

Electronically Filed
Supreme Court
SCWC-17-0000027
13-APR-2020
08:13 AM

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---o0o---

DJ,
Respondent/Plaintiff-Appellant,

vs.

CJ,
Petitioner/Defendant-Appellee.

SCWC-17-0000027

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-17-0000027; FC-D NO. 12-1-6689)

APRIL 13, 2020

CONCURRING AND DISSENTING OPINION BY NAKAYAMA, J.,
IN WHICH RECKTENWALD, C.J., JOINS

I agree with the Majority's holding that the family court did not abuse its discretion in relying upon the Custody Investigation Unit (CIU) report in making its custody decision. However, I do not agree with the Majority's holding that the

family court abused its discretion in denying Father's motion for a continuance.

While I agree that "[p]arental rights guaranteed under the Hawai'i Constitution would mean little if parents were deprived of the custody of their children without a fair hearing[,]” In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002), in my view, Father was not deprived of a fair hearing when the family court denied his motion for a continuance. Father successfully gave opening and closing statements, presented his evidence, and elicited testimony from his witnesses. Though he struggled with cross-examination, he ultimately succeeded in cross-examining Mother's witnesses, and does not identify any information he was prevented from eliciting on cross-examination. It is clear to me that Father's unfamiliarity with one part of the trial process did not prejudice his case.

I respectfully concur in part and dissent in part.

I. BACKGROUND

Mother and Father were born in the Philippines and married in the United States in 2009. Their son, RBJ, was born in the Philippines on February 5, 2008. Their daughter, CAJ, was born in the United States on January 9, 2012.

Mother and Father divorced in 2012. Mother and Father's divorce decree granted them joint legal and physical custody of their two children.¹

A. Family Court Proceedings

On February 1, 2016, Mother, proceeding pro se, filed a motion for post-decree relief requesting that she be granted sole physical custody of RBJ and CAJ, subject to Father's right to reasonable visitation. In a declaration attached to her motion for post-decree relief, Mother explained that she intended to relocate to Durham, North Carolina with her children, where she would live with her then-fiancé and her parents.

Also proceeding pro se, Father filed a response to Mother's motion for post-decree relief on February 18, 2016.

The family court held a hearing on Mother's motion for post-decree relief on March 16, 2016.² At the hearing, the family court stated that it was unable to determine whether relocation to Durham was in the children's best interests based upon the information in the parties' moving papers. Father requested the assistance of a Tagalog interpreter, and in light

¹ Father and Mother were both represented by counsel in the underlying divorce proceedings.

² The Honorable Lanson K. Kupau presided over the hearings held on March 16, 2016, March 30, 2016, and June 8, 2016.

of Father's request, the family court continued the hearing on Mother's motion for post-decree relief to March 30, 2016.

The parties initially agreed to the appointment of a fact finder to provide the family court with the information it required to render a decision on Mother's motion, but Mother later decided not to proceed with a fact finder because it was more expensive than she had anticipated.

At a hearing held on June 8, 2016, the family court determined that it was unable to rule upon Mother's motion for post-decree relief at that time and ordered that the case be set for trial. Specifically, the following exchange took place:

THE COURT: [Y]ou guys have to . . . come back here for trial on July 8th at 8:30.

All witnesses and exhibit lists need to be filed and exchanged with the parties by July 1st, 2016.

And then we'll -- I'll give you a half-day trial, from 8:30 to 12 o'clock, to present whatever witnesses you have and evidence you have to either support your request to relocate or to challenge the request to relocate. Okay?

Do you guys understand that?

. . . .

[MOTHER]: Actually, I actually prepared the exhibits, but then if you want to (indiscernible) for the trial, then --

THE COURT: Because I -- I want you guys to have more time than you guys are going to have just in a -- a short hearing today, 'cause this is a very important request. So I'm going to set it for trial and give you half a day, just you guys, to present your case so that I can have more time to go and consider everything. Okay?

Okay. Any questions, sir?

[FATHER]: No, Your Honor.

THE COURT: And then [an] interpreter will be ordered for that day.

On June 14, 2016, the family court entered an order that, inter alia, referred the parties to the family court's CIU, ordered the parties to cooperate with the CIU investigation, and continued the trial on Mother's motion for post-decree relief to September 30, 2016.

On September 23, 2016, Court Officer Leanna Lui, MSW (Lui), completed a CIU custody evaluation report (CIU report). Ultimately, the CIU report recommended that the children be allowed to relocate to Durham with Mother and to remain with Mother during the school year. The CIU report also recommended a time-sharing arrangement whereby the children would spend certain school breaks with Father.

On September 30, 2016, the family court held a half-day trial on Mother's motion for post-decree relief.³ Both Mother and Father proceeded pro se. Father was accompanied by a Tagalog interpreter.

First, the family court asked Mother and Father to clarify who their witnesses were and what they expected each of their witnesses to testify to. Father, without difficulty, explained that he had brought his sister, his father, and a family friend, to testify on his behalf. He also described what he believed each witness would testify to. Father prepared

³ The Honorable William J. Nagle, III, presided.

numerous exhibits to support his challenge to Mother's motion for post-decree relief, which included documentary evidence of his stable employment, health insurance, citizenship status, housing arrangements, and his financial responsibility, as well as photographs supporting his active involvement in his children's social and personal lives.

Father and Mother gave their opening statements. Father delivered his opening statement through his interpreter. Father's opening statement highlighted that his children were very important to him, that he was a United States citizen, that he would feel very hurt if his children were removed and allowed to relocate, and that he hoped that his children would be permitted to stay with him and his parents in Hawai'i.

Mother called three witnesses to testify on her behalf: (1) Leimomi Clark (Mrs. Clark), a friend; (2) Charito Cortez, the children's maternal grandmother; and (3) Michael Clark (Mr. Clark), Mrs. Clark's husband. Mother also testified on her own behalf.

Father cross-examined Mrs. Clark and Mr. Clark but elected not to cross-examine Mother or the children's maternal grandmother. During cross-examination, Father successfully asked Mrs. Clark and Mr. Clark to clarify certain parts of their testimony. In cross-examining Mr. Clark, for example, Father questioned the validity of Mr. Clark's opinion that Durham was

safer than Hawai'i, given that, in Father's view, there is a greater history of violence on the mainland. Father also called into question Mr. Clark's testimony that relocation was in the children's best interest by asking whether Mr. Clark thought it was in the children's best interest to stop seeing their Father regularly.

However, the family court reminded Father several times that he was only permitted to ask questions on cross-examination, and that he was not allowed to argue with the witnesses. For example, the following exchange took place on cross-examination of Mrs. Clark:

BY [FATHER]:

Q. Ms -- Mrs. Clark, you just said that it would be (indiscernible) I'm not good father in terms of educating and intensive (indiscernible) for my kids. I believe that I did my best, sending them in their doctors --

THE COURT: Excuse me. Do you have any questions for her?

Q. (BY [FATHER]) Mrs. Clark, how did you said that -- you said that I am not being a good father to my kids in terms of their health or something or their school, in their school, sending them in Lunalilo School?

A. Well, I understand from your son, [RBJ], who is . . . eight years old, that you do his homework for him, and you provide him his answers because you felt that he was too lazy to do his homework, and he was frustrated about doing his homework. I don't think that's a good thing for a father to do because the son -- your son will never learn anything in school.

Q. I'm -- I'm trying to encourage him to do his homework or to do his classwork.

THE COURT: [Father], not time to argue with the witness. If you have a question to ask her, you should ask her now.

[FATHER]: (Through interpreter) Only the question -- only the statements that (indiscernible) make?

(In English) Only the statement, Your Honor, or --

THE COURT: This is not the time for you to make statements. If you have questions to ask Mrs. Clark--
[FATHER]: About what she said?
THE COURT: About her testimony, yeah.
[FATHER]: That's all, Your Honor.

Similarly, on Mr. Clark's cross-examination, the following exchange took place:

BY [FATHER]:

Q. Sir, Mr. Clark, Lieutenant⁴, what did you said, N.C., North Carolina, is better than Hawaii, considering now there's a lot of crime happening there, considering Hawaii is very peaceful, and there's no history of anything violence, except the last war, which is World War II, which been long, long time [sic]?

A. [Father], for your information, working -- working the streets of Kalihi for 29 years and the surrounding district of Kaneohe, our town is not as peaceful as you might imagine. I've been trained in riot control, and we have prevented a few riots, including a few at a bar . . . many times. So the actions that you've seen in Charlotte, North Carolina, are typical of a . . . metropolitan area. We're no different.

The metropolitan [area] here . . . has a permanent population of 956,000 people. Of that, the average . . . people who are committing crimes is 3 percent. Well, that's over 30,000 who are causing trouble in our city. So we don't live in a real peaceful environment[.]

Q. And then you said that the kids not going have a hard time going back and forth every week. Have you ever think that it's going to be hard for them not to see me, if you're thinking the -- their best interest, to (indiscernible) me as their father, not to see me every week (indiscernible) right now?

A. Considering my observations of their reactions to you, oh, I certainly think they'll be much better off, especially as a baby, when your daughter, [CAJ], used to kick and scream when you'd take her away from her mother or me or my wife during the twice weekly exchanges.

Q. For what I see, Mr. Clark, my daughter always excited to see me, and my son.

THE COURT: Excuse me, [Father]. This is the time for questions. Okay?

[FATHER]: That's all, Your Honor.

⁴ Mr. Clark testified that he is a retired police lieutenant for the Honolulu Police Department.

After Mother finished presenting her evidence, the family court informed the parties that it had invited Lui to testify and authenticate the CIU report. Upon being informed that Lui was being called to testify as a witness, Father objected and orally moved for a continuance so that he could consult an attorney:

[FATHER]: Can I say something, Your Honor? I would like to practice my right to -- to see a -- a lawyer.
THE COURT: See a lawyer now?
[FATHER]: I would like to extend this hearing.
THE INTERPRETER: Asking for a continuance because he wants to consult a lawyer.

Mother objected to Father's motion for a continuance, observing that the hearing on her motion for post-decree relief had already been continued several times. The family court then asked Father why he had not retained an attorney up until that point. Father responded:

Your Honor, I didn't know is going -- this going to be the setup, 'cause normally when we go to . . . court, it's normally asking the judge. I didn't know about . . . cross-examination, something like that. I have no idea. So I would like to practice my right to hire a lawyer, to see a lawyer (indiscernible), and extend this hearing, 'cause I . . . have no idea about this . . . procedure.

Ultimately, the family court denied Father's motion for a continuance in the following exchange:

THE COURT: Okay. [Father], the problem I'm having is that this motion was filed back . . . in February. You folks have had numerous hearings before . . . Judge Kupau. Since that time, you've been to court, you know, a fair amount. I guess . . . I don't understand why you've had in excess of six months to hire an attorney, and now we're halfway through the

trial, and you want to continue the matter to hire an attorney.

[FATHER]: Like, again, like I said, Your Honor, I didn't know this -- that this the first time I been here in this kind of setup of -- in the court. I normally go to a -- they get a judge and two of us. THE COURT: Uh-huh.

[FATHER]: That's -- that's how it is. But cross-examination, I have no idea. That's why I cannot do it. So I would like to say -- I would like to practice my right to . . . see a lawyer so I can also (indiscernible) for me to deliver my -- my . . .

THE COURT: Okay. [Father], the Court's going to deny your motion for a continuance. I think it's too late. We're already in the trial. That's something that if you were . . . going to, you should have hired an attorney early on. So I'm going to deny your motion. It's too late.

The family court called Lui to testify. Lui testified that she completed a custody evaluation investigation for the present case. Lui further stated that she generated a report offering recommendations to the family court based off of her investigation, which was completed on September 23, 2016.

Both parties were afforded an opportunity to cross-examine Lui. Father experienced difficulty in cross-examining Lui and again requested a continuance so that he could consult a lawyer, which the family court denied:

BY [FATHER]:

Q. In her report, you never said that I do have a one-bedroom house and all that . . . safety first, which is I -- I mention it -- mention to you four times. If you remember, when you come to my house, my main goal for my . . . children is . . . their safety. But . . . you never put anything about that, all the safety thing that I show it to you?

A. I'm sorry. I don't understand the question.

THE COURT: [Father], it would help if you'd just ask a very simple question like, do you remember the time you visited my house?

[FATHER]: Like again -- like I said, Your Honor, I would like to see a lawyer because I would

like to practice my right to -- 'cause I don't know --
I don't know how to do this thing.

. . . .

[FATHER]: In her report, she didn't write down
what inside of the refrigerator, things like that,
what . . . foods that my children eat, and then what
(indiscernible) my parents' house, what the childrens
[sic] do . . . there. So, to me --

THE COURT: Okay.

[FATHER]: -- this woman is incomplete.

THE COURT: All right.

[FATHER]: (Indiscernible.)

THE COURT: Do you agree that your report is
incomplete in any way?

[LUI]: No.

THE COURT: Okay.

[FATHER]: Your Honor, again, I would like to
practice my right to hire a lawyer, to . . .

THE COURT: [Father], again, we're in the middle
of the trial. If you wanted to hire a lawyer, this
was something you should have done way before this.

After Lui testified on behalf of the family court,
Father presented his evidence. Father brought his sister, his
father, and a family friend to testify on his behalf. Without
the assistance of an interpreter, Father elicited the testimony
of all three of his witnesses on direct examination.

Father's sister testified that Father had excellent
relationships with his children, that the children were already
acclimated to living in Hawai'i and would have difficulty
adjusting to living on the mainland, that she believed that
Hawai'i was more stable than North Carolina, that the children
would receive an adequate education in Hawai'i, and that she would
provide Father and the children financial and emotional support
if the children remained in Hawai'i.

Additionally, Father's family friend attested that Father was a good role model to his children who provided for their needs. Father's family friend also testified that relocation would not be in the children's best interests because they had established positive relationships with their cousins in Hawai'i and because the children had already acclimated to living and going to school in Hawai'i.

The children's paternal grandfather testified that RBJ was doing well in school in Hawai'i and that relocation was not in the children's best interests because they should be raised with the aloha spirit in Hawai'i.

Father also testified at length. Father testified that relocation was not in the children's best interests because: (1) his children, especially RBJ, would experience anxiety in having to relocate and acclimate to a new environment; (2) Father had stable, long-term employment and health benefits that would allow him to provide for his children and meet their needs; (3) Father had secured stable housing, which was in close proximity to his parents' house, so that his children would receive ample support; (4) Father opened savings accounts for his children; (5) RBJ's academic performance and behavioral issues had vastly improved in Hawai'i; (6) Father took the children to a variety of excursions and social activities to spend quality time together; (7) Father

had consistently met all of his children's personal and medical needs; and (8) the children had been injured while in Mother's care but not in his care. As he testified, Father utilized his exhibits to support each of the foregoing points and argued how each exhibit supported that moving to Durham was not in the children's best interests. For the most part, Father testified in English, on his own; he only relied on the interpreter to clarify that he believed his children would experience anxiety if they relocated to Durham.

Mother and Father then gave their closing arguments. Father gave his closing argument on his own, in English; the interpreter only assisted him in clarifying that he believed that his children would suffer from anxiety if they were relocated to North Carolina. Father reiterated that he could raise the children in a more stable environment in Hawai'i, where the children already had established relationships with their schools, extended family, and medical treatment professionals. Father also argued that he would be a good role model to his children and that his relationship with his children would be negatively affected if they relocated to the mainland.

Following the parties' closing arguments, the family court took the matter under advisement.

On November 23, 2016, the family court filed a written order granting Mother's motion for post-decree relief. In the order, the family court issued its factual findings based upon the CIU report and the evidence presented at trial, and ruled, in relevant part:

Based on the evidence at trial and the report of CIU, the Court finds that Mother has been the primary caregiver, and more consistently supportive parent to the children. The Court also finds that Mother has, and is presently able to place the interests of the children ahead of her own, even while working multiple jobs to provide for them financially. No evidence was presented at trial that any safety issues will arise if an award of physical custody is made to Mother for the relocation. On the other hand, Father has failed to show that he has advanced the children's educational opportunities, nor has he demonstrated at trial that he would be an adequate physical custodian. Based upon these findings, the Court awards sole physical custody of the minor children to Mother, subject to Father's rights of visitation[.]

Additionally, in a footnote, the family court observed that Father requested a continuance at trial, but that the request was denied. The footnote provided:

Father requested a continuance of the trial to retain legal counsel after Mother had concluded her presentation of evidence in her case in chief. Despite the passage of 7 months and numerous court hearings since the filing of Mother's Motion, Father had failed to seek or retain legal counsel. Father presented no excuse for his failure to retain legal counsel in a timely fashion, and the Court denied Father's request for a continuance literally in the middle of trial as untimely.

On December 2, 2016, Father filed a "Motion for Reconsideration or Amendment of Judgments and Orders" (motion for reconsideration). Father argued that his motion for reconsideration should be granted because, among other things,

the family court should have granted his motion for a continuance so he could have sought advice from a lawyer.

On January 4, 2017, the family court issued a written order denying Father's motion for reconsideration. The family court ruled that Father's motion for reconsideration primarily reiterated the arguments that he raised at trial and did not present any new evidence and/or arguments that could not have been presented at trial.

B. ICA Proceedings

On appeal, Father, now represented by counsel, argued that the family court abused its discretion in denying his motion for a continuance at trial and in relying upon the CIU report in support of its decision granting mother's motion for post-decree relief.

On December 26, 2017, the ICA filed a summary disposition order, in which a majority of the ICA panel vacated the family court's orders granting Mother's motion for post-decree relief and denying Father's motion for reconsideration.

The ICA majority concluded that "the family court abused its discretion in denying Father's request for a continuance to seek the assistance of counsel." In light of this holding, the ICA majority further determined that it need not address Father's second point of error.

Judge Reifurth wrote a dissenting opinion. In his view, the family court did not abuse its discretion in denying Father's request for a continuance. He reasoned:

While parents have a substantive liberty interest in the care, custody, and control of their children, and these rights "would mean little if parents were deprived of the custody of their children without a fair hearing," In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002), this is not that case. Father, in fact, had long-ago been provided with an interpreter, and the hearing on the Motion had already been delayed for almost seven months. He was familiar with his right to counsel and the [trial] process, yet he chose not to hire an attorney. In sum, he did not exercise any due diligence. Father's substantive parental rights, in this context, were therefore not infringed upon, and the court did not abuse its discretion in denying Father's mid-hearing request for a further continuance.

Therefore, in contrast with the majority, Judge Reifurth stated that he would have affirmed the family court's orders granting Mother's motion for post-decree relief and denying Father's motion for reconsideration. Mother appealed.

II. DISCUSSION

A. The Family Court did not abuse its discretion when it denied Father's motion for a continuance.

The Majority holds, in agreement with the ICA majority, that "the family court abused its discretion in denying Father's oral request for a continuance to seek counsel under the circumstances of this case." Majority at 38-39. According to the majority, these "circumstances" include Father's unfamiliarity with the trial process and difficulties with

English, that Father had insufficient time to review and seek counsel's advice about the CIU report, and that Father's substantive parental rights were at stake at trial. Majority at 40. The Majority implies that the family court abused its discretion in denying Father's request for a continuance because doing so deprived him of his established right to be heard in a "meaningful manner." Majority at 38, quoting In re Doe, 108 Hawai'i 144, 157, 118 P.3d 54, 67 (2005). I respectfully disagree.

Because the family courts are uniquely positioned as triers of fact throughout complicated and emotional custody cases, we afford them great deference in making custody decisions and in determining what is in the best interests of the child. See A.A. v. B.B., 139 Hawai'i 102, 106, 384 P.3d 878, 882 (2016). Indeed, "the family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion." In re Jane Doe, Born on May 22, 1976, 84 Hawai'i 41, 46, 928 P.2d 883, 888 (1996) (citation omitted). We have repeatedly said that we will not disturb the family court's decision on appeal "unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant . . . and its decision clearly exceeded the bounds of reason." Doe v. Doe, 98 Hawai'i

144, 154, 44 P.3d 1085, 1095 (2002), quoting In re Jane Doe, 84 Hawai'i at 46, 927 P.2d at 888; see also In re Jane Doe, 95 Hawai'i 183, 189, 20 P.3d 616, 622 (2001).

The record indicates that the family court did not abuse its discretion by depriving Father of the opportunity to present his case in a "meaningful manner" when it denied his request for a continuance. Contra Majority at 38. On the contrary, the record supports that notwithstanding Father's difficulty in cross-examining witnesses, Father had a full and fair opportunity and the capability to present his case in opposition to Mother's motion for post-decree relief at trial.

As an initial matter, Father had the assistance of an interpreter, whose services he could employ at any time, for the duration of trial. Additionally, the record reflects that Father came to trial prepared to present his case. He brought three witnesses to testify on his behalf and explained to the family court what he expected each witness to testify to at the beginning of trial. Moreover, Father prepared numerous exhibits to support his challenge to Mother's motion for post-decree relief.

Father gave an opening statement and cross-examined Mother's witnesses. Although Father experienced difficulty in

cross-examining witnesses, Father was not completely unable to conduct cross-examination at trial. In cross-examining Mr. Clark, for example, Father questioned the validity of Mr. Clark's opinion that Durham was safer than Hawai'i and called into question Mr. Clark's testimony that relocation was in the children's best interests by asking whether Mr. Clark thought it was in the children's best interests to stop seeing their Father regularly.

During his case-in-chief, Father called all three of his witnesses to testify on his behalf and elicited their testimony on direct examination on his own, in English. While examining his witnesses, Father was able to elicit testimony that was favorable to his case regarding whether relocation was in the children's best interests.

Father also testified at length in English, mostly without the assistance of his interpreter. Father testified about the various reasons why he believed that relocation was not in the children's best interests. As he testified, Father utilized his exhibits to support his reasoning

Moreover, Father waited to request a lawyer until after Mother had finished presenting her case.⁵ A California Court of

⁵ Father argues that he was unprepared for the rigors of conducting a trial, believing it to be similar to the hearings he had attended previously, and that he consequently did not request an attorney before trial. (continued...)

Appeal held in A.G. v. C.S., 246 Cal. App. 4th 1269, 1289 (2016), that a parent's decision to wait until the end of a child custody trial to request a continuance so that she could seek an attorney weighed in favor of affirming the trial court's denial of that request. There, the court held that the family court did not abuse its discretion in denying a pro se parent's request for a continuance when "she waited not just until the day of the hearing, but until Father had already presented three witnesses and she had finished her own testimony before seeking a continuance to find counsel." Id. Consistent with the A.G. v. C.S. holding, I believe that here, the timing of Father's request - after Mother had presented her case in chief and after Father had cross-examined Mother's witnesses - indicates that the circuit court was within its discretion to deny Father's request.

Finally, Father gave his closing argument in English, largely without the assistance of his interpreter. Father reiterated the reasons why he believed the children would be better off in Hawai'i and argued that he would be a good role model to his children. Therefore, it is clear to me from the

⁵(...continued)

However, the record indicates that Father arrived at trial aware of what it would entail. Father brought three witnesses and explained to the circuit court what he expected their testimony would be. Father also prepared numerous exhibits to support his position.

record that Father was afforded a full and fair opportunity to present his case and that he did competently present it.

Furthermore, Father does not explain what evidence or information he was prevented from introducing on cross-examination, which he was unable to independently introduce during the presentation of his evidence. As such, Father has not demonstrated how his unfamiliarity with one part of the trial proceedings, cross-examination, prejudiced his ability to present his case in opposition to Mother's motion for post-decree relief.

This court has held that the family court abused its discretion when it denied a party's motion to continue a custody trial. Doe v. Doe, 98 Hawai'i at 156, 44 P.3d at 1097. However, the facts of Doe can be distinguished from those of this case. In Doe, we held that the family court abused its discretion in denying Mother's motion for a new trial after the family court precluded several of Mother's witnesses from testifying for her due to time constraints. Id. According to those witnesses' affidavits, they intended to testify about "Father's alleged abuse of Mother and its related effect on Child." Id. By contrast, here Father was not prevented from allowing any witness to testify, successfully conducted direct examination of his witnesses and, with some difficulty, conducted cross-examination

of Mother's witnesses. Moreover, in contrast with the Doe witnesses' affidavits that they would testify about the Doe Father's abuse, here Father never identified what he would have elicited, with the assistance of an attorney, on cross-examination that he was unable to elicit himself. Therefore, unlike the family court in Doe, whose ruling "resulted in the exclusion of testimony of witnesses bearing upon the issue of family violence and, inferentially, the best interest of Child[,]" 98 Hawai'i at 155, 44 P.3d at 1096, the family court's ruling here merely avoided further unnecessary delay.

To conclude, it is true that the record supports that Father experienced difficulty cross-examining witnesses at trial. However, the record reflects that Father came to trial prepared to present his case and was able to present his case by presenting witness testimony, documentary evidence, and arguments to support his position that relocation to Durham was not in his children's best interests because they could grow up in a more stable environment with him and his extended family in Hawai'i. Additionally, Father has not identified or described what information he was prevented from eliciting on cross-examination, and therefore, how his unfamiliarity with one part of the trial process prejudiced his case. On this record, Father was able to

meaningfully present his case and was not "deprived [of] the custody of [his] children without a fair hearing," In re T.M., 131 Hawai'i 419, 433-34, 319 P.3d 338, 352-53 (2014) (quoting In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002)).

In light of the foregoing, it cannot be concluded that the family court "disregard[ed] rules or principles of law or practice to the substantial detriment of" Father when it denied his mid-hearing motion for a continuance. In re T.M., 131 Hawai'i at 431, 319 P.3d at 350. Accordingly, the family court did not abuse its discretion in denying Father's motion for a continuance.⁶

III. CONCLUSION

I agree with the Majority's holding that the family court did not abuse its discretion when it relied upon the CIU report in making its custody determination. However, I do not believe that the family court abused its discretion in denying Father's motion for a continuance in the middle of trial. In denying Father's motion for a continuance, the family court did

⁶ Aside from stating that an attorney might have more effectively cross-examined the CIU social worker, Father does not assert how, specifically, a continuance could have helped him. Father's failure to show how he was prejudiced by the family court's denial of his request for a continuance, combined with his apparent ability to present his case without an attorney, indicates to me that this court should not hold that the family court abused its discretion.

not deprive Father of the opportunity to present his case in a "meaningful manner[,]” In re Doe, 108 Hawai'i at 157, 118 P.3d at 67, and therefore did not "disregard[] rules or principles of law or practice[.]” See Doe v. Doe, 98 Hawai'i at 154, 44 P.3d at 1096. Moreover, Father was able to thoroughly present his case without the assistance of an attorney and did not identify what information he was prevented from eliciting on cross-examination or describe how his unfamiliarity with cross-examination prejudiced his case.

I would therefore reverse the ICA's amended judgment on appeal and affirm the family court's November 23, 2016 and January 4, 2017 orders.

For these reasons, I respectfully concur in part and dissent in part.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

