

# 2011 CHILD WELFARE LAW UPDATE CASE LAW; STATUTES, ETC.

Patrick A. Pascual  
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## CASES

### I. Child Welfare - Published Decisions .

#### A. U.S. Supreme Court

In re RGB, 123 Haw. 1, 299 P.3d 1066 (2010); cert. denied, [Mother] v. DHS, State of Hawaii, \_\_\_ U.S. \_\_\_, 131 S.Ct.250, 178 L.Ed.2d 166 (Oct. 4, 2010); recon. denied, \_\_\_ U.S. \_\_\_, 131 S.Ct. 814, 178 L.Ed.2d 545 (Dec. 6, 2010).

- Hawaii Supreme Court decision that while Mother's counsel was ineffective, there was no violation of U.S. Constitution, 14 Amendment. Due Process violation based on the "fair trial" standard.

Camreta v. Greene, \_\_\_ U.S. \_\_\_, 131 S.Ct. 2020, 179 L.Ed.2d 1118, 2011 WL 2039369 (2011), aff'g in part and vacating as moot in part, 588 F. 3rd 1011 (9<sup>th</sup> Cir. 2009).

- In a 42 U.S.C. § 1983 civil rights law suit, the U.S. Supreme Court vacated the U.S. 9th Circuit Court of Appeals ruling that the Oregon DHS (CPS/CWS) social worker and the county deputy sheriff violated the 9-year old female child's U.S. Constitution 4th Amendment rights against warrantless searches and seizures. The 9-year child was seized when she was interviewed at an office at the school in the presence of the social worker and the uniformed and visibly armed deputy sheriff for 2 hours, without a warrant, exigent circumstances (imminent harm) and parental consent.
- Due to nature of 42 U.S.C. § 1983 civil rights law suits, the lower court's ruling on the constitutionality of the state actor's conduct is reviewable, even though the state actor(s) is entitled to immunity.
- Case moot because the child no longer lives in Oregon and is almost an adult.

## **B. Hawai'i.**

In re TW, 124 Haw. 468, 248 P.3d 234 (App. 2011).

- The Hawaii ICA reversed the family court's ruling denying the mother's motion to set aside default, vacated the Order Awarding Permanent Custody (Order Terminating Parental Rights), and remanded for a trial on DHS' Motion for Permanent Custody.
- The family court abused its discretion in denying mother's motion to set aside default when:
  - Defaults and default judgments are not favored and court's prefer the adjudication on the merits, i.e. trial.
  - Parents have a protected liberty interest to raise children; proceedings to terminate parental rights must comply with Due Process.
  - Mother defaulted and MPC granted at return on motion.
  - Mother attended every hearing.
  - Mother was participating in services, despite at least one relapse.
  - Mother was not properly served with motion; while hearing was calendared as a return on DHS' motion, Mother's counsel was not served with the motion until the day of the hearing.  
In dicta, the ICA ruled that the hearing should have been continued.
- In re KB, No. 30521, SDO (App. Mar, 31, 2011) .
  - ICA SDO, entered 3 months after In re TW.
  - Family Court abused discretion in denying father's motion for reconsideration (should have been titled "motion to set aside default), when father:
    - Defaulted at the pretrial hearing (for the MPC trial)
    - Father had an "excuse(s)" for missing hearing
    - Father was at the courthouse on the scheduled trial date
    - Father attended every hearing and participated in services while incarcerated

## **C. U.S. Ninth Circuit Court of Appeals.**

Tamas v. DSHS State of Washington, 630 F.3d 833 (9th Cir. 2010).

- Children in State foster care have a protected liberty interest that the State will provide minimally adequate care and safety. State has an affirmative duty to ensure the safety of children in State foster care. This duty includes placing a child in a safe foster home/placement, and protecting a child from harm by the foster

- parents. State violates duty (and the children's protected liberty interest) when it acts with "deliberate indifference."
- State's duty generally ends when the child is adopted. However, State violates its duty when the State created the danger/harm by placing the child in a prospective adoptive home where the child was harmed and the State should have known of the danger, but acted with "deliberate indifference."

## **II. Other Published Decisions.**

### **A. Hawaii.**

State v. Silver, 125 Haw. 1, 249 P.3d 1141 (2011).

- Whether the touching of the buttocks is "sexual contact" depends on the facts and circumstances, i.e. is the touching "sexual conduct"?
- Touching the buttocks of a minor who was asleep, and during the same incident where defendant touched the minor's penis is sexual contact.
- Mere "horse-playing", such as touching the minor's buttocks while throwing the minor in a swimming pool, alone, is not sexual contact.

## **III. Hawaii Unpublished Decisions (Summary Disposition Orders and Memorandum Opinions).**

See Table (Handout)

## **LEGISLATION and COURT RULES**

### **I. Hawaii Legislation (except Act 51).**

Act 77: Amends HRS § 602-59 (c)

- Shortens maximum time to file a petition for writ of certiorari with the Hawaii Supreme Court (appealing the Hawaii ICA's decision) from 90 days to 30 days (after the entry of the judgment on appeal or dismissal), with a requested extension of another 30 days. Effective Date: January 1, 2012. Only ICA judgments on appeal and dismissals filed on or after January 1, 2012.
- HRAP Rule 36 (c) stills needs to be amended to conform with Act 77; the Rule still states that the effective date of the ICA judgment on appeal is 91 days after the judgment on appeal or dismissal if no petition for writ of certiorari is filed with the Hawaii Supreme Court.

Act 179:

- A DHS authorized “provider” (child-placing organization or child-caring institution) may provide no cost emergency shelter and related services to a consenting minor under certain circumstances. “Provider” mandated to report to DHS.

Act 47:

- Amends HRE Rule 303 (c). Presumption that information from government internet sources are correct.

## **II. Federal Legislation.**

CAPTA (Child Abuse Protection and Treatment Act) Reauthorization Act of 2010, PL 111-320. Amends and Re-Authorizes the following:

- Child Abuse Prevention and Treatment Act (CAPTA);
- Family Violence Prevention and Services Act;
- Child Abuse Prevention and Treatment and Adoption Reform Act of 1987; and
- Abandoned Infants Assistance Act of 1988.

(See Handouts for Text and Highlights).

## **III. Court Rules.**

- A. Child Protective Pilot Project Rules.
- Extended to December 31, 2011.