
NO. 24639

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

No. 24639
JANE DOE, Petitioner-Appellant,

vs.

JOHN DOE, Defendant-Appellee.
(FC-P NO. 93-0625)

No. 24657
JANE DOE, Petitioner-Appellant,

vs.

JOHN DOE, Defendant-Appellee.
(FC-P NO. 93-0925)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-P NOS. 93-0625 & 93-0925)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiff-appellant Jane Doe (Mother) appeals from the Family Court of the First Circuit's¹ September 20, 2001 order awarding defendant-appellee John Doe (Father) sole legal and physical custody of their two children and October 1, 2001 judgment awarding Father attorneys' fees and costs. Mother contends that the family court erred in: (1) denying her motion to decline jurisdiction; (2) relying on inadmissible evidence in

¹ The Honorable R. Mark Browning and John C. Bryant presided over the matters pertinent to this appeal.

awarding temporary custody to Father and finding that "a grave risk exists that the children will be psychologically harmed if they were returned to their mother[;]" (3) awarding fees to Custody Guardian Ad Litem Marianita Lopez (the CGAL); (4) denying her motion to continue trial; (5) adopting the CGAL's visitation recommendation; (6) concluding that "there have been material changes in relevant circumstances affecting the best interests of [the children;]" (7) entering conclusions of law regarding the Hague Convention on the Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter, Hague Convention or Convention]; (8) awarding child support to Father; and (9) awarding attorneys' fees to Father.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Mother's contentions as follows: (1) the family court had proper jurisdiction over this case inasmuch as the jurisdictional requirements set forth in the Uniform Child Custody Jurisdiction Act were satisfied, see Hawai'i Revised Statutes (HRS) §§ 583-1, 583-2(1) (1993) (repealed 2002); (2) the issue of temporary custody is now moot because Father's temporary custody terminated once the family court made its final determination of permanent custody, see In re Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992); Wong v. Bd. of Regents, 62

Haw. 391, 394-95, 616 P.2d 201, 204 (1980); (3) Mother has waived her challenge to the family court's award of fees to the CGAL, see Kau v. City & County of Honolulu, 104 Hawai'i 468, 475 n.6, 92 P.3d 477, 484 n.6 (2004), and failed to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4)(iii) (2004); (4) Mother waived her argument that "the family court should have stayed the proceedings when it was aware that the federal court was holding a hearing[,]" see Kau, 104 Hawai'i at 475 n.6, 92 P.3d at 484 n.6, and the family court did not abuse its discretion in denying Mother's motion because Mother's unpreparedness was a direct result of her own decision not to participate in the family court proceedings, see Sapp v. Wong, 62 Haw. 34, 41, 609 P.2d 137, 142 (1980); (5) we must uphold the family court's decision to adopt the CGAL's visitation recommendation because Mother has not satisfied her "burden of furnishing the appellate court with a sufficient record to positively show the alleged error . . . includ[ing] in the record all the evidence on which the lower court might have based its [decision,]" Union Bldg. Materials Corp. v. Kakaako Corp., 5 Haw. App. 146, 151-52, 682 P.2d 82, 87 (1984) (citations omitted); (6) we uphold the family court's conclusion that material changes in relevant circumstances occurred because Mother failed to: (a) include in her points of error a quotation of the conclusion urged as error, HRAP Rule 28(b)(4), (b) challenge the findings of fact establishing that material changes in circumstances

occurred, see Okada Trucking Co. v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81, reconsideration denied, 101 Hawai'i 233, 65 P.3d 180 (2002), and (c) provide this court with "all of the evidence on which the lower court might have based its [conclusion.]" Union Bldg. Materials Corp., 5 Haw. App. at 151-52, 682 P.2d at 87 (1984) (citations omitted); (7) the Hague Convention's implementing legislation clarifies that the family court assumed proper jurisdiction over the instant action, see 42 U.S.C. § 11603 (1988);² (8) the family court did not abuse its discretion in awarding child support to Father inasmuch as it: (a) utilized the child support guidelines, pursuant to HRS § 571-52.5 (1993); (b) considered the amount Mother "is capable of earning if [she] attempts in good faith to secure proper employment[.]" Cleveland v. Cleveland, 1 Haw. App. 187, 192, 616 P.2d 1014, 1017 (1980); (c) considered the size of Mother's estate and net worth, id.; and (d) based its decision "upon a consideration of all pertinent facts and circumstances[.]" id.; and (9) because Mother did not object to or challenge Father's requests for and/or the family court's award of fees before the family court, she has waived this argument on appeal, see Kau, 104 Hawai'i at 475 n.6, 92 P.3d at 484 n.6. Therefore,

² With respect to Mother's challenge to the family court's conclusions regarding the Hague Convention, we note that Mother's position on appeal is directly contrary to one she assumed before the family court, where she urged the family court to determine the parties' rights under the Convention.

IT IS HEREBY ORDERED that the family court's September 20, 2001 order and October 1, 2001 judgment from which this appeal was taken are affirmed.

DATED: Honolulu, Hawai'i, November 16, 2004.

On the briefs:

Paul A. Lynch and
Steven J. Kim (of
Lynch Ichida Thompson
Kim & Hirota), for
plaintiff-appellant

Chunmay Chang, for
defendant-appellee