



The Judiciary, State of Hawai'i

Testimony to the Thirtieth State Legislature, 2020 Session
House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Tuesday, February 25, 2020, 11:00 A.M. (Agenda #1)
State Capitol, Conference Room 308

by
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Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2550, H.D. 1, Relating to the Family Court.

Purpose: Makes decisions of the family court appealable to the supreme court instead of the intermediate court of appeals. Requires the supreme court to render a final decision on appeals from family court orders within 180 days. Encourages a reduction in the number of remands to the family court. Takes effect on 7/1/2050.

Judiciary's Position:

The Judiciary respectfully opposes this bill, but offers suggestions:

The reason stated for this bill is the length of time families, including children, must wait for decisions related to children and families. The Judiciary recognizes that appeals involving the custody of children must be decided in a timely fashion. To that end, the Supreme Court has adopted an expedited process for handling family court termination of parental rights cases. In addition, both the Supreme Court and the Intermediate Court of Appeals (ICA) give priority to termination of parental rights cases, and family court matters involving the custody of children.

For fiscal year 2017-2018, there were thirty-four family court appeals terminated by the ICA. There were only six family court applications for a writ of certiorari from ICA decisions filed in the Supreme Court. Thus, the majority of family court appeals are resolved by the ICA and do not move on to the Supreme Court.



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Of the four cases cited in this proposed legislation as evidence of the delay in child custody matters, two appeals did not involve the custody of children. Cox v. Cox, 138 Hawai'i 476, 382 P.3d 288 (2016), involved the award of attorneys' fees. Brutsch v. Brutsch, 139 Hawai'i 373, 390 P.3d. 1260 (2017), involved the division of the husband's inheritance. The opinion in Brutsch v. Brutsch, stated specifically that the issue of child custody was resolved and was not the subject of the appeal.

Tumaneng v. Tumaneng 138 Hawai'i 468, 382 P.3d 280 (2016) did involve the custody of a child. Review of record shows, however, that a portion of the time the case was pending in the appellate courts was the result of requests for extensions filed by both parties to the appeal. Once briefing was complete, the ICA issued its decision quickly. The Supreme Court issued its published opinion within seven months after the application for a writ of certiorari was accepted. Further, either party could have filed an application for transfer to the Supreme Court pursuant to HRS section 602-58 and Rule 40.2 of the Hawai'i Rules of Appellate Procedure.

The final case cited is W.N. v. S.M., which involved a dispute over joint custody and visitation. This was not a case that involved the transfer of custody from one party to another. As noted in House Bill No. 353, there were two separate appeals. After briefing in the appeal was completed, one of the parties filed an application for transfer pursuant to HRS section 602-58. The Supreme Court accepted the application for transfer, bypassing consideration by the ICA. The first appeal was resolved with a published opinion and a remand for further proceedings in 2016. A.A. v. B.B., 139 Hawai'i 102, 384 P.3d 878 (2016). The family court disposition on remand resulted in a second appeal. The Supreme Court granted another application for transfer, which resulted in a second published opinion within four months thereafter. W.N. v. S.M., 143 Hawai'i 128, 424 P.3d 483 (2018). Both published opinions explained why remands were necessary. Multiple remands for a single case are extremely rare, and this case involved very unusual circumstances and issues of first impression. Given the specific facts presented by these appeals, not remanding the matter for further proceedings in each appeal could have been interpreted as denying due process to the party seeking review.

Although the Judiciary believes the changes proposed by House Bill No. 2550 are unnecessary, the Judiciary acknowledges the concern, and interest in changes that can be implemented to expedite final decisions in child custody matters. To this end, the Judiciary's 2020 legislative package includes two bills, HB1787 and SB2118, which specifically add child custody matters, other than HRS chapter 587A cases, to the grounds for discretionary transfer of cases from the ICA to the Supreme Court pursuant to HRS § 602-58(b). If either of these bills are enacted, litigants will have the opportunity to expedite resolution of their appeals involving child custody matters.

Thank you for the opportunity to testify on this matter.

LATE

HB-2550-HD-1

Submitted on: 2/25/2020 10:29:57 AM

Testimony for FIN on 2/25/2020 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Oppose	No

Comments: