

*** NOT FOR PUBLICATION ***

NO. 24913

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of Jane Doe born on July 13, 1998

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-S NO. 01-062)

SUMMARY DISPOSITION ORDER

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

Petitioner-appellant the State of Hawai'i Department of Human Services (DHS) appeals from (1) the November 28, 2001 findings of fact, conclusions of law, and order of the family court of the second circuit, the Honorable Geronimo Valdriz, Jr. presiding, granting father-appellee (Father) \$51,559.68 in attorneys' fees and costs and (2) the January 18, 2002 findings of fact, conclusions of law, and order denying DHS's motion for reconsideration. On appeal, DHS argues that the family court erred when it (1) awarded Father \$51,559.68 in attorneys' fees and costs pursuant to Hawai'i Family Court Rules (HFCR) Rule 68 (2000);¹ (2) concluded that the attorneys' fees and costs

¹ HFCR Rule 68 provides:

At any time more than 20 days before any contested hearing held pursuant to HRS sections 571-11 to 14 (excluding law violations and criminal matters) is scheduled to begin, any party may serve upon the adverse party an offer to allow a judgment to be entered to the effect specified in the offer. Such offer may be made as to all or some of the issues, such as custody and visitation. Such offer shall not be filed with the court, unless it is accepted. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, any party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall treat those issues as uncontested. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine costs and attorney's fees. If the judgment in its entirety finally obtained by the offeree is patently not

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incurred were not inequitable in accordance with the provisions of Hawai'i Revised Statutes (HRS) HRS § 580-47 or other applicable statutes, as amended; and (3) denied DHS's motion for reconsideration, inasmuch as applying HFCR Rule 68 to cases brought under HRS chapter 587, the Child Protective Act, will have a chilling effect on DHS's statutory mandate to protect children.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised, we hold that the family court did not err when it: (1) awarded Father \$51,559.68 in attorneys' fees and costs, inasmuch as the plain language of HFCR Rule 68 authorizes the family court to award reasonable attorney's fees and costs if the judgment obtained by the offeree is not more favorable than the offer, unless the court specifically determines that the attorney's fees and costs would be inequitable in accordance with the provisions of HRS § 580-47 or other applicable statutes, as amended, see HFCR Rule 68. See generally Nakasone v. Nakasone, 102 Hawai'i 177, 181, 73 P.3d 715, 719 (2003) (explaining that the primary purpose of HFCR Rule 68 is "to encourage settlements 'more than [20] days before [any] . . . contested hearing for an order is scheduled to begin'"); (2) concluded that the attorneys' fees and costs incurred were not inequitable in accordance with the provisions of HRS § 580-47 or other applicable statutes, as amended, inasmuch as the family

¹(...continued)

more favorable than the offer, the offeree must pay the costs, including reasonable attorney's fees incurred after the making of the offer, unless the court shall specifically determine that such would be inequitable in accordance with the provisions of HRS section 580-47 or other applicable statutes, as amended.

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court did not specifically determine that the award was inequitable, see id.; and (3) denied DHS's motion for reconsideration, inasmuch as the plain language of HFCR Rule 68 permits awarding attorney's fees and costs in any contested hearing held pursuant to HRS §§ 571-11 to 14, see id.; see also HRS § 571-11(9) ("Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings . . . [f]or the protection of any child under chapter 587."). Therefore,

IT IS HEREBY ORDERED that the family court's findings of fact, conclusions of law, and order granting Father's motion for attorneys' fees and costs and findings of fact, conclusions of law, and order denying DHS's motion for reconsideration, from which this appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, December 19, 2003.

On the briefs:

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