

DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent.

The disputed issue in this case was custody over the parties' two young children (Children). Father resided in Texas and Mother resided in Hawai'i. Mother and Father accused each other of being the perpetrator of domestic violence, and Father alleged that Mother's older son had engaged in sexual abuse of Children.

In custody disputes, the family court is guided by the principle that "[c]ustody should be awarded to either parent or to both parents according to the best interests of the child" Hawaii Revised Statutes (HRS) § 571-46(a)(1) (Supp. 2012). In addition, HRS § 571-46(a)(9) (Supp. 2012) provides that where child custody is in dispute, "a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence."

Father and Mother presented diametrically opposing claims and evidence regarding each other's fitness as a parent. In order to properly determine the best interests of Children, the Family Court of the First Circuit (Family Court) was required to resolve these conflicting claims and evidence, which in large part turned on the Family Court's assessment of whether Father or Mother was more credible.

In my view, the question of custody over Children was too important and the proper determination of Children's best interests too complex for the Family Court to inflexibly limit the time for trial to a total of three hours. Because the three hours were split between the parties, this meant that Mother had only 90 minutes, including her cross-examination of Father, to present her case. Under the circumstances of this case, I believe that the Family Court abused its discretion in cutting short Mother's case and precluding her from introducing additional evidence based on its rigid enforcement of the three-

hour time limit. See Doe v. Doe, 98 Hawai'i 144, 155-56, 44 P.3d 1085, 1096-97 (2002). The Family Court's three-hour time limit unreasonably deprived Mother of a fair opportunity to present her case.

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