
A BILL FOR AN ACT

RELATING TO THE FAMILY COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the delays
2 experienced by parents and children while awaiting the
3 disposition of appeals from family court decisions arguably
4 violate the due process clauses of both the state and federal
5 constitutions. Indeed, delays conflict with the stated mission
6 of the family court "to provide a fair, speedy, economical, and
7 accessible forum for the resolution of matters involving
8 families and children."

9 The legislature further finds that, in recent years,
10 parents and children have had to wait as long as five years for
11 the resolution of cases involving life-altering matters such as
12 custody determinations. The uncertainty created by long delays
13 harms families and needlessly prolongs an already stressful and
14 traumatic experience. A recent Hawaii Supreme Court decision,
15 *W.N. v. S.M.*, SCAP 17-0000539, 2018 WL 3617874 (2018), serves to
16 illustrate the potential harm that can be inflicted during a
17 child's formative years. The child was five years old when the



1 original family court petition was filed in 2014. The family
2 court's decision was appealed not once but twice. The Hawaii
3 Supreme Court's decision remanded the case yet again to the
4 family court for another evidentiary hearing. If the results of
5 the family court decision are once again appealed, the case may
6 linger for another two years, potentially until 2020 or 2021.
7 By this time, the child could be eleven or twelve years old. If
8 the family court ultimately finds that the child's best interest
9 requires placement with the present non-custodial parent who
10 sued for custody in 2014, the child will have been with the
11 "wrong" parent for six or seven years, a significant period of
12 time in a child's life that cannot be recouped.

13 Moreover, the case discussed above is no exception. Other
14 cases that have undergone the appeals process show that delays
15 have lasted as long as:

- 16 (1) Four years and eleven months between the filing of the
17 family court order and the decision by the supreme
18 court in *Brutsch v. Brutsch*, 139 Hawaii 373 (2017);
19 (2) Four years in *Cox v. Cox*, 138 Hawaii 476 (2016); and
20 (3) Two years and six months in *Tumaneng v. Tumaneng*, 138
21 Hawaii 468 (2016).



1 Delays can result in unacceptable incongruities if the
2 matter to be decided becomes moot while the appeal is pending,
3 such as when a child reaches the age of majority before the
4 child custody decision is finally made.

5 Therefore, the purpose of this Act is to:

- 6 (1) Expedite the appeals from family court orders by
7 making the orders appealable directly to the supreme
8 court instead of the intermediate court of appeals;
- 9 (2) Require the supreme court to render a final decision
10 on appeals from family court orders within one hundred
11 eighty days; and
- 12 (3) Encourage a reduction in the number of remands to the
13 family court.

14 SECTION 2. Section 571-54, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§571-54 Appeal. (a) An interested party, aggrieved by
17 any order or decree of the court, may appeal to the
18 [~~intermediate appellate~~] supreme court for review of questions
19 of law and fact upon the same terms and conditions as in other
20 cases in the circuit court, and review shall be governed by
21 chapter 602, except as hereinafter provided. Where the decree



1 or order affects the custody of a child or minor, the appeal
2 shall be heard at the earliest practicable time. In cases under
3 section 571-11, the record on appeal shall be given a fictitious
4 title, to safeguard against publication of the names of the
5 children or minors involved.

6 (b) The stay of enforcement of an order or decree, or the
7 pendency of an appeal, shall not suspend the order or decree of
8 the court regarding a child or minor, or discharge the child or
9 minor from the custody of the court or of the person,
10 institution, or agency to whose care the child or minor has been
11 committed, unless otherwise ordered by the family court or by
12 the [~~appellate~~] supreme court after an appeal is taken. Pending
13 final disposition of the case, the family court or the
14 [~~appellate~~] supreme court, after the appeal is taken, may make
15 [~~such~~] an order for temporary custody as is appropriate in the
16 circumstances. If the [~~appellate~~] supreme court does not
17 dismiss the proceedings and discharge the child or minor, it
18 shall affirm or modify the order of the family court within one
19 hundred eighty days of its receipt of the appeal and remand the
20 child or minor to the jurisdiction of the family court for
21 disposition not inconsistent with the [~~appellate~~] supreme



1 court's finding on the appeal [-]; provided that the supreme
2 court shall endeavor to finally resolve any family court order
3 appeal involving a child or minor and shall only exercise its
4 remand power as sparingly as possible.

5 (c) An order or decree entered in a proceeding based upon
6 section 571-11(1), (2), or (6) shall be subject to appeal only
7 as follows:

8 Within twenty days from the date of the entry of any such
9 order or decree, any party directly affected thereby may file a
10 motion for a reconsideration of the facts involved. The motion
11 and any supporting affidavit shall set forth the grounds on
12 which a reconsideration is requested and shall be sworn to by
13 the movant or the movant's representative. The judge shall hold
14 a hearing on the motion, affording to all parties concerned the
15 full right of representation by counsel and presentation of
16 relevant evidence. The findings of the judge upon the hearing
17 of the motion and the judge's determination and disposition of
18 the case thereafter, and any decision, judgment, order, or
19 decree affecting the child and entered as a result of the
20 hearing on the motion, shall be set forth in writing and signed
21 by the judge. Any party aggrieved by [~~any such~~] the findings,



1 judgment, order, or decree shall have the right to appeal
 2 therefrom to the [~~intermediate appellate~~] supreme court, upon
 3 the same terms and conditions as in other cases in the circuit
 4 court, and review shall be governed by chapter 602; provided
 5 that no [~~such~~] motion for reconsideration shall operate as a
 6 stay of [~~any such~~] the findings, judgment, order, or decree
 7 unless the judge of the family court so orders; and provided
 8 further that no informality or technical irregularity in the
 9 proceedings prior to the hearing on the motion for
 10 reconsideration shall constitute grounds for the reversal of
 11 [~~any such~~] the findings, judgment, order, or decree by the
 12 [~~appellate~~] supreme court."

13 SECTION 3. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval
 16 and shall apply to appeals taken on or after the effective date
 17 of this Act.

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INTRODUCED BY:

Case. Am
[Signature]

JAN 18 2019



H.B. NO. 353

Report Title:

Family Court; Supreme Court; Direct Appeal

Description:

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.

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