



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 13, 2020, 2:05 p.m.
State Capitol, Conference Room 325

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2550, 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.

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



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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.

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



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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.

HB-2550

Submitted on: 2/11/2020 2:21:36 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

TESTIMONY OF ANTHONY A. PERRAULT
Regarding HB 2550, Relating to The Family Court
Rep. Chris Lee, Chair/Rep. Joy A. San Buenaventura, Vice Chair
Thursday, February 13, 2020 2:05 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Chris Lee and Members of the Judiciary Committee:

I support the passage of House Bill 2550 (Relation to The Family Court) because the legislature is correct: The appellate process is so long (a minimum of 2+ years) that the delay can cause irreparable damage to children, and by the time a decision is rendered by the Intermediate Court of Appeals (ICA), the issue may be moot on account of the ages of the subject children.

I have personally been involved in several Family Court appeals, and in all of them, the ICA has taken over two (2) years to render a decision. Moreover, a decision by the ICA does not necessarily end the litigation because the case may be remanded back to the Family Court for further testimony and evidence, or it can be appealed again to the Supreme Court. I agree that the Supreme Court should remand cases with instructions specific enough to ensure that the Family Court makes the appropriate findings, which will hopefully prevent a second appeal. I further agree that the Supreme Court should do its best to exercise its remand power sparingly.

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HB-2550

Submitted on: 2/11/2020 5:43:12 PM

Testimony for JUD on 2/13/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn R Yamamoto	Individual	Support	No

Comments:

February 11, 2020

Public Hearing

February 11, 2020

Representative Lee,

I strongly support HB2550.

I advocate for families in the child welfare system. A Mom exercised her right to challenge a jurisdictional ruling by filing an appeal shortly after the initial removal hearing. To date, it's been 7 months of waiting for notice of the appeal ruling. In the meantime, an infant and toddler are stuck in foster care while there is no evidence that the appeal is even in the hands of a judge!

Marilyn Yamamoto

Hawaii Family Advocacy Team