law is clear that illegitimate children shall use the surname and shall be under the parental authority of their mother. The use of the word “**shall**” underscores its mandatory character. The **discretion** on the part of the illegitimate child to use the surname of the father is conditional upon proof of compliance with RA 9255 and its IRR.

Since the undisputed facts show that the children were born outside a valid marriage after 3 August 1988, specifically in June 2008 and August 2011, respectively, then they are the illegitimate children of Tinitigan and Barcelote. The children shall use the surname of their mother, Barcelote. The entry in the subject birth certificates as to the surname of the children is therefore incorrect; their surname should have been “Barcelote” and not “Tinitigan.”

We do not agree with the CA that the subject birth certificates are the express recognition of the children’s filiation by Tinitigan, because they were not duly registered in accordance with the law.

Act No. 3753, otherwise known as the Civil Registry Law,<sup>16</sup> states:

Section 5. Registration and Certification of Birth. – The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or

<sup>16</sup> Took effect on 27 February 1931.

midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

**In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses.**

In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

Any fetus having human features which dies after twenty four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died. (Emphasis supplied)

In *Calimag v. Heirs of Macapaz*,<sup>17</sup> we held that “under Section 5 of Act No. 3753, the declaration of *either* parent of the [newborn] **legitimate** child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an illegitimate child does the law require that the birth certificate be signed and sworn to jointly by the parents of the infant, or only by the mother if the father refuses to acknowledge the child.”<sup>18</sup>

The first paragraph of Section 5 of Act No. 3753 assumes that the newborn child is legitimate since our law accords a strong presumption in favor of legitimacy of children.<sup>19</sup> On the other hand, the fourth paragraph of Section 5 specifically provides that **in case of an illegitimate child**, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. The fourth paragraph of Section 5 specifically applies to an illegitimate child and likewise underscores its mandatory character with the use of the word “shall.” *Lex specialis derogat generali*. Where there is in the same statute a particular enactment and also a general one which, in its most comprehensive sense, would include what is

<sup>17</sup> G.R. No. 191936, 1 June 2016, 791 SCRA 620. Emphasis supplied, italics in the original.

<sup>18</sup> Id. at 634.

<sup>19</sup> Civil Code, Art. 220 provides: “In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression.”



embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language which are not within the provision of the particular enactment.<sup>20</sup>

Thus, it is **mandatory** that the mother of an illegitimate child signs the birth certificate of her child in all cases, irrespective of whether the father recognizes the child as his or not. The only legally known parent of an illegitimate child, by the fact of illegitimacy, is the mother of the child who conclusively carries the blood of the mother.<sup>21</sup> Thus, this provision ensures that individuals are not falsely named as parents.<sup>22</sup>

The mother must sign and agree to the information entered in the birth certificate because she has the parental authority and custody of the illegitimate child. In *Briones v. Miguel*,<sup>23</sup> we held that an illegitimate child is under the sole parental authority of the mother, and the mother is entitled to have custody of the child. The right of custody springs from the exercise of parental authority.<sup>24</sup> Parental authority is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses.<sup>25</sup>

Since it appears on the face of the subject birth certificates that the mother did not sign the documents, the local civil registrar had no authority to register the subject birth certificates. Under the IRR of Act No. 3753, the civil registrar shall see to it that the Certificate of Live Birth presented for registration is properly and completely filled up, and the entries are correct.<sup>26</sup> In case the entries are found incomplete or incorrect, the civil registrar shall require the person concerned to fill up the document completely or to correct the entries, as the case may be.<sup>27</sup>

Clearly, the subject birth certificates were not executed consistent with the provisions of the law respecting the registration of birth of illegitimate children. Aside from the fact that the entry in the subject birth certificates as to the surname of the children is incorrect since it should have been that of the mother, the subject birth certificates are also incomplete as they lacked the signature of the mother.

<sup>20</sup> *Bayan v. Executive Secretary Zamora*, 396 Phil. 623 (2000), citing *Manila Railroad Co. v. Insular Collector of Customs*, 52 Phil. 950 (1929).

<sup>21</sup> See Dissenting Opinion of Justice Carpio in *Tacson v. Commission on Elections*, 468 Phil. 421, 624 (2004).

<sup>22</sup> *Ara v. Pizarro*, G.R. No. 187273, 15 February 2017.

<sup>23</sup> 483 Phil. 483 (2004).

<sup>24</sup> *Santos, Sr. v. Court of Appeals*, 312 Phil. 482 (1995).

<sup>25</sup> *Id.*, citing *Reyes v. Alvarez*, 8 Phil. 732; 2 Manresa 21, cited in I A. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, COMMENTARIES AND JURISPRUDENCE 604 (1990 ed.).

<sup>26</sup> IRR of Act No. 3753, Rule 9 (1).

<sup>27</sup> IRR of Act No. 3753, Rule 9 (2).

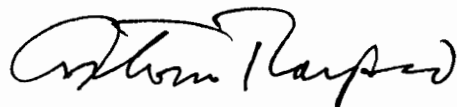
Acts executed against the provisions of mandatory or prohibitory laws shall be void.<sup>28</sup> In *Babiera v. Catotal*,<sup>29</sup> we declared as void and cancelled a birth certificate, which showed that the mother was already 54 years old at the time of the child's birth and which was not signed either by the civil registrar or by the supposed mother.

Accordingly, we declare the subject birth certificates void and order their cancellation for being registered against the mandatory provisions of the Family Code requiring the use of the mother's surname for her illegitimate children and Act No. 3753 requiring the signature of the mother in her children's birth certificates.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the *best interests of the child* shall be the primary consideration.<sup>30</sup>

**WHEREFORE**, we **GRANT** the petition. We **REVERSE** and **SET ASIDE** the 5 March 2015 Decision and the 3 December 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03223-MIN. We **REINSTATE** the 28 February 2013 Decision of the Regional Trial Court of Davao City, Branch 15, in SPC. PROC. No. 12,007-12. The Civil Registrar of the Office of the Local Civil Registry of Davao City is ordered to **CANCEL**: (1) the Certificate of Live Birth of Avee Kynna Noelle Barcelote Tinitigan under Registry No. 2008-21709 and (2) the Certificate of Live Birth of Yuhares Jan Barcelote Tinitigan under Registry No. 2011-28329.

**SO ORDERED.**




**ANTONIO T. CARPIO**  
Associate Justice

<sup>28</sup> Civil Code of the Philippines, Article 5 provides: "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

<sup>29</sup> 389 Phil. 34 (2000).

<sup>30</sup> §1 of Article 31 of the Convention on the Rights of the Child.

**WE CONCUR:**



**DIOSDADO M. PERALTA**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



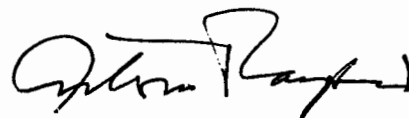
**MARVIC M.V.F. LEONEN**  
Associate Justice



**SAMUEL R. MARTIRES**  
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

## 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