



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 January 2021** which reads as follows:*

“G.R. No. 253540 (*Sandra Mae G. Torre Franca v. The City Civil Registry of Tagum City, Davao del Norte; and Terrence Edward Matias Fernandez*) — The doctrine of judicial hierarchy of courts requires that recourse must first be made to the lower ranked courts exercising concurrent jurisdiction with a higher court. Thus, an assailed decision of the regional trial court on appeal must first be brought before the Court of Appeals. This general rule, however, admits of certain exceptions, such as when the case appealed does not involve factual, but purely legal questions, as here.¹

The Court, nonetheless, finds no compelling reason to reverse the trial court’s dispositions² in this case.

Article 176 of the Family Code as amended by Republic Act No. (RA) 9255³ decrees:

Article 176. **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 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. x xx (Emphases supplied)

¹ *Dio v. Subic Bay Marine Exploratorium, Inc.*, 736 Phil. 216, 224 (2014), citing *Bonifacio v. RTC of Makati, Branch 149*, 634 Phil. 348 (2010).

² Penned by Presiding Judge Ma. Susana T. Baua; *Rollo*, pp. 19-21.

³ 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"

Meanwhile, Administrative Order No. 1⁴(AO 1) Series of 2016 of the Office of the Civil Registrar General, implementing the provisions of RA 9255 ordains:

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 AUSF is executed.

x x x (Emphases supplied)

Here, petitioner Sandra Mae G. Torre Franca (petitioner) essentially maintains that the trial court erred in dismissing her petition,⁵ claiming that pursuant to Article 176 of the Family Code the use of the mother's surname by an illegitimate child such as her daughter Theresse May is **mandatory**, especially in the absence of an Affidavit to Use the Surname of the Father (AUSF) as required by Rule 8.2 of AO 1, s. 2016. She insists that her daughter's use of the surname of the father, Terrence Edward Matias "Fernandez" has no basis in law and should therefore be changed to her surname "Torre Franca."

We are not persuaded.

First. *Grande v. Antonio*⁶ clearly ordained that when an illegitimate child is acknowledged and recognized by his or her father, said child will have the choice on which surname to use. As held, *the clear, unambiguous, and unequivocal use of "may" in Art. 176 rendering the use of an illegitimate father's surname discretionary controls, and [acknowledged] illegitimate children are given the choice on the surnames by which they will be known.* Thus, just as how the use of the father's surname is discretionary on the acknowledged illegitimate child, so too, is the use of his or her mother's surname.

Second. Petitioner may not rely on the absence of an AUSF to compel her daughter's use of her surname. For an AUSF was not yet required at the time Theresse May's birth certificate⁷ was registered. To be sure, the above-cited rules were promulgated only in 2016,⁸ while records show that Theresse

⁴ Entitled "REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9255 (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)," approved on March 22, 2016.

⁵ *Rollo*, pp. 3-18.

⁶ 727 Phil. 448, 460 (2014).

⁷ *Rollo*, p. 23.

⁸ Rule 12. *Effectivity.* —

This Revised Implementing Rules and Regulations shall take effect 15 days after its publication in a newspaper of general circulation in the Philippines.

May's birth certificate was registered on July 21, 2015.

The governing rule when Therese May's birth was registered was still AO 1 Series of 2004, thus:

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.

Verily, AO 1, s. 2004 only requires an AUSF when the child's birth had previously been registered using the mother's surname. For original registrations as in the case of Therese May, a public document executed by the father, either at the back of the Certificate of Live Birth or in a separate document, would suffice.

Here, petitioner does not deny as she herself asserts that Therese May's father Terrence Edward Matias Fernandez executed an Affidavit of Acknowledgment/Admission of Paternity which was annotated on the dorsal portion of Therese May's birth certificate. Thus, Therese May's use of her father's surname cannot be deemed erroneous.

Petitioner, nevertheless, insists on the application of AO 1, s. 2016, claiming that AO 1, s. 2004 had already been voided by *Grande*.

Approved this 22nd of March 2016.

We disagree.

Grande voided AO 1, s. 2004 only *insofar as it provides the mandatory use by illegitimate children of their father's surname upon the latter's recognition of his paternity*. Nothing more. Thus, the requirements under Rule 7 thereof for an illegitimate child's use of his or her father's surname still governed the registration of Theresse May's birth. Compliance with Rule 7, however, would only entitle the acknowledged illegitimate child the right to choose which of his or her parents' surname to use.

To give credence to petitioner's interpretation and allow the retroactive application of AO 1, s. 2016 would wreak havoc on the Local Civil Registries which had registered the names of illegitimate children prior to its effectivity. Following her argument, countless entries and registrations, and as many birth certificates would be deemed erroneous, hence, susceptible to cancellation.

At any rate, the registration of an illegitimate child's birth certificate is ideally a joint act between both parents. The recent case of *Barcelote v. Republic*,⁹ elucidates:

"[O]nly 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."

x x x [T]he fourth paragraph of Section 5 [of Act No. 3753] 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."**
x x x

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. Thus, this provision ensures that individuals are not falsely named as parents.

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. x x x (Emphases and underscoring supplied)

Here, Theresse May's birth certificate was jointly registered by her parents before their relationship turned sour. Indeed, the signature of petitioner herself is apparent on Theresse May's birth certificate, indicating her consent, acknowledgment and verification of its contents, including the use of

⁹ 815 Phil. 664, 277-278 (2017).

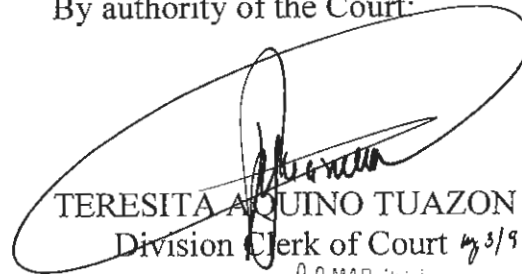
“Fernandez” as her daughter’s surname.

In sum, the requirements for Theresse May’s use of her father’s surname were fulfilled when her birth was registered. Sandra Mae, too, consented to registering Theresse May’s birth under the surname “Fernandez.” There is no apparent error, therefore, in Theresse May’s birth certificate which requires correction. The Court, nonetheless, reiterates its pronouncement in *Grande* - illegitimate children are given the choice on the surnames by which they will be known. Thus, this resolution will not bar Theresse May from electing her surname of choice in the proper case.

Accordingly, the Petition is denied for utter lack of merit.

SO ORDERED.” (Rosario, *J.*, designated additional member per S.O. 2797 dated November 5, 2020)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *ag 3/9*
09 MAR 2021

ATTY. MARY JUSTICE P. AURELIO-YAP (reg)
Counsel for Petitioner
Yap Building, First Avenue, Magugpo South
Tagum City, Davao del Norte

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

TERRENCE EDWARD MATIAS FERNANDEZ (reg)
Respondent
654-5 Aurora Street, Davao City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 2
Tagum City, Davao del Norte
(Sp. Proc. Case No. 2171)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

Please notify the Court of any change in your address.
GR253540. 01/25/2021(17)