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CASE HYPOTHETICAL FOR BEST PRACTICES PANEL

Per their Hawaii paternity judgment, Mother has sole legal and sole physical custody of daughter "Jane", while Father A's visitation is unspecified. Father A relocated to a Mainland city with his girlfriend, while mother remarried (Father B) and together they had son "John".

CWS filed a Petition for Temporary Foster Custody of Jane and John when Father B's child from a previous relationship was seriously injured while on an extended visit with Father B and Mother in Hawaii. The case was classified as an unknown perpetrator case, as the only persons present in the home at the time of the injury were Mother, Father B, Jane and John. Criminal investigations were opened against Mother and Father B.

Jane and John were placed together with Maternal Grandmother (MGM), with whom the children already had a strong relationship. MGM agreed to supervise the visits of Mother and Father B (who were now separated and going through a contested divorce while still undergoing the criminal investigations). MGM also arranged and managed the visits of Father A whenever he returned to Hawaii to visit Jane.

Father B subsequently relocated to his parents' home on the Mainland.

Father A's position was that Jane should be placed with him on the Mainland. Father B's position was to have John placed with him or with his parents on the Mainland (they had very limited contact with John, given the geographic distance between them and the very young age of the child). Mother's position was that the 2 children should not be separated and should be returned to her when appropriate, and to remain with MGM until then.

CWS requested an Interstate Compact for the Placement of Children (ICPC) home study for each Father. Each ICPC home study approved placement of the respective child with his or her father.

All 3 parents were relatively compliant with their service plans and in constant contact with CWS, the GAL, their respective counsel and the Court.

However, it was unknown if or when a criminal prosecution would be filed, and all evidence in the criminal case was inaccessible to the participants in the child welfare case.

After an adjudication/placement trial, the Court ordered that the children remain in foster custody, and that the children continue to be placed with MGM. The Court also ordered that Jane be sent to Father A on the Mainland for an "extended visit".

The GAL did a home visit with Father A, his girlfriend, and with Jane. Following the visit, the GAL recommended that the Court officially place Jane with Father A.

Mother objected to the GAL's recommendation of placing Jane with Father A. She argued that it was in Jane's best interests to remain with MGM and to have meaningful contact with Mother. She also argued that the GAL had a conflict of interest by making a recommendation regarding Jane which was against the best interest of John (i.e., it was not in John's best interests to be separated from Jane). Mother requested that the GAL be replaced.

MGM retained an attorney and intervened in the case. She requested that both children remain together with her, and that she ultimately wished to take legal guardianship of both.

The subject of the injured child's injuries began circulating on social media, with confidential details (including photographs) being disclosed and threats being made against Mother. The sources of the social media appeared to be from the injured child's extended family members.

DHS filed a Motion to Terminate Parental Rights with a Permanent Plan of adoption with respect to John. Father B discontinued his participation and deferred to MGM as to John. Mother opposed the Motion to Terminate Parental Rights, but was agreeable to MGM adopting both children or taking legal guardianship of both children if the Motion to Terminate Parental Rights was granted. MGM filed a Motion for a Permanent Plan of Legal Guardianship regarding both children. Father A continued to seek placement and custody of Jane.

A mediation was held to try to find a resolution to this case, but it was unsuccessful.

At the time the case was heading to trial on both motions, Jane was 11 years old and John was 5 years old. Jane hadn't stated her preference regarding where she wanted to live, but she asked to speak to the Judge prior to the trial.

Rule 20. PERMISSIVE JOINDER OF PARTIES.

(a) **Permissive joinder.** All persons may join or be joined in one action as parties concerning any right to relief jointly, severally, or in the alternative, in respect of or arising out of property ownership or an issue as to parentage, custody, visitation, support, placement, or treatment of a child.

(b) **Separate trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claims against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(Amended March 30, 2022, effective April 25, 2022.)

Rule 21. MISJOINDER AND NON-JOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately by order of the court.

Rule 22. RESERVED.**Rule 23. RESERVED.****Rule 24. INTERVENTION.**

(a) **Intervention of right.** Upon timely application anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property, transaction, or custody, visitation, or parental rights of a minor child which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive intervention.** Upon timely application anyone may be permitted to intervene in an action:

(1) when a statute confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute, ordinance or executive order administered by an officer, agency or governmental organization of the State or a county, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute, ordinance or executive order, the officer, agency or governmental organization upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) **Notice of Claim of Unconstitutionality.** A party who draws into question the constitutionality of a Hawai'i statute in any proceeding to which the State of Hawai'i, or any agency thereof, or any officer or employee thereof in an official capacity is not a party, shall provide immediate written notice of the constitutional issue to the Attorney General of the State of Hawai'i.

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Hot Tips for Child Welfare Mediations

- Mediations are currently being held in-person and via Zoom. Be sure to clarify the format for your mediation as early as possible to avoid confusion.
- Please ask Resource Caregivers to be available during the mediation. They don't have to attend, particularly if their presence will upset a parent but it REALLY helps if they are available to talk via telephone.
- We love it when DHS Supervisors attend mediation! Very helpful to have all decision makers at the table.
- Mediation is an opportunity to move the case forward. PREPARE yourself and/or your client! Be ready to talk about everything, not just the larger issues. Visits, services, therapy, communication, etc. can all be very important.
- Side bars are allowed. Unlike a judge, mediators have no power to make decisions. The entire process is confidential. If you know there are tricky issues don't be afraid to reach out to your mediator in advance to give them a heads up.
- Please, please, please complete the evaluation form for mediation. Encourage your clients to do so as well. They can be completed via an online form or a hard copy in-person. We really appreciate your feedback!
- We have quarterly OCWMP Stakeholder Meetings to assess the progress and make recommendations for improving this program. Let us know how we can do better!

Oahu Child Welfare Mediation Program
SFY 2022 Mediation Data Report, rev. July 27, 2022
Reporting Period: July 1, 2021 to June 30, 2022

Mediations scheduled: 32
 Number of Mediations held: **26**
 Mediations held virtually: 16
 Cancellations: 6¹
 Rescheduled: 0
 Continued: 3
 Trials Held: 8²

Mediations by Month

July 2021	August 2021	September 2021
Scheduled: 4 Held: 1 Held virtually: 1 Canceled: 3 Rescheduled: 0 Trials completed: 0	Scheduled: 2 Held: 2 Held virtually: 1 Canceled: 0 Rescheduled: 0 Trials completed: 0	Scheduled: 3 Held: 3 Held virtually: 3 Canceled: 0 Rescheduled: 0 Trials completed: 2
October 2021	November 2021	December 2021
Scheduled: 1 Held: 1 Held virtually: 1 Canceled: 0 Rescheduled: 0 Trials completed: 0	Scheduled: 1 Held: 1 Held virtually: 1 Canceled: 0 Rescheduled: 0 Trials completed: 0	Scheduled: 2 Held: 2 Held virtually: 1 Canceled: 0 Continued: 1 Trials completed: 0
January 2022	February 2022	March 2022
Scheduled: 3 Held: 2 Held virtually: 1 Canceled: 1 Continued: 1 Trials completed: 0	Scheduled: 3 Held: 3 Held virtually: 2 Canceled: 0 Rescheduled: 0 Trials completed: 0	Scheduled: 1 Held: 1 Held virtually: 1 Canceled: 0 Rescheduled: 0 Trials completed: 1
April 2022	May 2022	June 2022
Scheduled: 4 Held: 4 Held virtually: 2 Canceled: 0 Rescheduled: 0 Trials Held: 3	Scheduled: 4 Held: 3 Held virtually: 1 Canceled: 1 Rescheduled: 0 Trials Held: 1	Scheduled: 4 Held: 3 Held virtually: 1 Canceled: 1 Rescheduled: 0 Continued: 1 Trials Held: 1

¹ Three cancellations were due to parents not showing up. Other cancellations were due to: father not showing up and mother would not sign the Confidentiality Form; parties reaching an agreement sometime before the scheduled mediation; and child returned home.

² Many of the trials were continued into the following months.

Settlement Rates*

Settlements: 10 (43 %) (adj., jdx, FC, service plan, ALTCP-REU w/ one parent, ALTCP-LG, divorce custody order)
Partial Settlements: 4 (17 %) (adjudication, jurisdiction, FC, service plan, ALTCP-LG, ALTCP-TPR, visitation)
No Settlement: 9 (39 %) (adjudication, jurisdiction, FC, service plan)
Continued: 3
(Partial and Full Settlements: **61 %**)

*Taken as a percentage of the 23 cases for which mediations were completed.

Issues Most Often Mediated

Appropriate Long-Term Case Plan including TPR, adoption, LG 75 %
Jurisdiction, adjudication 17 %

[\$587A-3.1] Rights of children in foster care. (a) The department or an authorized agency shall ensure, whenever possible, that a child in foster care will:

- (1) Live in a home, free from physical, psychological, sexual, and other abuse;
- (2) Receive food, shelter, and clothing;
- (3) Receive medical care, dental services, corrective vision care, and mental health services;
- (4) Be enrolled in a health insurance plan and, within forty-five days of out-of-home placement, be provided with a health assessment and recommended treatment;
- (5) Have regular, supervised or unsupervised, in-person, telephone, or other forms of contact with the child's parents and siblings while the child is in foster care, unless the contact is either prohibited by court order or is deemed to be unsafe by the child's child welfare services worker, therapist, guardian ad litem, or court appointed special advocate. Withholding visitation shall not be used as punishment. If the department or authorized agency denies supervised or unsupervised visits with the child's parents or siblings:
 - (A) If all parties, including the child, agree to the denial of the visits, the department or authorized agency shall submit a written report to the court within five working days to document the reasons why the visits are being denied; or
 - (B) If any party, including the child, disagrees with the denial of the visits, the department or authorized agency shall file a motion for immediate review within five working days that shall include the specific reasons why visits are being denied;
- (6) Receive notice of court hearings, and if the child wishes to attend the hearings, the department or authorized agency shall ensure that the child is transported to the court hearings;
- (7) Have in-person contact with the child's assigned child welfare services worker;
- (8) Have the ability to exercise the child's own religious beliefs, including the refusal to attend any religious activities and services;
- (9) Have a personal bank account if requested and assistance in managing the child's personal income consistent with the child's age and development, unless safety or other concerns require otherwise;
- (10) Be able to participate in extracurricular, enrichment, cultural, and social activities; provided that if a child caring institution or resource caregiver authorizes the participation, the authorization shall be in accordance with the reasonable and prudent parent standard, as defined in title 42 United States Code section 675(10) (A);
- (11) Beginning at age twelve, be provided with age-appropriate life skills training and a transition plan for appropriately moving out of the foster care system, which shall include reunification or other permanency, and written information concerning independent living programs, foster youth organizations, and transitional planning services that are available to all children

in foster care who are twelve years of age or older and their resource families;

- (12) If the child is fourteen years of age or older, have the right to be involved in developing a case plan and planning for the child's future;
- (13) If the child is fourteen years of age or older, receive the child's credit report, free of charge, annually during the child's time in foster care and receive assistance with interpreting the report and resolving inaccuracies, including, when feasible, assistance from the child's guardian ad litem; and
- (14) If the child is seventeen years of age, receive prior to aging out of care certain personal records, such as an official or certified copy of the child's United States birth certificate, a Social Security card issued by the Commissioner of Social Security, health insurance information, a copy of the child's medical records or information to access the child's medical records free of charge, immigration documents, and a driver's license or civil identification card issued by the State; provided that the department or authorized agency shall obtain the personal records for the child.

(b) In addition to the rights established in subsection (a), a child in foster care shall have the following rights:

- (1) To be treated fairly and equally and receive care and services that are culturally responsive and free from discrimination based on race, ethnicity, color, national origin, ancestry, immigration status, gender, gender identity, gender expression, sexual orientation, religion, physical and mental disability, pregnancy or parenting status, or the fact that the child is in foster care;
- (2) To meet with and speak to the presiding judge in the child's case;
- (3) To have regular in-person contact with the child's court appointed guardian ad litem, court appointed special advocate, and probation officer;
- (4) To ask for an attorney, if the child's opinions and requests differ from those being advocated by the guardian ad litem pursuant to section 587A-16(c)(6);
- (5) To attend school and to remain in the child's school of origin unless determined not to be in the child's best interest, and to be provided cost-effective transportation to be maintained in the child's school of origin; provided that if the child changes school during a school year, the child should be enrolled immediately in the new school; and
- (6) To receive educational records to the same extent as all other students.

(c) Sua sponte or upon appropriate motion, the family court may issue any necessary orders to any party, including the department, department of education, department of health, guardian ad litem, court appointed special advocate, or probation officer to ensure the child is provided with the rights enumerated in subsections (a) and (b).

(d) Nothing in this section shall establish a private cause of action for violation of any provision of this section. [L 2018, c 105, §1]