EN BANC

G.R. No. 215370 – RICHELLE BUSQUE ORDOÑA, *Petitioner*, **v. THE LOCAL CIVIL REGISTRAR OF PASIG CITY and ALLAN V. FULGUERAS,** *Respondents.*

Promulgated:

November 9, 2021

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

As a brief background, petitioner Richelle Busque Ordoña (petitioner) is married to a certain Ariel O. Libut (Libut), but their estrangement led to their separation *de facto*. While their marriage was still subsisting, petitioner worked abroad. There, she met Allan V. Fulgueras (Fulgueras), and had an intimate relationship with him, resulting in her pregnancy with the latter as the putative father. When petitioner went back to the Philippines, she gave birth to a son, whom she named "Alrich Paul Fulgueras" (Alrich Paul), as evinced in his Certificate of Live Birth. The said certificate also reflected Fulgueras as the child's father. Later on, petitioner filed a Rule 108 petition before the court *a quo* seeking the following corrections in her son's Certificate of Live Birth: (1) change of Alrich Paul's surname from Fulgueras (his supposed biological father's surname) to Ordoña (his mother's maiden surname); and (2) deletion of the entries in the paternal information therein pertaining to Fulgueras.[1]

However, in seeking such corrections, it is discerned that petitioner effectively attacked the legitimacy and filiation of Alrich Paul through a Rule 108 petition. To my mind, this cannot be allowed, considering that the Family Code fixes a civil status for a child born in wedlock, and concomitant thereto, the well-settled rule that the civil status of a person cannot be attacked collaterally.[2] Indeed, **the legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law**.[3] As aptly pointed out by the *ponencia*, case law categorically provides that "the legitimacy and filiation of children cannot be collaterally attacked in a petition for correction of entries in the certificate of live birth."[4]

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1 See *ponencia*, p. 2.

2 See *Tison v. Court of Appeals*, 342 Phil. 550, 558 (1997).

3 See id. See also Articles 170 and 171 of the Family Code and *Geronimo v. Santos*, 770 Phil. 364, 377-378 (2015).

4 *Ponencia*, p. 9, citing *Miller v. Miller*, G.R. No. 200344, August 28, 2019, and *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, 622 Phil. 654, 659 (2009).

In any event, even assuming *arguendo* that what was filed was a direct action to impugn Alrich Paul's legitimacy and filiation, the same must still fail as it was not filed by the proper party, and within the limited period provided by law.

To expound, Articles 170 and 171 of the Family Code respectively read:

> Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.
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> If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.
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> Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:
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> (1) If the husband should die before the expiration of the period fixed for bringing his action;
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> (2) If he should die after the filing of the complaint without having desisted therefrom; or
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> (3) If the child was born after the death of the husband.

Based on the foregoing provisions, it is only the husband – or in proper cases, his heirs – who may file a direct action impugning the legitimacy and filiation of a child born within a valid and subsisting wedlock, and such action must be brought within one (1), two (2), or three (3) years, from knowledge of the child's birth or its recording in the civil register, depending on the attendant circumstances. As worded, these provisions' enumeration as to who may properly file such direct action appears to be exclusive, and hence, precludes any other person outside of the same to make such filing. A basic principle in statutory construction – which applies here – is "*expressio unius est exclusio alterius*" – where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. This rule and its variations are canons of restrictive interpretation, which are based on the rules of logic and the natural workings of the human mind. It necessarily proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[5]

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[5] See *Romualdez v. Marcelo*, 529 Phil. 90, 106 (2006); citation omitted.

In *Geronimo v. Santos*,[6] the Court explained the operation of Article 171 of the Family Code:

> Upon the expiration of the periods provided in Article 170, the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring during the period of the conception of the child, may still be easily available.
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> **Only the husband can contest the legitimacy of a child born to his wife**. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none – even his heirs – can impugn legitimacy; that would amount to an insult to his memory.[7]

Applying the foregoing to this case, only Libut (or in proper cases, his heirs), as petitioner's legal husband, may file a direct action to impugn Alrich Paul's legitimacy and filiation. Even petitioner herself, as the child's mother, could not do so in light of Article 167[8] of the Family Code, which expressly prohibits mothers from impugning the legitimacy and filiation of their own children.[9]

Indeed, there is a seeming unfairness in the law insofar as allowing only the husband to impugn legitimacy and/or filiation. However, the Court is constrained to apply and interpret the law as it is, unless and until it is declared unconstitutional in a direct action for such purpose, or it is amended by remedial legislation. Thus, in the latter respect, Congress' attention must be called to this apparent disparity between the mother's and the father's legal standing in assailing the legitimacy and/or filiation of a child.

On a related matter, it deserves clarification that while the Court, in the 2020 case of *Alanis III v. Court of Appeals* (*Alanis III*),[10] ruled that a legitimate child is

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6 770 Phil. 364 (2015).

7 Id. at 378, citing *Tison v. Court of Appeals*, supra note 2, at 558-559.

8 Article 167 of the Family Code reads:

> Art. 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

9 "The fact that Florencia's husband is living and there is a valid subsisting marriage between them gives rise to the presumption that a child born within that marriage is legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect innocent offspring from the odium of illegitimacy." (*Cabatania v. Court of Appeals*, 484 Phil. 42, 51-52 [2004]; See also *Liyao, Jr. v. Tanhoti-Liyao*, 428 Phil. 628, 640-641 [2002])

10 G.R. No. 216425, November 11, 2020.

entitled to use the surname of either parent as his/her surname, such holding finds no application in this case. A closer reading of *Alanis III* would reveal that it involved ***a petition for change of name under Rule 103 and was filed by the concerned individual himself***, Anacleto Ballaho Alanis III, who wanted to have his name changed to Abdulhamid Ballaho. The ground invoked in that case was the risk of confusion because therein petitioner (who was then already an adult) had been using the name Abdulhamid Ballado since he was a child and all documents relevant to him, from school records to government documents, referred to him as Abdulhamid Ballaho, not Anacleto Ballaho Alanis III. More importantly, the petition for change of name filed in that case did not have any effect on therein petitioner's status of legitimacy and/or filiation. In contrast to this case, the instant petition is one for Rule 108 and was filed by herein petitioner, purportedly on behalf of her minor child, Alrich Paul. As earlier intimated, the latter petition does not only seek to change Alrich Paul's name to avoid confusion as in *Alanis III*, but its grant would effectively affect the filial tie between Alrich Paul and his putative biological father, respondent Fulgueras.

There are fundamental differences between petitions filed under Rule 103 and those filed under Rule 108. As per the rules, a petition for change of name under Rule 103 must be filed by the "person desiring to change his name."[11] A Rule 103 petition stands on one's own **personal right** to bring an action to change his name based on *reasonable grounds*, *e.g.*, to avoid confusion, to change a ridiculous name or one tainted with dishonor, or to change a name that is very difficult to pronounce. On the other hand, a petition for cancellation or correction of entry under Rule 108 can be filed by "[a]ny person interested in any act, event, order or decree concerning the civil status of persons."[12] Thus, a change of name effected under Rule 108 is only a *consequence or by-product* of another act, event, order or decree; a Rule 108 petition is not an action brought for the very purpose of changing one's name. Necessarily, therefore, the issues tried in a Rule 108 petition revolve around the act, event, order or decree upon which the correction or change in entry is sought, and not on the reasonableness of the change in name sought as in a Rule 103 petition. Given these differences, a Rule 108 petition cannot be simplified and resolved based on the parameters of a Rule 103 petition. The two petitions are different and a Rule 108 petition must establish the act, event, order or decree upon which it is based.

Here, it bears reiterating that petitioner filed a Rule 108 petition, citing as basis, *inter alia*, the act or event that it was only made to appear that respondent Fulgueras signed the Affidavit of Acknowledgement/Admission of Paternity attached to Alrich Paul's Certificate of Live Birth, when in truth, he could not have done so as he was abroad when the latter was born. As such, *Alanis III*, which involved a Rule 103 petition, cannot be made to apply here.

Finally, it should be pointed out that case law has already settled that petitions affecting the names of minor children filed by their parents – as in this case – ***should be dismissed on the ground of prematurity***. It is ratiocinated that since it will be the

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[11] See Section 1, Rule 103 of the Rules of Court.
[12] See Section 1, Rule 108 of the Rules of Court.

minor child who will be ultimately affected by a change of name, then he/she should be given the opportunity to decide for himself/herself upon reaching adulthood.[13] In *Wang v. Cebu City Civil Registrar*,[14] the Court ruled:

> In addition, petitioner is only a minor. Considering the nebulous foundation on which his petition for change of name is based, **it is best that the matter of change of his name be left to his judgment and discretion when he reaches the age of majority**. As he is of tender age, he may not yet understand and appreciate the value of his name and granting of the same at this point may just prejudice him in his rights under our laws.[15] (Emphasis and underscoring supplied)

Following settled case law on the matter, I respectfully submit that the instant petition should be dismissed, without prejudice to Alrich Paul filing a Rule 103 petition – based on, *inter alia*, his personal right to choose his surname between that of his father or his mother, pursuant to *Alanis III* – once he reaches adulthood.

In view of the foregoing, I vote to **DENY** the present petition.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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13 See *Wang v. Cebu City Civil Registrar*, 494 Phil. 149, 163 (2005); See also *Republic v. Marcos*, 261 Phil. 319, 326-327 (1990); *Padilla v. Republic*, 199 Phil. 226, 230 (1982); and *Moore v. Republic*, 118 Phil. 285, 288 (1983).

14 See id.

15 See id. at 163.