



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

GRACE M. GRANDE,
Petitioner,

G.R. No. 206248

Present:

- versus -

PATRICIO T. ANTONIO,
Respondent.

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,**
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

FEBRUARY 18, 2014

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DECISION

VELASCO, JR., *J.*:

Before this Court is a Petition for Review on Certiorari under Rule 45, assailing the July 24, 2012 Decision¹ and March 5, 2013 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 96406.

As culled from the records, the facts of this case are:

Petitioner Grace Grande (Grande) and respondent Patricio Antonio (Antonio) for a period of time lived together as husband and wife, although

* On leave.

** No part.

¹ *Rollo*, pp. 23-41. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison.

² *Id.* at 42-43.

Antonio was at that time already married to someone else.³ Out of this illicit relationship, two sons were born: Andre Lewis (on February 8, 1998) and Jerard Patrick (on October 13, 1999).⁴ The children were not expressly recognized by respondent as his own in the Record of Births of the children in the Civil Registry. The parties' relationship, however, eventually turned sour, and Grande left for the United States with her two children in May 2007. This prompted respondent Antonio to file a Petition for Judicial Approval of Recognition with Prayer to take Parental Authority, Parental Physical Custody, Correction/Change of Surname of Minors and for the Issuance of Writ of Preliminary Injunction before the Regional Trial Court, Branch 8 of Aparri, Cagayan (RTC), appending a notarized Deed of Voluntary Recognition of Paternity of the children.⁵

On September 28, 2010, the RTC rendered a Decision in favor of herein respondent Antonio, ruling that "[t]he evidence at hand is overwhelming that the best interest of the children can be promoted if they are under the sole parental authority and physical custody of [respondent Antonio]."⁶ Thus, the court *a quo* decreed the following:

WHEREFORE, foregoing premises considered, the Court hereby grants [Antonio's] prayer for recognition and the same is hereby judicially approved. x x x Consequently, the Court forthwith issues the following Order granting the other reliefs sought in the Petition, to wit:

- a. Ordering the Office of the City Registrar of the City of Makati to cause the entry of the name of [Antonio] as the father of the aforementioned minors in their respective Certificate of Live Birth and **causing the correction/change and/or annotation of the surnames of said minors in their Certificate of Live Birth from Grande to Antonio;**
- b. Granting [Antonio] the right to jointly exercise Parental Authority with [Grande] over the persons of their minor children, Andre Lewis Grande and Jerard Patrick Grande;
- c. Granting [Antonio] primary right and immediate custody over the parties' minor children Andre Lewis Grande and Jerard Patrick Grande who shall stay with [Antonio's] residence in the Philippines from Monday until Friday evening and to [Grande's] custody from Saturday to Sunday evening;
- d. Ordering [Grande] to immediately surrender the persons and custody of minors Andre Lewis Grande and Jerard Patrick Grande unto [Antonio] for the days covered by the Order;
- e. Ordering parties to cease and desist from bringing the aforementioned minors outside of the country, without the written consent of the other and permission from the court.
- f. Ordering parties to give and share the support of the minor children Andre Lewis Grande and Jerard Patrick Grande in the amount of

³ Id. at 25.

⁴ Id. at 10, 25, 44-46, 50.

⁵ Id. at 79.

⁶ Id. at 30.

P30,000 per month at the rate of 70% for [Antonio] and 30% for [Grande].⁷ (Emphasis supplied.)

Aggrieved, petitioner Grande moved for reconsideration. However, her motion was denied by the trial court in its Resolution dated November 22, 2010⁸ for being *pro forma* and for lack of merit.

Petitioner Grande then filed an appeal with the CA attributing grave error on the part of the RTC for allegedly ruling contrary to the law and jurisprudence respecting the grant of sole custody to the mother over her illegitimate children.⁹ In resolving the appeal, the appellate court modified in part the Decision of the RTC. The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is partly **GRANTED**. Accordingly, the appealed Decision of the Regional Trial Court Branch 8, Aparri Cagayan in SP Proc. Case No. 11-4492 is **MODIFIED** in part and shall hereinafter read as follows:

- a. **The Offices of the Civil Registrar General and the City Civil Registrar of Makati City are DIRECTED to enter the surname Antonio as the surname of Jerard Patrick and Andre Lewis, in their respective certificates of live birth, and record the same in the Register of Births;**
- b. [Antonio] is ORDERED to deliver the minor children Jerard Patrick and Andre Lewis to the custody of their mother herein appellant, Grace Grande who by virtue hereof is hereby awarded the full or sole custody of these minor children;
- c. [Antonio] shall have visitorial rights at least twice a week, and may only take the children out upon the written consent of [Grande]; and
- d. The parties are DIRECTED to give and share in support of the minor children Jerard Patrick and Andre Lewis in the amount of P30,000.00 per month at the rate of 70% for [Antonio] and 30% for [Grande]. (Emphasis supplied.)

In ruling thus, the appellate court ratiocinated that notwithstanding the father's recognition of his children, the mother cannot be deprived of her sole parental custody over them absent the most compelling of reasons.¹⁰ Since respondent Antonio failed to prove that petitioner Grande committed any act that adversely affected the welfare of the children or rendered her unsuitable to raise the minors, she cannot be deprived of her sole parental custody over their children.

⁷ Id. at 24-25.

⁸ Id. at 30.

⁹ Id. at 31.

¹⁰ Id. at 36-38.

The appellate court, however, maintained that **the legal consequence of the recognition made by respondent Antonio that he is the father of the minors, taken in conjunction with the universally protected “best-interest-of-the-child” clause, compels the use by the children of the surname “ANTONIO.”**¹¹

As to the issue of support, the CA held that the grant is legally in order considering that not only did Antonio express his willingness to give support, it is also a consequence of his acknowledging the paternity of the minor children.¹² Lastly, the CA ruled that there is no reason to deprive respondent Antonio of his visitorial right especially in view of the constitutionally inherent and natural right of parents over their children.¹³

Not satisfied with the CA’s Decision, petitioner Grande interposed a partial motion for reconsideration, particularly assailing the order of the CA insofar as it decreed the change of the minors’ surname to “Antonio.” When her motion was denied, petitioner came to this Court via the present petition. In it, she posits that Article 176 of the Family Code—as amended by Republic Act No. (RA) 9255, couched as it is in permissive language—may not be invoked by a father to compel the use by his illegitimate children of his surname without the consent of their mother.

We find the present petition impressed with merit.

The sole issue at hand is the right of a father to compel the use of his surname by his illegitimate children upon his recognition of their filiation. Central to the core issue is the application of Art. 176 of the Family Code, originally phrased as follows:

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 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.

This provision was later amended on March 19, 2004 by RA 9255¹⁴ which now reads:

Art. 176. – Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in

¹¹ Id. at 38.

¹² Id. at 39.

¹³ Id.

¹⁴ An Act Allowing Illegitimate Children to Use the Surname of Their Father Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise Known as the “Family Code of the Philippines,” signed into law on February 24, 2004 and took effect on March 19, 2004 fifteen (15) days after its publication on Malaya and the Manila Times on March 4, 2004.

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.)

From the foregoing provisions, it is clear that the general rule is that an illegitimate child **shall** use the surname of his or her mother. The exception provided by RA 9255 is, in case his or her filiation is expressly recognized by the 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. In such a situation, the illegitimate child may use the surname of the father.

In the case at bar, respondent filed a petition for judicial approval of recognition of the filiation of the two children with the prayer for the correction or change of the surname of the minors from Grande to Antonio when a public document acknowledged before a notary public under Sec. 19, Rule 132 of the Rules of Court¹⁵ is enough to establish the paternity of his children. But he wanted more: a judicial conferment of parental authority, parental custody, and an official declaration of his children's surname as Antonio.

Parental authority over minor children is lodged by Art. 176 on the mother; hence, respondent's prayer has no legal mooring. Since parental authority is given to the mother, then custody over the minor children also goes to the mother, unless she is shown to be unfit.

Now comes the matter of the change of surname of the illegitimate children. Is there a legal basis for the court *a quo* to order the change of the surname to that of respondent?

Clearly, there is none. Otherwise, the order or ruling will contravene the explicit and unequivocal provision of Art. 176 of the Family Code, as amended by RA 9255.

¹⁵ Rule 132, Sec. 19. *Classes of Documents*. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or a foreign country;
- (b) **Documents acknowledged before a notary public except last will and testaments; and**
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

Art. 176 gives illegitimate children the right to decide if they want to use the surname of their father or not. It is not the father (herein respondent) or the mother (herein petitioner) who is granted by law the right to dictate the surname of their illegitimate children.

Nothing is more settled than that when the law is clear and free from ambiguity, it must be taken to mean what it says and it must be given its literal meaning free from any interpretation.¹⁶ Respondent's position that the court can order the minors to use his surname, therefore, has no legal basis.

On its face, Art. 176, as amended, is free from ambiguity. And where there is no ambiguity, one must abide by its words. The use of the word "may" in the provision 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 discretion¹⁷ upon the illegitimate children.

It is best to emphasize once again that the yardstick by which policies affecting children are to be measured is their best interest. On the matter of children's surnames, this Court has, time and again, rebuffed the idea that the use of the father's surname serves the best interest of the minor child. In *Alfon v. Republic*,¹⁸ for instance, this Court allowed even a **legitimate** child to continue using the surname of her mother rather than that of her legitimate father as it serves her best interest and there is no legal obstacle to prevent her from using the surname of her mother to which she is entitled. In fact, in *Calderon v. Republic*,¹⁹ this Court, upholding the best interest of the child concerned, even allowed the use of a surname different from the surnames of the child's father or mother. Indeed, the rule regarding the use of a child's surname is second only to the rule requiring that the child be placed in the best possible situation considering his circumstances.

In *Republic of the Philippines v. Capote*,²⁰ We gave due deference to the choice of an illegitimate minor to use the surname of his mother as it would best serve his interest, thus:

The foregoing discussion establishes the significant connection of a person's name to his identity, his status in relation to his parents and his successional rights as a legitimate or illegitimate child. For sure, these matters should not be taken lightly as to deprive those who may, in any way, be affected by the right to present evidence in favor of or against such change.

¹⁶ *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255; *Chartered Bank Employees Association v. Ople*, No. L-44717, August 28, 1985, 138 SCRA 273; *Quijano v. Development Bank of the Philippines*, G.R. No. 26419, October 19, 1970, 35 SCRA 270; *Luzon Surety Co., Inc. v. De Garcia*, No. L-25659, October 31, 1969, 30 SCRA 111.

¹⁷ Agpalo, Ruben, STATUTORY CONSTRUCTION 460 (6th ed., 2009); citations omitted.

¹⁸ No. L-51201, May 29, 1980, 97 SCRA 858.

¹⁹ 126 Phil. 1 (1967).

²⁰ G.R. No. 157043, February 2, 2007, 514 SCRA 76, 83-84.

The law and facts obtaining here favor Giovanni's petition. Giovanni availed of the proper remedy, a petition for change of name under Rule 103 of the Rules of Court, and complied with all the procedural requirements. After hearing, the trial court found (and the appellate court affirmed) that the evidence presented during the hearing of Giovanni's petition sufficiently established that, under Art. 176 of the Civil Code, Giovanni is entitled to change his name as he was never recognized by his father while his mother has always recognized him as her child. A change of name will erase the impression that he was ever recognized by his father. **It is also to his best interest as it will facilitate his mother's intended petition to have him join her in the United States. This Court will not stand in the way of the reunification of mother and son.** (Emphasis supplied.)

An argument, however, may be advanced advocating the mandatory use of the father's surname upon his recognition of his illegitimate children, citing the Implementing Rules and Regulations (IRR) of RA 9255,²¹ which states:

Rule 7. Requirements for the Child to Use the Surname of the Father

7.1 For Births Not Yet Registered

7.1.1 The illegitimate child **shall** use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.

7.1.2 If admission of paternity is made through a private instrument, the child **shall** use the surname of the father, provided the registration is supported by the following documents:

x x x x

7.2. For Births Previously Registered under the Surname of the Mother

7.2.1 If filiation has been expressly recognized by the father, the child **shall** use the surname of the father upon the submission of the accomplished AUSF [Affidavit of Use of the Surname of the Father].

7.2.2 If filiation has not been expressly recognized by the father, the child **shall** use the surname of the father upon submission of a public document or a private handwritten instrument supported by the documents listed in Rule 7.1.2.

7.3 Except in Item 7.2.1, the consent of the illegitimate child is required if he/she has reached the age of majority. The consent may be contained in a separate instrument duly notarized.

x x x x

Rule 8. Effects of Recognition

8.1 For Births Not Yet Registered

²¹ Office of Civil Registrar General (OCRG) Administrative Order No. 1, Series of 2004, issued by the National Statistics Office-Office of the Civil Registrar General. Approved on May 14, 2004, published on May 18, 2004 on the Manila Times, and took effect on June 2, 2004.

8.1.1 The surname of the father **shall** be entered as the last name of the child in the Certificate of Live Birth. The Certificate of Live Birth shall be recorded in the Register of Births.

x x x x

8.2 For Births Previously Registered under the Surname of the Mother

8.2.1 If admission of paternity was made either at the back of the Certificate of Live Birth or in a separate public document or in a private handwritten document, the public document or AUSF shall be recorded in the Register of Live Birth and the Register of Births as follows:

*“The surname of the child is **hereby changed** from (original surname) to (new surname) pursuant to RA 9255.”*

The original surname of the child appearing in the Certificate of Live Birth and Register of Births shall not be changed or deleted.

8.2.2 If filiation was not expressly recognized at the time of registration, the public document or AUSF shall be recorded in the Register of Legal Instruments. Proper annotation shall be made in the Certificate of Live Birth and the Register of Births as follows:

*“Acknowledged by (name of father) on (date). The surname of the child is **hereby changed** from (original surname) on (date) pursuant to RA 9255.”* (Emphasis supplied.)

Nonetheless, the hornbook rule is that an administrative issuance cannot amend a legislative act. In *MCC Industrial Sales Corp. v. Ssangyong Corporation*,²² We held:

After all, the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is found in the legislative enactment itself. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the Legislature. Thus, if a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails, because the law cannot be broadened by a mere administrative issuance — an administrative agency certainly cannot amend an act of Congress.

Thus, We can disregard contemporaneous construction where there is no ambiguity in law and/or the construction is clearly erroneous.²³ What is more, this Court has the constitutional prerogative and authority to strike down and declare as void the rules of procedure of special courts and quasi-

²² G.R. No. 170633, October 17, 2007, 536 SCRA 408, 453.

²³ *Regalado v. Yulo*, 61 Phil. 173 (1935); *Molina v. Rafferty*, 37 Phil. 545 (1918).

judicial bodies²⁴ when found contrary to statutes and/or the Constitution.²⁵ Section 5(5), Art. VIII of the Constitution provides:

Sec. 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.** (Emphasis supplied.)

Thus, We exercise this power in voiding the above-quoted provisions of the IRR of RA 9255 insofar as it provides the mandatory use by illegitimate children of their father's surname upon the latter's recognition of his paternity.

To conclude, the use of the word "shall" in the IRR of RA 9255 is of no moment. The clear, unambiguous, and unequivocal use of "may" in Art. 176 rendering the use of an illegitimate father's surname discretionary controls, and **illegitimate children are given the choice on the surnames by which they will be known.**

At this juncture, We take note of the letters submitted by the children, now aged thirteen (13) and fifteen (15) years old, to this Court declaring their opposition to have their names changed to "Antonio."²⁶ However, since these letters were not offered before and evaluated by the trial court, they do

²⁴ The Office of the Civil Registrar General exercises quasi-judicial powers under Rule 13, Title 1, of NSO Administrative Order 1-93, December 18, 1993, *Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration*:

RULE 13. Posting of the Pending Application. — (1) A notice to the public on the pending application for delayed registration shall be posted in the bulletin board of the city/municipality for a period of not less than ten (10) days.

(2) If after ten (10) days, no one opposes the registration, the civil registrar shall evaluate the veracity of the statements made in the required documents submitted.

(3) If after proper evaluation of all documents presented and investigation of the allegations contained therein, the civil registrar is convinced that the event really occurred within the jurisdiction of the civil registry office, and finding out that said event was not registered, he shall register the delayed report thereof.

(4) The civil registrar, in all cases of delayed registration of birth, death and marriage, shall conduct an investigation whenever an opposition is filed against its registration by taking the testimonies of the parties concerned and witnesses in the form of questions and answers. After investigation, the civil registrar shall forward his findings and recommendations to the Office of the Civil Registrar-General for appropriate action.

(5) The Civil Registrar-General may, after review and proper evaluation, deny or authorize the registration.

²⁵ *Tan v. COMELEC*, G.R. Nos. 166143-47 & 166891, November 20, 2006, 507 SCRA 352, 370-371.

²⁶ *Rollo*, pp. 45-46.

not provide any evidentiary weight to sway this Court to rule for or against petitioner.²⁷ A proper inquiry into, and evaluation of the evidence of, the children's choice of surname by the trial court is necessary.


WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The July 24, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 96406 is **MODIFIED**, the dispositive portion of which shall read:

WHEREFORE, the appeal is partly **GRANTED**. Accordingly, the appealed Decision of the Regional Trial Court Branch 8, Aparri Cagayan in SP Proc. Case No. 11-4492 is **MODIFIED** in part and shall hereinafter read as follows:

- a. [Antonio] is **ORDERED** to deliver the minor children Jerard Patrick and Andre Lewis to the custody of their mother herein appellant, Grace Grande who by virtue hereof is hereby awarded the full or sole custody of these minor children;
- b. [Antonio] shall have visitation rights²⁸ at least twice a week, and may only take the children out upon the written consent of [Grande];
- c. The parties are **DIRECTED** to give and share in support of the minor children Jerard Patrick and Andre Lewis in the amount of P30,000.00 per month at the rate of 70% for [Antonio] and 30% for [Grande]; and
- d. **The case is REMANDED to the Regional Trial Court, Branch 8 of Aparri, Cagayan for the sole purpose of determining the surname to be chosen by the children Jerard Patrick and Andre Lewis.**

Rule 7 and Rule 8 of the Office of the Civil Registrar General Administrative Order No. 1, Series of 2004 are **DISAPPROVED** and hereby declared **NULL** and **VOID**.


SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

²⁷ Rule 132, Sec. 34. *Offer of evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

²⁸ In family law, the right granted by a court to a parent or other relative who is deprived custody of a child to visit the child on a regular basis. *See* DICTIONARY OF LEGAL TERMS 529 (3rd ed.).

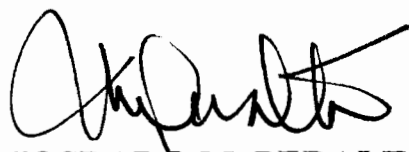
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice

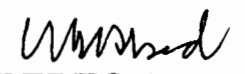

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(on leave)
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

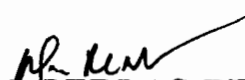

ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

(No part)
JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



MARIA LOURDES P. A. SERENO
Chief Justice

