

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29726

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Interest of A.L.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JUL 28 AM 7:51

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 07-11422)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Presiding Judge, Foley, and Nakamura, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over Mother-Appellant's appeal from the Honorable James H. Hershey's March 11, 2009 order denying Mother-Appellant's motion for immediate review to have the family court set aside its acceptance of Mother-Appellant's stipulation to terminate her parental rights (the March 11, 2009 interlocutory order), because the March 11, 2009 interlocutory order is not an appealable final order under Hawaii Revised Statutes (HRS) § 571-54 (2006).

HRS § 571-54 governs the intermediate court of appeals' jurisdiction over Mother-Appellant's appeal. Under HRS § 571-54, "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). "Final order means an order ending the proceedings, leaving nothing further to be accomplished." Familian Northwest v. Central Pacific Boiler, 68 Haw. 368, 370, 714 P.2d 936, 937 (1986) (citations and internal quotation marks omitted). "However, it is widely acknowledged that a final judgment or decree is not necessarily the last decision of a case. What determines the finality of an order or decree is the nature and effect of the order or decree." In re Jane Doe, 77 Hawai'i 109, 114, 883 P.2d 30, 35 (1994) (citation and internal quotation marks omitted). "The very

nature of a family court chapter 587 proceeding entails an ongoing case which does not result in a final order, as that term is generally defined, . . . because, under chapter 587, the family court retains continuing jurisdiction over the case in order to prevent future harm or threatened harm to a child." In re Doe, 96 Hawai'i 272, 283, 30 P.3d 878, 889 (2001) (citations, internal quotation marks, and original brackets omitted).

"[P]arents have fundamental liberty interests in the care, custody, and management of the[ir] child[ren]." In re Jane Doe, 77 Hawai'i at 115, 883 P.2d at 36 (citations, internal quotation marks, and original brackets omitted). Thus, a family court order that "infringe[s] upon parental custody rights is an appealable decision even though the requisite finality normally required for appeals is lacking." Id. at 114, 883 P.2d at 35 (citations omitted).

The March 11, 2009 interlocutory order does not directly infringe upon Mother-Appellant's parental custody rights, but, rather, is merely one of a series of interlocutory orders within a proceeding for the final adjudication of Petitioner-Appellee State of Hawai'i Department of Human Services' (Appellee DHS) December 11, 2008 motion for an order awarding permanent custody and establishing a permanent plan. The family court has not yet finally determined Appellee DHS's December 11, 2008 motion for an order awarding permanent custody and establishing a permanent plan, and, thus, the family court had not yet entered a final order for the underlying proceeding that is appealable pursuant to HRS § 571-54. Although exceptions to the final judgment requirement exist under Forgay v. Conrad, 47 U.S. 201 (1848), (the Forgay doctrine) and the collateral order doctrine, the March 11, 2009 interlocutory order does not satisfy all of the requirements for appealability under the Forgay doctrine or the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine) and Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319,

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322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine).

Absent a final order that is appealable pursuant to HRS § 571-54, this appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that appellate court case number 29726 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, July 28, 2009.

Brunie K. A. Watanabe
Acting Chief Judge

Daniel R. Foley
Associate Judge

Craig H. Nakamura
Associate Judge