

In re RGB,

123 Haw. 1, 299 P.3d 1066 (2010)

- In Termination of Parental Rights Cases, the Due Process Clauses of the U.S. Constitution Provide Parents:
 - Right to Counsel
 - If Parent is Indigent, then Court Appoints Counsel (under certain circumstances based on the Lassiter Test – Adopted by the ICA in In re "A" Children)
 - **Right to Effective Assistance of Counsel**
- Did Not Address these Rights Under the Due Process Clause of the Hawaii State Constitution

4

Ineffective Assistance of Counsel
"Fundamental Fairness" Test

- Rejected the Criminal Standard used by ICA and Other States
- Standard:
 - Counsel's Representation was Inadequate and/or Incompetent, and
 - Parent was Denied a Fair Trial to the Extent that the Trial Court's Decision is Called Into Question (Result would be Different)
- Same Standard for Trial and Appeal

5

Ineffective Assistance of Counsel:
How Raised

- Direct Appeal
- Collateral Attack under HFCR Rule 60 (b) – Motion for Relief from Judgment or Order
 - Motion Must be Made within a Reasonable Time
 - Court May Look at Length of Time Child is in Foster Custody using a Best Interest of the Child Analysis
 - Motion Not Authorized If Child was Adopted

6

In re Adoption of a Female Child

No. 29147, slip op. (March 4, 2010)

- Adoption of an Indian Child is Governed by the Indian Child Welfare Act (ICWA)
- Domicile of an Indian Child is the Domicile of the Indian Parent
- Hawaii State Courts DO NOT have Subject Matter Jurisdiction over an Adoption of an Indian Child whose Parent is a Domiciliary of an Indian Tribe/Nation. Tribe/Nation has Exclusive Jurisdiction.
- Caveat: States are not Prevented from Taking Custody of an Indian Child who is a Domiciliary of an Indian Tribe/Nation When the Child is Found in the State and Subject to Imminent Harm. 25 U.S.C. § 1922

7

SDO's & Memo. Opinions

- In re R Children, No. 39541 Memo. (App. Aug. 26, 2009)
 - NCIS Agent's Testimony Describing Child Porn in the Parent's Computer, Without Producing the Images, Violated the "Best Evidence Rule" in HRE 1002
- In re D.H., No. 29096 SDO (App. Aug. 31, 2009)
 - Under the "Parental Unfitness" HRS § 587-73 (a) (1) and (2) [Act 135: HRS § 587A-33 (a) (1) and (2)] criteria, DHS Only has to Prove that Parents are Either "Not Willing" or "Not Able"

8

SDO's & Memo. Opinions (cont.)

- In re M.B., No. 29222 SDO (App. Sept. 30, 2009)
 - DHS' Reasonable Efforts Obligation to Provide Interpreters for Parents during Services is Limited, Based on the Availability and Skill of Interpreters, and DHS' Efforts to Obtain Interpreters.
- In re Adoption of a Male Child, Born on July 25, 2004, No. 29517 SDO (App. Dec. 14, 2009); cert. rejected April 22, 2010.
 - Adoption from a CPA Case
 - Non-Custodial Grandparents have No Right to Intervene in Adoption Case Regarding Grandchildren.
 - Non-Custodial Grandparents Do Not have Liberty Interests in the Adoption of Their Grandchildren

9

SDO's & Memo. Opinions (cont.)

- In re M.A. and H.W., No. 30032 SDO (April 16, 2010)
 - Reversible Error for Family Court Not to Enter Findings of Fact and Conclusions of Law Supporting Order Awarding Permanent Custody (TPR) Pursuant to HFCR Rule 52
- In re T.C., No. 28294. Order Denying Parents' Petition for Writ of Certiorari (Jan. 11, 2010)
 - Cannot Vicariously Raise Constitutional Issues on Behalf of Others
 - May Contradict ICA ruling that Parents have Full Party Status/Standing in HRS § 571-11 (1) LV Cases

10

SDO's & Memo. Opinions (cont.)

- In re M. Children, No. 30091, SDO (App. May 4, 2010)
 - Family Court did not abuse discretion by qualifying DHS social worker, with the title of Human Services Professional (workers in a social work position but given this title because the worker does not have a social work degree), as an expert in social work Testimony of the worker that her work was in social work. HRS § 467E-6 (2) exempts persons employed by the federal, state or county as a social worker from the licensing requirement.

11

Other Hawaii Appellate Cases

- Styke v. Sotelo, 121 Haw. 485, 228 P.3d 365 (App. 2010)
 - In HRS Chapter 586 Cases, although HRS § 586-5 (b) states that Hearing Shall be Held within 15 days after the TRO was granted, the statute, on its face, does not require that the TRO be dissolved if no hearing is held within 15 days
 - Note: HRS § 586-5 (b) only allows court to continue the hearing up to 90 days after the entry of the TRO to perfect service on the respondent.

12

Other Hawaii Appellate Cases

- Weinberg v. Weinberg, 123 Haw. 68, 299 P.3d 1133 (2010)
 - Defendant Failed to Meet Pretrial Deadlines. Family Court's Sanctions Against Defendant by Prohibiting Defendant from Calling Witnesses and Proferring Exhibits was Too Severe and Reversible Error

13

Other Hawaii Appellate Cases

- In re N.C., ___ Haw. ___, ___ P.3d ___ (2010) (No. 28294 Slip Op. April 19, 2010)
 - HRS § 571-11 (2) DOES NOT Authorize PINS LV Petitions and Adjudications
- Cvitanovich-Dubie v. Dubie, ___ Haw. ___. P.3d ___ (App. 2010) (No. 28928 Slip Op. April 12, 2010)
 - Hawaii Does Not Recognize Foreign Divorce, unless One Party is a Domicile of the Country
 - May be Recognized under "Quasi-Estoppel"

14

U.S. SUPREME COURT

- Abbott v. Abbott, ___ U.S. ___, 130 S.Ct. 1983, ___ L.Ed. ___ No. 08-625, 2010 WL 1946730 (May 17, 2010)
 - The Hague Convention on the Civil Aspects of International Kidnapping (International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*)
 - *Ne Exact* Laws is a Right to Custody

15

U.S. Ninth Circuit

- Cuellar v. Joyce, 596 F.3d 505 (9th Cir. 2010)
 - Application of The Hague Convention on the Civil Aspects of International Kidnapping (International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.*)
 - No Extreme Psychological Harm When Child was Living with Parent, who took the Child, for Two Years; the Parent Created the Situation.

16

U.S. Ninth Circuit

- Burke v. County of Alameda, 586 F.3d 725 (9th Cir. 2009)
 - Parent with Joint Legal Custody, with Sole Physical Custody to the Other Parent, Has a Liberty Interest to Be Considered for Placement, and to Placement (if appropriate) when the State Involuntarily Removes the Child from the Custodial Parent


17

U.S. Ninth Circuit

- James v. Rowlands, 606 F.3d 646 (9th Cir. 2010)
 - Parent with Joint Legal Custody, with Sole Physical Custody has Due Process Right to be Informed of CPS Intervention
 - Right to be Informed of Pending Voluntary Placement, Unless Prior Notice will Subject Child to Imminent Harm
 - Need Not Consider for Placement

18

**HAWAII
COURT RULES**



19

**CHILD PROTECTIVE PILOT
PROJECT RULES (CPPPR)**

Extended to December 31, 2010

20

Electronic Filing & Court Records

- Proposed Rules Adopting Electronic Filing and Service:
 - Hawaii Electronic Filing and Service Rules
 - Hawaii Court Records Rules
- Proposed Amendments to Hawaii Rules of Appellate Procedure to Conform with Electronic Filing and Service Rules
 - Pre-registration for Electronic Filing in Hawaii Appellate Courts

21
