

NOS. CAAP-20-0000700 and CAAP-20-0000718

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE INTEREST OF B CHILDREN

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 14-00235)

ORDER DISMISSING APPEALS

(By: Leonard, Presiding Judge, Hiraoka and Nakasone, JJ.)

Upon review of the record in In the Interest of B Children, CAAP-20-0000700, In the Interest of B Children, CAAP-20-0000717, and in the Interest of B Children, CAAP-20-0000718,¹ it appears that:

(1) On October 29, 2020, self-represented Mother-Appellant (Mother) filed a notice of appeal in the underlying case, FC-S No. 14-00235, from the October 21, 2020 order terminating parental rights, which created the appeal in CAAP-20-0000700;

(2) On December 7, 2020, the circuit court clerk notified the parties in CAAP-20-0000700 that the record on appeal had not been filed because Mother did not pay the filing fee or obtain a fee waiver;

(3) On December 8, 2020, the record on appeal in CAAP-20-0000700 was due but not filed. Therefore, Mother is in default of the record on appeal;

¹ The court takes judicial notice of the records filed in CAAP-20-0000700, CAAP-20-0000717, and CAAP-20-0000718. Hawai'i Rules of Evidence Rule 201.

(4) On January 4, 2021, the appellate clerk in CAAP-20-0000700 notified Mother to pay the filing fee or file a motion for leave to proceed on appeal *in forma pauperis* on or before January 14, 2021, or the matter would be brought to the court's attention and could result in sanctions, including dismissal of the appeal;

(5) On February 9, 2021, the appellate clerk entered a default of the record on appeal in CAAP-20-0000700, informing Mother that the time to docket the appeal expired on December 8, 2020, she had not paid the filing fees or obtained an order allowing her to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on February 18, 2021, for action that may include dismissal of the appeal, and she could seek relief from default by motion;

(6) Mother took no further action in CAAP-20-0000700;

(7) On November 18, 2020, Mother, through private counsel, Shawn A. Luiz (Luiz), filed a notice of appeal from the October 21, 2020 order terminating parental rights and the October 22, 2020 orders concerning the Child Protective Act in FC-S No. 14-00235, which created the appeal in CAAP-20-0000717;

(8) On December 15, 2020, the circuit court clerk filed the record on appeal in CAAP-20-0000717, which identified Luiz as Mother's counsel. The abbreviated opening brief is due on or before March 3, 2021;

(9) Meanwhile, on November 18, 2020, Mother filed another self-represented notice of appeal from the October 21, 2020 order terminating parental rights in the underlying case, which created the appeal in CAAP-20-0000718;²

(10) On December 15, 2020, the circuit court clerk notified the parties in CAAP-20-0000718 that the record on appeal had not been filed because Mother did not pay the filing fee or obtain a fee waiver;

(11) The same day, the appellate clerk in CAAP-20-0000718 notified Mother to pay the filing fee or file a motion

² It is not clear why Mother filed the second notice of appeal, or why she apparently did not notify or identify Luiz as her counsel. Mother is cautioned that generally she should not file documents on her own in cases where she is represented by counsel.

for leave to proceed on appeal *in forma pauperis* on or before December 28, 2020, or the matter would be brought to the court's attention and could result in sanctions, including dismissal of the appeal;

(12) On January 4, 2021, the appellate clerk entered a default of the record on appeal in CAAP-20-0000718, informing Mother that the time to docket the appeal expired on December 28, 2020, she had not paid the filing fees or obtained an order allowing her to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on January 14, 2021, for action that may include dismissal of the appeal, and she could seek relief from default by motion;

(13) Mother took no further action in CAAP-20-0000718; and

(14) An appeal may be dismissed where the record on appeal has not been prepared because the appellant failed to pay the required fees or obtain an order allowing the appellant to proceed *in forma pauperis*. HRAP Rule 11(b)(2), (c)(2). Therefore, the court will dismiss the appeals in CAAP-20-0000700 and CAAP-20-0000718 for failure to pay the filing fees or obtain a fee waiver. In addition, Mother's self-represented appeals in CAAP-20-0000700 and CAAP-20-0000718 are duplicative of her appeal in CAAP-20-0000717, where she is represented by counsel, as all three appeals are from the same October 21, 2020 order terminating parental rights in the underlying case.

Therefore, IT IS HEREBY ORDERED that the appeals in CAAP-20-0000700 and CAAP-20-0000718 are dismissed.

IT IS FURTHER ORDERED that the appellate clerk shall mail a copy of this order to attorney Shawn A. Luiz, at his mailing address on record with the Hawai'i State Bar Association.

DATED: Honolulu, Hawai'i, February 23, 2021.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Karen T. Nakasone
Associate Judge