***** NOT FOR PUBLICATION *****

NO. 24958

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

IN THE MATTER OF THE ADOPTION OF A MALE CHILD, BORN ON NOVEMBER 2, 1987, AND A FEMALE CHILD, BORN ON SEPTEMBER 20, 1989,

by

JOHN DOE, Petitioner-Appellee,

vs.

RICHARD ROE, Intervenor-Respondent-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-ADOPTION NO. 01-1-0314)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson and Nakayama, JJ., Circuit Judge Perkins, in place of Acoba J., who is unavailable, and Circuit Judge Town, assigned by reason of vacancy)

The intervenor-respondent-appellant Richard Roe appeals from the findings and decision of the first circuit family court, filed on April 18, 2002, the Honorable Marilyn Carlsmith presiding, granting petitioner-appellant John Doe's petition for adoption. Specifically, Roe argues that the family court erred in its order, filed on January 30, 2002, "defaulting" Roe, granting the adoption petition, compelling payment of earlier ordered sanctions against Roe and his counsel, and awarding additional Custody Guardian Ad Litem (CGAL) fees, on the bases that: (1) he had no prior notice that a default judgment might be entered against him and default was "not a proper sanction under the circumstances"; (2) the grant of Doe's adoption petition, pursuant to Hawai‘i Revised Statutes (HRS) § 578-2(c)(2)(A) (1993), violates his right to due process and equal

protection of the law, as guaranteed by the fourteenth amendment to the United States Constitution; (3) the family court erred in denying his motion to declare Doe's petition for adoption perjured, because, according to Roe, a footnote contained in Doe's adoption petition was inaccurate; and (4) the family court erred in denying Roe's motion for continuance of trial, because Roe required a continuance in order to obtain discovery relating to Doe's criminal record, and the delays in discovery were Doe's fault.

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 affirm the family court's decision to grant John Doe's adoption petition.

First, notwithstanding Roe's contentions to the contrary, the record reveals that Roe was notified well in advance that, on January 8, 2002, the family court would be considering sanctions against Roe and his attorney, including the sanction of default, and that the family court had ordered Roe and his attorney to attend the January 8, 2002 pretrial conference.

Second, the sanctions imposed by the family court were within the proper exercise of its discretion. See Hawai‘i Family Court Rules (HFCR) Rule 37(b) ("If a party . . . fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make such orders in regard to the failure as are just," including "dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]"); Kawamata Farms, Inc. v. United Agri Products, 86 Hawai‘i 214, 242, 948 P.2d 1055, 1083

(1997) ("[C]ourts have inherent equity, supervisory, and administrative powers as well as inherent power to control the litigation process before them. . . . Among courts' inherent powers are the powers to create a remedy for a wrong even in the absence of specific statutory remedies, and to prevent unfair results. The courts also have inherent power to curb abuses and promote a fair process which extends to the preclusion of evidence and may include dismissal in severe circumstances. It follows that if the [family] court has the inherent power to level the ultimate sanction of dismissal, it necessarily has the power to take all reasonable steps short of dismissal, depending on the equities of the case." (Citations and internal quotation signals omitted.)).

Third, because Roe failed to include the transcript of the January 8, 2002 hearing in the record on appeal, it is impossible for this court adequately to review whether the family court abused its discretion in sanctioning Roe. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(b)(1)(A) ("When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court . . . appealed from, the appellant shall file with the clerk of the court appealed from . . . a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary . . . ."); Bettencourt v. Bettencourt, 80 Hawai'i 225, 230-31, 909 P.2d 553, 558-59 (1995) (disregarding arguments raised on appeal that require a review of the proceedings below because the appellant failed to include a transcript of the proceedings in the record); Tradewinds Hotel, Inc. v. Cochran, 8 Haw. App. 256, 266, 799 P.2d 60, 66 (1990) (same). Nevertheless, based on our review of the motions and

orders contained in the record, as well as the family court's findings that Roe failed to comply with numerous rules and orders of the family court pertaining to discovery in addition to the previously ordered monetary sanctions, which Roe does not dispute on appeal, we do not believe that the family court abused its discretion in sanctioning Roe for his contumacious behavior.

Fourth, we decline to address Roe's constitutional challenge of the grant of Doe's adoption petition pursuant to HRS § 578-2(c)(2)(A), because the family court had an alternative basis for granting Doe's adoption petition -- i.e., the grounds set forth in HRS § 578-2(c)(2)(C) -- and, therefore, his constitutional argument regarding HRS § 578-2(c)(2)(A) is unhelpful to him.

Fifth, because Roe failed to include the transcript of the January 8, 2002 hearing in the record on appeal, this court has no basis upon which to review the family court's denial of (1) his motion to declare Doe's adoption petition perjured and for award of attorneys' fees and costs and (2) his motion to continue the trial date, which he filed on January 2, 2002. See HRAP Rule 10(b)(1)(A), supra; Bettencourt, 80 Hawai'i at 230-31, 909 P.2d at 558-59; Tradewinds Hotel, Inc., 8 Haw. App. at 266, 799 P.2d at 66. Moreover, because Roe did not challenge any of the family court's findings upon which its denial of his motions was based, this court may disregard his points of error in this regard. See HRAP Rules 28(b)(4)(C) ("[T]he appellant shall file an opening brief, containing . . . [a] concise statement of the points of error set forth in separately numbered paragraphs. . . . Where applicable, each point shall also include the following: . . . (C) when the point involves a finding . . . of the court . . . , a quotation of the finding . . . urged as

error[.] . . . Points not presented in accordance with this section will be disregarded[.]"). Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 21, 2003.

On the briefs:

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George W. Ashford, Jr.,
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Howard Glickstein,
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John Doe