

NO. 24057

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-A NO. 00-1-0185)

In the Matter of the Adoption of a Female Child,
Born on April 28, 1998, A Minor.

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Lim, JJ.)

This appeal involves two petitions pertaining to a young girl born on April 28, 1998 (the Child). The Child's legal guardian (the Guardian) petitioned to adopt the Child, which would have entailed terminating the legal parent's parental rights. The Child's legal parent (the Legal Parent) opposed, and also responded by filing a petition to dissolve the Guardian's guardianship of the Child. The family court of the first circuit¹ denied both petitions, determining that it was in the Child's best interest to preserve the established status quo.

On her appeal, the Guardian contends the family court erred in its denial of her adoption petition and her subsequent motion for reconsideration. Essentially, the Guardian challenges the family court's findings of fact and conclusions of law supporting its determination that the Guardian did not satisfy the statutory requirements set forth in Hawaii Revised Statutes

¹ The Honorable John C. Bryant, judge presiding.

(HRS) § 578-2(c)(1)(C) & (D) (1993),² which enable the family court to dispense with consent of the legal parent in adoption proceedings. Specifically, the Guardian contends the Legal Parent did not contact or support the Child when able to do so for a period of at least one year, within the meaning of the statute. The Guardian further avers that the family court³

² Hawaii Revised Statutes (HRS) § 578-2 (1993) provides, in relevant part:

(a) Persons required to consent to adoption. Unless consent is not required or is dispensed with under subsection (c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

(1) The mother of the child[.]

. . . .

(c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

(1) Persons as to whom consent not required:

. . . .

(C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;

(D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so[.]

³ The Honorable R. Mark Browning, judge presiding.

erroneously denied her motion *in limine* seeking admission into evidence of a settlement letter written by the Legal Parent's attorney. We disagree with all of the Guardian's contentions and affirm.

We have sedulously reviewed the record and the briefs submitted by the parties. Having given due consideration to the arguments advanced and the issues raised by the parties, we resolve them as follows:

1. The family court found and concluded that the Guardian did not establish that the Legal Parent failed to contact or support the Child for the statutory period within the meaning of HRS § 578-2(c)(1)(C) & (D). We conclude there was substantial evidence supporting the family court's findings of fact in this connection, In re Adoption of a Male Child, 56 Haw. 412, 418-19, 539 P.2d 467, 471-72 (1975); cf. Woodruff v. Keale, 64 Haw. 85, 97-98, 637 P.2d. 760, 768 (1981), and hence, that those findings of fact were not clearly erroneous. In re Jane Doe, 84 Hawai'i 41, 46, 928 P.2d 883, 888 (1996). Accordingly, the family court's corresponding conclusions of law were correct. Id.

2. The Guardian argues that the family court erroneously applied a "parental preference" in its denial of her adoption petition. This assertion is based on a misconstruction of the record. The family court's discussion of the parental

preference occurred, not in connection with the Guardian's adoption petition, but in the family court's consideration of the Legal Parent's petition to remove the Guardian, and the family court's rejection of the parental preference redounded to the Guardian's ultimate benefit, as it resulted in the denial of the Legal Parent's petition to remove the Guardian. Upon our independent review of the record, we determine there was no clear error in the family court's assessment of what constituted the best interests of the Child. In re Jane Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001).

3. The Guardian argues that the settlement letter was admissible in spite of Hawaii Rules of Evidence (HRE) Rule 408 (1993).⁴ We disagree. The Guardian proffered the settlement letter in an attempt to prove the invalidity of the Legal Parent's claims to the entitlement of consent and to the best

⁴ Hawaii Rules of Evidence Rule 408 (1993) provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, or (3) mediation or attempts to mediate a claim which was disputed, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations or mediation proceedings is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations or mediation proceedings. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

interests of the Child. This is precisely the purpose that HRE Rule 408 excludes from the viable bases for proffer of a settlement offer. We conclude the family court was correct in this respect. State v. Gano, 92 Hawai'i 161, 166, 988 P.2d 1153, 1158 (1999).

Therefore,

IT IS HEREBY ORDERED, that the family court's November 1, 2000 order denying the Guardian's petition for adoption and the family court's January 4, 2000 order denying the Guardian's motion for reconsideration, are affirmed.

DATED: Honolulu, Hawai'i, June 28, 2002.

On the briefs:

Marianita Lopez,
for petitioner-appellant.

Chief Judge

John W. Schmidtke, Jr.,
for respondent-appellee.

Associate Judge

Associate Judge