CONCURRING AND DISSENTING OPINION BY LEONARD, PRESIDING J.

I concur with the majority's conclusion that the Family Court of the First Circuit (**Family Court**) erred in admitting Petitioner-Appellee Mitchell K. Kuroda's (**Kuroda**) hearsay testimony regarding the minor child's (**Minor**) statements to Kuroda. However, I respectfully dissent from the majority's decision to vacate the July 12, 2010 Order of Protection and remand for further proceedings, rather than to reverse the Order of Protection.

As stated in the majority opinion, Kuroda's inadmissible hearsay testimony "was the only testimony implicating Howard Seth Keith Peck (**Peck**) as having caused Minor's injury." Peck argues that with the exclusion of the hearsay testimony by Kuroda, the Order for Protection should be reversed. I agree. The Hawaiʻi Supreme Court has held:

> An appellate court will not reverse a judgment in a nonjury case because of the admission of incompetent evidence, unless all of the competent evidence is insufficient to support the judgment or unless it affirmatively appears that the incompetent evidence induced the court to make an essential finding which would not otherwise have been made.

Associated Eng'rs & Contractors, Inc. v. State, 58 Haw. 187, 213, 567 P.2d 397, 414 (1977) (citation and quotation marks omitted). This court applied the supreme court's analysis in Santos v. Perreira, 2 Haw. App. 387, 393-94, 633 P.2d 1118, 1124 (1981), wherein the appellate court concluded that the trial court erred in its admission of certain exhibits. The court cited the passage above from Associated Engineers and stated:

> In considering this issue, we note the existence of a presumption in a non-jury trial that all incompetent evidence was disregarded and that the issues were determined upon an appropriate consideration of the competent evidence only. . . .
>
> The record contains sufficient competent evidence to support a decree in favor of the Santoses. However, we conclude from the record in general and the Finding of Fact No. 5 in particular that it affirmatively appears that but for the improper use of the competent evidence, the trial court's decision would have been otherwise.

Id. at 394 (citations and footnote omitted). Accordingly, in light of the existence of competent evidence in the record, the court remanded for a new trial.

Here, by contrast, there is no competent evidence whatsoever implicating Peck as having caused Minor's injury. Without any competent evidence in the record supporting the relief requested in Kuroda's petition, there is no basis for ordering further litigation and I would reverse the Family Court's July 12, 2010 Order of Protection.[1]

[1] As stated in Hawaiʻi Rules of Appellate Procedure Rule 35(e), when an order is "reversed," it ends the litigation on the merits.