NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28019

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

2006 SEP 22 AM 10: 14
E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII
FILED

In the Interest of J.T.

APPEAL FROM FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08104)

ORDER DISMISSING FATHER-APPELLANT'S APPEAL AND
ALLOWING MOTHER-APPELLANT'S APPEAL TO PROCEED
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of Mother-Appellant's September 8, 2006 statement of jurisdiction and the record on appeal, it appears that we lack jurisdiction over Father-Appellant's appeal from the May 8, 2006 order that awarded Petitioner-Appellee Department of Human Services (Appellee DHS) with permanent custody of Mother-Appellant's and Father-Appellant's minor child and established a permanent plan for the minor child. Under HRS § 571-54 (1993), "appeals in family court cases, as in other civil cases, may be taken only from (1) a final judgment, order, or decree, . . . or (2) a certified interlocutory order." In re Doe, 96 Hawai'i 272, 283, 30 P.3d 878, 889 (2001) (citations omitted). "By the plain language of the statute, a party desiring to appeal from an order entered in a proceeding governed by HRS § 571-54 is required to file a motion for reconsideration." In re Doe Children, 94 Hawai'i 485, 486, 17 P.3d 217, 218 (2001). "Thus, there is no

appealable order until the family court resolves the motion for reconsideration." Id. Although 2006 Hawai'i Sessions Laws Act 3 (Act 3) amended HRS § 571-54 by repealing the requirement for a motion for reconsideration under these circumstances, the family court entered the May 8, 2006 order before the July 1, 2006 effective date of Act 3, and, thus, the amendment under Act 3 does not apply to the May 8, 2006 order. See HRS § 1-3 (1993) ("No law has any retrospective operation, unless otherwise expressed or obviously intended.").

Mother-Appellant filed a May 24, 2006 motion for reconsideration within twenty days after entry of the May 8, 2006 order, as HRS § 571-54 (1993) required, and, thus, the May 8, 2006 order was appealable for Mother-Appellant. However, Father-Appellant did not file his June 1, 2006 motion for reconsideration within twenty days after entry of the May 8, 2006 order, as HRS § 571-54 (1993) required, and, thus, Father-Appellant failed to perfect his right to assert an appeal under HRS § 571-54 (1993). Therefore, the May 8, 2006 order is not appealable by Father-Appellant. Absent an appealable order for Father-Appellant, we lack jurisdiction over Father-Appellant's appeal. Accordingly,

IT IS HEREBY ORDERED that Father-Appellant's appeal is dismissed for lack of appellate jurisdiction. At this time, the intermediate court of appeals retains jurisdiction over Mother-Appellant's appeal, and, thus, Mother-Appellant shall proceed

with briefing pursuant to Rule 28 of the Hawai'i Rules of Appellate Procedure.

DATED: Honolulu, Hawai'i, September 22, 2006.

James S. Burns
Chief Judge

Associate Judge

Daniel R. Foley
Associate Judge