

NO. 23247

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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JEFFREY A. HOFFMAN, Respondent/Plaintiff-Appellee

vs.

PAMELA J. HOFFMAN, Petitioner/Defendant-Appellant

and

JOHN J. and JODI MEYER,  
Respondents/Intervenors-Appellees

and

JANICE WOLF, Respondent/Custody  
Guardian ad Litem-Appellee

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(FC-D NO. 99-1001)

ORDER DISMISSING APPLICATION FOR CERTIORARI

On October 21, 2001, the Intermediate Court of Appeals (ICA)<sup>1</sup> issued a Summary Disposition Order (SDO) affirming several orders of the family court of the first circuit<sup>2</sup> (the court), the last of which was a decree granting divorce and awarding child custody in Hoffman v. Hoffman, FC-D No. 99-1001. The decree awarded permanent physical and legal custody of the natural children of Petitioner/Defendant-Appellant Pamela J. Hoffman

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<sup>1</sup> Acting Chief Judge Corinne K.A. Watanabe and Associate Judges John S.W. Lim and Daniel R. Foley decided this case.

<sup>2</sup> The Honorable Lillian Ramirez-Uy decided the custody matter which is the issue raised on appeal.

(Mother) to their paternal uncle and aunt, Respondents/  
Intervenors-Appellees John J. Meyer and Jodi Meyer (collectively,  
Intervenors). On November 13, 2001, Mother filed an application  
for certiorari from the order.

Upon review of the papers filed on May 17, 2002 by  
Intervenors and the record, it appears that proceedings are  
simultaneously pending before this court and before the  
Thirteenth Judicial District Court, County of Sandoval, State of  
New Mexico (the New Mexico court) concerning the custody decision  
of the court in FC-D No. 99-1001. In the proceeding before this  
court, Mother seeks, through her application, to vacate the  
Hawai'i family court's decision awarding custody to Intervenors  
and not to Mother. In the proceeding before the New Mexico  
court, Mother similarly seeks custody from Intervenors. A May 3,  
2002 stipulation entered into in the New Mexico court among  
Respondent/Plaintiff-Appellee Jeffrey A. Hoffman (Father),  
Mother, and Intervenors and ordered by that court declares that  
(1) the aforesaid New Mexico court has jurisdiction over the  
subject matter and the parties, (2) Hawai'i no longer has subject  
matter jurisdiction as to custody , (3) "in the event that the  
Supreme Court of Hawaii reverses the orders set forth in the  
Decree in the Hawaii matter, . . . any direct order regarding  
custody and/or timesharing, or any other matter determined by the  
Hawaii courts shall be moot as to the parties herein and such  
order shall not be enforced in any jurisdiction," (4) "[i]n the  
event the Supreme Court of the State of Hawaii affirms the Decree

and the ruling of the [ICA], the Decree shall be a valid order of the State of Hawaii and granted full faith and credit in the State of New Mexico, subject to further order of this Court in the State of New Mexico[,]" (emphasis added) and (5) "in the event the Supreme Court of Hawaii remands the matter before it in the Hawaii [a]ppeal, any such remand shall be considered only in the State of New Mexico in accordance with the laws of the State of New Mexico." Further, "[Father and Intervenors] . . . stipulate and agree that they will not voluntarily file a Motion to Dismiss the Hawaii [a]ppeal. [Mother] acknowledges that the sole purpose of not stipulating to the voluntary dismissal of the Hawaii [a]ppeal is her interest in the rule of law in the State of Hawaii."

It appears that an opinion by this court "on the rule of law" in Hawai'i on the custody issue cannot ultimately affect custody matters in New Mexico concerning Mother and Intervenors. On September 25, 2002, this court issued an order to show cause as to why this certiorari proceeding should not be dismissed as moot. On October 7, 2002, Mother responded that the appeal should not be dismissed because (1) "the Family Court's finding of parental unfitness is . . . a permanent and significant stigma[,]" (2) "a finding of parental unfitness may indeed either directly or indirectly affect [Mother's] status in future legal proceedings[,]" (3) "the Family Court's adjudication of [Mother's] parental unfitness may also have non-legal collateral consequences[,]" and (4) it "concerns matters involving questions

that affect the public interest and are capable of repetition yet evading review.”

As mentioned, the parties and children are no longer in this jurisdiction and the parties have stipulated to both subject matter and personal jurisdiction in the New Mexico court. A decision by this court will have no effect on the custody status of the children and/or will be subject to further orders of the New Mexico court. Under such circumstances, this court would be rendering an advisory opinion. See Wong v. Board of Regents, 62 Haw. 391, 394-95, 616 P.2d 201, 204 (1980) (“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”

(Citing Anderson v. W.G. Rawley Co., 27 Haw. 150, 152 (1923); Territory by Choy v. Damon, 44 Haw. 557, 562, 356 P.2d 386, 390 (1960), cert. denied, 368 U.S. 838 (1961).)). Inasmuch as the parties have removed themselves and the children to another state and stipulated to jurisdiction in another court, and all issues on appeal, including unfitness, are subject to further order of the New Mexico court, it is not likely that the issue raised on certiorari will likely recur insofar as this court is concerned. See In re Thomas, 73 Haw. 223, 228, 832 P.2d 253, 255 (1992) (“[T]he circumstances under which this situation may recur are

too conjectural for appellate review." ). Accordingly, the matter is moot and, therefore,

IT IS HEREBY ORDERED that the application for certiorari is dismissed.

DATED: Honolulu, Hawai'i, November 15, 2002.

Richard Lee and Paul D. Hicks (Law Office of Richard Lee), on the application for petitioner/defendant-appellant.