

SECOND DIVISION**REPUBLIC OF THE PHILIPPINES, G.R. No. 166676**

Petitioner,

Present:

- versus -

QUISUMBING, *J.*, Chairperson,
CARPIO MORALES,
TINGA,
VELASCO, JR., and
BRION, *JJ.***JENNIFER B. CAGANDAHAN,**

Respondent.

Promulgated:

September 12, 2008

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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 Cagandahans 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 respondents 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 respondents uterus is not fully developed because of lack of female hormones, and that she has no monthly period. He further testified that respondents 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 respondents 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 petitioners 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 petitioners school records, voters 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 RESPONDENTS 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, respondents petition before the court *a quo* did not implead the local civil registrar. ^[5] The OSG further contends respondents 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 respondents 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 respondents 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 persons 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]

Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court. [19]

The entries envisaged in Article 412 of the Civil Code and correctable under Rule 108 of the Rules of Court are those provided in Articles 407 and 408 of the Civil Code:

ART. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

ART. 408. The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

The acts, events or factual errors contemplated under Article 407 of the Civil Code include even those that occur after birth. ^[20]

Respondent undisputedly has CAH. This condition causes the early or inappropriate appearance of male characteristics. A person, like respondent, with this condition produces too much androgen, a male hormone. A newborn who has XX chromosomes coupled with CAH usually has a (1) swollen clitoris with the urethral opening at the base, an ambiguous genitalia often appearing more male than female; (2) normal internal structures of the female reproductive tract such as the ovaries, uterus and fallopian tubes; as the child grows older, some features start to appear male, such as deepening of the voice, facial hair, and failure to menstruate at puberty. About 1 in 10,000 to 18,000 children are born with CAH.

CAH is one of many conditions ^[21] that involve intersex anatomy. During the twentieth century, medicine adopted the term intersexuality to apply to human beings who cannot be classified as either male or female. ^[22] The term is now of widespread use. According to Wikipedia, intersexuality is the state of a living thing of a gonochoristic species whose sex chromosomes, genitalia, and/or secondary sex characteristics are determined to be neither exclusively male nor female. An organism with intersex may have biological characteristics of both male and female sexes.

Intersex individuals are treated in different ways by different cultures. In most societies, intersex individuals have been expected to conform to either a male or female gender role. ^[23] Since the rise of modern medical science in Western societies, some intersex people with ambiguous external genitalia have had their genitalia surgically modified to resemble either male or female genitals. ^[24] More commonly, an intersex individual is considered as suffering from a disorder which is almost always recommended to be treated, whether by surgery and/or by taking lifetime medication in order to mold the individual as neatly as possible into the category of either male or female.

In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. It has been suggested that there is some middle ground between the sexes, a no-mans land for those

individuals who are neither truly male nor truly female.^[25] The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification.

In the instant case, if we determine respondent to be a female, then there is no basis for a change in the birth certificate entry for gender. But if we determine, based on medical testimony and scientific development showing the respondent to be other than female, then a change in the subjects birth certificate entry is in order.

Biologically, nature endowed respondent with a mixed (neither consistently and categorically female nor consistently and categorically male) composition. Respondent has female (XX) chromosomes. However, respondents body system naturally produces high levels of male hormones (androgen). As a result, respondent has ambiguous genitalia and the phenotypic features of a male.

Ultimately, we are of the view that where the person is biologically or naturally intersex the determining factor in his gender classification would be what the individual, like respondent, having reached the age of majority, with good reason thinks of his/her sex. Respondent here thinks of himself as a male and considering that his body produces high levels of male hormones (androgen) there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons, like respondent, is fixed.

Respondent here has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. Respondent could have undergone treatment and taken steps, like taking lifelong medication,^[26] to force his body into the categorical mold of a female but he did not. He chose not to do so. Nature has instead taken its due course in respondents development to reveal more fully his male characteristics.

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as ones sexuality and lifestyle preferences, much less on whether or

not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an incompetent ^[27] and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondents position and his personal judgment of being a male.

In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondents congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.

As for respondents change of name under Rule 103, this Court has held that a change of name is not a matter of right but of judicial discretion, to be exercised in the light of the reasons adduced and the consequences that will follow. ^[28] The trial courts grant of respondents change of name from Jennifer to Jeff implies a change of a feminine name to a masculine name. Considering the consequence that respondents change of name merely recognizes his preferred gender, we find merit in respondents change of name. Such a change will conform with the change of the entry in his birth certificate from female to male.

WHEREFORE, the Republics petition is **DENIED**. The Decision dated January 12, 2005 of the Regional Trial Court, Branch 33 of Siniloan, Laguna, is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

LEONARDO A. QUISUMBING
Associate Justice

WE CONCUR:

CONCHITA CARPIO MORALES
Associate Justice

DANTE O. TINGA
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

A T T E S T A T I O N

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 Courts Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons 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 Courts Division.

REYNATO S. PUNO
Chief Justice

[1] *Rollo*, pp. 29-32. Penned by Judge Florenio P. Bueser.

[2] *Id.* at 33-37.

[3] *Id.* at 31-32.

[4] *Id.* at 97.

[5] *Id.* at 99.

[6] *Id.* at 103.

[7] *Id.* at 104.

[8] *Id.* at 136.

[9] *Id.* at 127.

[10] *Id.* at 134.

[11] *Id.* at 136.

[12] *Republic v. Court of Appeals*, G.R. No. 103695, March 15, 1996, 255 SCRA 99, 106.

[13] *Ceruila v. Delantar*, G.R. No. 140305, December 9, 2005, 477 SCRA 134, 147.

[14] *Republic v. Benemerito*, G.R. No. 146963, March 15, 2004, 425 SCRA 488, 492.

[15] SEC. 6. *Construction.*- These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[16] Art. 376. No person can change his name or surname without judicial authority.

[17] 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 REGISTRAR WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES. APPROVED, MARCH 22, 2001.

[18] *Silverio v. Republic of the Philippines*, G.R. No. 174689, October 19, 2007, 537 SCRA 373, 388.

[19] *Id.* at 389.

[20] *Id.* at 389.

[21] (1) 5-alpha reductase deficiency; (2) androgen insensitivity syndrome; (3) aphallia; (4) clitoromegaly; (5) congenital adrenal hyperplasia; (6) gonadal dysgenesis (partial & complete); (7) hypospadias; (8) Kallmann syndrome; (9) Klinefelter syndrome; (10) micropenis; (11) mosaicism involving sex chromosomes; (12) MRKH (mullerian agenesis; vaginal agenesis; congenital absence of vagina); (13) ovo-testes (formerly called true hermaphroditism); (14) partial androgen insensitivity syndrome; (15) progestin

induced virilization; (16) Swyer syndrome; (17) Turner syndrome. [Intersexuality <<http://en.wikipedia.org/wiki/Intersexual>> (visited August 15, 2008).]

[22] Intersexuality <<http://en.wikipedia.org/wiki/Intersexual>> (visited August 15, 2008).

[23] Intersexuality <<http://en.wikipedia.org/wiki/Intersexual>> (visited August 15, 2008), citing Gagnon and Simon 1973.

[24] Intersexuality <<http://en.wikipedia.org/wiki/Intersexual>> (visited August 15, 2008).

[25] M.T. v. J.T. 140 N.J. Super 77 355 A. 2d 204.

[26] The goal of treatment is to return hormone levels to normal. This is done by taking a form of cortisol (dexamethasone), fludrocortisone, or hydrocortisone) every day. Additional doses of medicine are needed during times of stress, such as severe illness or surgery.

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Parents of children with congenital adrenal hyperplasia should be aware of the side effects of steroid therapy. They should report signs of infection and stress to their health care provider because increases in medication may be required. In addition, steroid medications cannot be stopped suddenly, or adrenal insufficiency will result.

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The outcome is usually associated with good health, but short stature may result even with treatment. Males have normal fertility. Females may have a smaller opening of the vagina and lower fertility. Medication to treat this disorder must be continued for life. (Congenital Adrenal Hyperplasia <<http://www.nlm.nih.gov/medlineplus/encyclopedia.html>>.)

[27] The word incompetent includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation. (See Sec. 2 of Rule 92 of the Rules of Court)

[28] *Yu v. Republic of the Philippines*, 123 Phil. 1106, 1110 (1966).