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NO. CAAP-23-0000665
(Consolidated with NO. CAAP-23-0000703 and CAAP-23-0000704)

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

NO. CAAP-23-0000665
IN THE MATTER OF THE GUARDIANSHIP OF E.K.
(CASE NO. 1FGD-23-0000056)

NO. CAAP-23-0000703
IN THE INTEREST OF EK1, EK2, EK3, and R.K.
(CASE NO. FC-S 14-00192)

NO. CAAP-23-0000704
IN THE INTEREST OF RK1 and RK2
(CASE NO. FC-S 21-00212)

APPEALS FROM THE FAMILY COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, McCullen and Gluck, JJ.)

In this consolidated appeal,¹ Mother-Appellant/Cross-Appellee (**Mother**) appeals and Father-Appellee/Cross-Appellant (**Father**) (together, **Parents**) cross-appeals from three orders of

¹ We consolidated three appeals, CAAP-23-000703 (FC-S No. 14-00192), CAAP-23-000704 (FC-S No. 21-00212), and CAAP-23-000665 (1FGD-23-0000056), all of which involve the same family. As discussed more fully below, the first two cases involve the termination of parental rights as to five children and the third case involves the appointment of co-guardians for a sixth child.

the Family Court of the First Circuit (**Family Court**): two orders, dated September 29, 2023, terminating Mother's and Father's parental rights as to five children (referred to as RK1, RK2, RK3, EK2, and EK3), and an order dated October 4, 2023 appointing co-guardians of a sixth child (EK1) (collectively, **Children**).²

Mother raises several points of error, which we reorganize and consolidate as follows. First, Mother argues that the Family Court erred in proceeding without RK1's consent to the Permanent Plan. Second, Mother argues that the Family Court erred in approving adoption for RK1, EK2, and EK3 "based on generalized findings and the adoption presumption, without the child-specific findings required to override [RK1's] non-consent" and without adequate statutory findings as required by Hawai'i Revised Statutes (**HRS**) §§ 587A-32 and -33. Third, Mother argues that the Family Court erred by treating prior rulings as law of the case and a waiver of later challenges, which reduced the burden at trial for the State Department of Human Services (**State** or **DHS**). Fourth, she argues that the Family Court failed to conduct a proper inquiry as to the applicability of the Indian Child Welfare Act (**ICWA**).

Father challenges multiple findings of fact (**FOFs**) and generally contends the Family Court abused its discretion in concluding that he was not willing and able (either presently or in the reasonably foreseeable future) to provide the Children a safe family home.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we resolve Parents' arguments as follows, and affirm.

² The Honorable Brian A. Costa presided.

Background: In 2014, DHS received a report of threat of neglect to several of the Children, triggering the instant litigation. Over the next several years, the Children were taken from the family home and placed in foster custody.

In 2023, the State filed the following motions:

1. On February 3, 2023, in case FC-S No. 14-00192 (**2014 TPR Case**), the State moved to terminate Parents' parental rights as to three children (RK1, EK2, and EK3).
2. On February 3, 2023, in case FC-S No. 21-00212 (**2021 TPR Case**), the State moved to terminate Parents' parental rights as to two other children (RK2 and RK3).
3. On May 25, 2023, also in the 2014 TPR Case, the State moved to establish a permanent plan (with the goal of legal guardianship) as to one child, EK1, who was a subject of both the 2014 TPR Case and case 1FGD-23-0000056 (**Guardianship Case**).³ On March 16, 2023, the State had also filed a Petition for Appointment of Co-Guardians of EK1 (**Co-Guardianship Petition**) in the Guardianship Case.

The Family Court held a consolidated trial on the State's three motions in July, August, and September 2023. On September 29, 2023, the Family Court entered orders terminating parental rights (**Termination Orders**) as to the five children in the two TPR Cases, and the Court granted the May 25, 2023 Motion to Establish a Permanent Plan as to EK1. On October 4, 2023, the Family Court entered an Order Appointing

³ EK1 turned eighteen years old during the pendency of this appeal.

Co-Guardians of the Minor (**Guardianship Order**) for EK1 in the Guardianship Case.⁴

At the time of trial in 2023, RK1 was fourteen years old and indicated he did not consent to the permanency goal of adoption. After consulting with him in camera, the Family Court determined it was in his best interests to proceed without RK1's consent.

After trial, the Family Court issued FOFs and conclusions of law (**COLs**) in the Guardianship Case and separate FOFs/COLs in the consolidated TPR Cases. In both the TPR Cases and the Guardianship Case, the Family Court found that (1) Parents were not presently willing and able to provide the Children with a safe family home, even with the assistance of a service plan; (2) it was not reasonably foreseeable that Parents would become willing and able to do so within a reasonable period of time; and (3) the respective Permanent Plans and Co-Guardianship Petition were in the Children's best interests.

Standards of Review:

The family court's FOFs are reviewed on appeal under the "clearly erroneous" standard. A FOF is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. "Substantial evidence" is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) (cleaned up). Additionally, "we will not disturb the family court's decisions on appeal unless the family court disregarded rules or

⁴ Due to delays in the submission of transcript requests (for which Mother's counsel was sanctioned) and the large number of transcripts Mother's counsel requested, Mother's Abbreviated Opening Brief was not submitted until May 2026. Upon completion of the responsive briefs, this appeal was placed on this court's ready calendar in June 2026 and assigned to this merit panel for disposition on July 2, 2026.

principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason." Id. at 189, 20 P.3d at 622 (cleaned up); see also In re JK, 149 Hawai'i 400, 409-10, 491 P.3d 1179, 1188-89 (App. 2021) (discussing standard of review of facts found by clear and convincing evidence).

Unchallenged FOFs are binding on appeal. In re Doe, 99 Hawai'i 522, 538, 57 P.3d 447, 463 (2002).

A. Mother's Arguments

(1) **RK1's consent.** Mother first contends the Family Court erred by proceeding without RK1's consent to the Permanent Plan. Mother relies on In re AB, 145 Hawai'i 498, 517-18, 454 P.3d 439, 458-59 (2019), arguing the Family Court's summary of the in camera discussion "did not reflect a meaningful discussion of adoption, termination, legal guardianship, permanent custody, [or] the legal consequences of adoption." Mother also argues that the Family Court's different treatment of EK1 further confirms the error in its treatment of RK1.

Under HRS § 587A-31(d) (2018):

At each permanency hearing, the court shall order:

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(3) A permanent plan with a goal of:

- (A) Placing the child for adoption and when the department will file a motion to set the matter for the termination of parental rights;
- (B) Placing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child; or
- (C) Awarding permanent custody to the department or an authorized agency, if the department documents and presents to the court a compelling reason why adoption and legal guardianship are not in the best interests of the child.

(Emphasis added.) HRS § 587A-32(a)(3)(A) (2018) states that the permanent plan shall document "[a] compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal[.]" Under HRS § 587A-33(a) (2018), "[a]t a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that: . . . (4) The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent."

We affirm the Family Court's findings and conclusions. FOFs 200 and 280-293 support the Family Court's decision to proceed without RK1's consent: the FOFs collectively indicate that RK1 vacillated between wanting to return to Parents and not wanting to return out of fear, that he had significant cognitive delays, that his "intellectual disability [and] mannerisms make him appear younger than his chronological age," and that although he told the Family Court he wanted to be reunified with Parents, he did not understand the concept of adoption. One cannot meaningfully consent to something that is not understood. The Family Court's unchallenged findings – regarding RK1's "intellectual disability" and inability to comprehend the concept of adoption – support its decision to proceed without RK1's consent under these circumstances. Taken together, FOFs 280-293 illustrate that the Family Court considered RK1's individual needs and did not rely on the presumption for adoption or on RK1's bond with the RCGs "as doing nearly all the work."⁵

⁵ Mother also argues that "HRS § 587A-33(a)(4) is a separate statutory prerequisite to termination" and that RK1's "non-consent required its own analysis and could not be absorbed into a generalized best interest finding." The Family Court conducted the analysis required in HRS § 587A-33(a)(4), as reflected in FOFs 280 to 293.

Moreover, Mother's reliance on In re AB is misplaced. There, DHS changed its placement recommendation (to an out of state permanent placement) at trial, and the Family Court accepted that recommendation without any serious inquiry. 145 Hawai'i at 517, 454 P.3d at 458. The Supreme Court held that the Family Court abused its discretion in doing so, as it "had an obligation in all instances involving out-of-state permanent placement recommendations to conduct an independent determination of the child's best interests." Id. Here, the Family Court conducted an independent determination of RK1's best interests during an in camera consultation, and that independent determination is reflected in FOFs 288 and 291-293. The Family Court did not skirt its statutory obligation to make an independent best interests determination.

Contrary to Mother's argument that the Family Court's treatment of EK1 further confirms the error in its treatment of RK1, the Family Court's treatment of EK1 is distinguishable. EK1 and RK1 are different ages and have different needs, particularly given RK1's "intellectual disability"; that the Family Court treated these two children differently is an appropriate result of an independent "best interests" determination for each child.

In short, the Family Court did not abuse its discretion in proceeding without RK1's consent.

(2) HRS §§ 587A-32 and -33 findings. In her points of error, Mother argues that the Family Court failed to make sufficient findings under HRS §§ 587A-32 and -33 to support the permanent plans for RK1, EK2, and EK3. However, FOFs 135, 151, 152, 199, 280, 300-301, and 326 (among others) support the Family Court's rulings, and Mother does not challenge these FOFs.

Mother focuses on RK1, conceding that the FOFs/COLs reference RK1's specific needs but arguing that "the court's

findings as to [RK1] were too thin to satisfy [statutory] requirements" and that "the permanent-plan findings do not connect that information to the decision to override his non-consent to adoption." The Family Court clearly explained why it proceeded without RK1's consent. The Family Court found that Mother and Father were not presently willing and able to provide him with a safe family home, and that it was not reasonably foreseeable that they would become willing and able to do so within a reasonable period of time. HRS § 587A-33(a)(1), (2). Under these circumstances, there is a statutory presumption that it is in RK1's best interests "to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home." HRS § 587A-33(a)(3)(A). The June 2023 Permanent Plan for RK1 (and EK2 and EK3) stated that the permanency goal was adoption, and it satisfied the requirements of HRS § 587A-32.

In sum, the Family Court made sufficient findings under HRS §§ 587A-32 and -33.

(3) Law of the case. Mother argues that the Family Court erroneously concluded that Mother's failure to appeal from prior foster-custody and adjudicatory orders constituted a waiver to subsequent challenges, and that the law of the case doctrine should not relieve DHS of its burden to prove the termination elements at trial (nor should it transform unchallenged prior findings into binding proof). She argues that the Family Court was required to consider current evidence, circumstances, permanent plans, and the best interests of each child, yet the Family Court expressly concluded the unchallenged rulings are binding.

Under the law of the case doctrine, "[u]nless cogent reasons support the second court's action, any modification of a prior ruling of another court of equal and concurrent jurisdiction will be deemed an abuse of discretion." Wong v.

City & Cnty. of Honolulu, 66 Haw. 389, 396, 665 P.2d 157, 162 (1983) (emphasis omitted). Here, the Family Court invoked the law of the case doctrine as follows:

9. Mother's and Father's failure to appeal this Court's March 14, 2022 findings and orders confirming the DHS' November 2021 assumption of foster custody of [EK4, EK1, RK1, and EK2] in FC-S No. 14-00192, and adjudicating the Petition - FC-S No 21-00212, invoking the court's CPA subject matter jurisdiction and awarding foster custody of [RK2 and RK3] in FC-S No. 21-00212, which are final appealable orders, is a waiver of any subsequent challenges to the March 14, 2022 findings and orders.

Mother presents no explanation and points to no evidence supporting her claim that application of the law of the case doctrine to unchallenged findings from 2022 relieved DHS of its trial burden, or that the law of the case doctrine was utilized to satisfy the elements of HRS § 587A-33(a). To succeed in its motions to terminate parental rights, DHS still had to – and did – present evidence that, at the time of the hearing in 2023, Parents were not willing and able to provide the Children a safe and secure family home, they would not be able to do so in the reasonably foreseeable future, and the Permanent Plans were in the Children's respective best interests. DHS's Permanent Plan for RK1, EK2, and EK3 (and for EK1), dated January 2023 – that is, after the 2022 findings referenced above – stated the following:

The DHS recommendation is termination of parental rights and an award of permanent custody to the department or other appropriate entity. The home is unsafe. The parents are not able to provide a safe family home for the child/ren, even with the assistance of a service plan[.]

DHS's Permanent Plan for RK2 and RK3, also dated January 2023, stated nearly the same thing. The Permanent Plans and the Family Court's FOFs/COLs support the Family Court's decision, and "an appellate court may affirm a judgment of the lower court on any ground in the record that supports affirmance." State v. Enos, 147 Hawai'i 150, 164, 465 P.3d 597, 611 (2020) (quoting State v. Fukagawa, 100 Hawai'i 498, 506, 60 P.3d 899, 907

(2002)). We conclude the Family Court did not err by applying the law of the case doctrine.

(4) ICWA. Mother next contends the Family Court failed to comply with the ICWA. The ICWA applies whenever an "Indian child" – defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe," 25 U.S.C. § 1903(4) – is the subject of a proceeding that "results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights." 25 C.F.R. § 23.103 (a)(1)(iii) (2016).

Pursuant to the ICWA:

State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

25 C.F.R. § 23.107(a) (2016).

The record indicates that, in January 2015, DHS sent notices to the Cherokee Nation and Bureau of Indian Affairs inquiring as to whether any of the Children in the 2014 TPR Case was an Indian child. The Cherokee Nation responded that none of the Children met the definition of an "Indian child." It is undisputed that all six Children discussed herein are full, biological siblings. In a consolidated hearing on October 13, 2022, the Family Court asked Mother if the Children in both TPR Cases are members of any Indian tribe, to which she responded "No." Mother further testified she was not herself an enrolled tribal member, and the Family Court then ordered that "[i]f any party later learns that the child is an Indian child as specifically defined under the [ICWA], they shall notify all

parties." On this record, we conclude the Family Court did not violate ICWA requirements.

B. Father's Arguments

Father has twenty-one numbered points of error that object to various FOFs and COLs, each of which is accompanied by a one-sentence argument. Neither the points of error nor the arguments contain any citations to "parts of the record relied on" or any argument as to why the specific FOF or COL is clearly erroneous or wrong. See Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28(b)(7) (eff. 2022) (requiring argument to be supported by "citations to the authorities, statutes and parts of the record relied on"); HRAP Rule 28(b)(4)(iii) (requiring appellant to identify "where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency"); HRAP Rule 28(b)(4) ("Points not presented in accordance with this section will be disregarded[.]"). For example, Father's points of error 3, 4, and 7 summarily assert, without analysis, that the record contains "no current evidence" or "no evidence" to support a particular fact or conclusion the Family Court found or reached; these arguments are waived. See HRAP Rule 28(b)(7). Even if the twenty-one points of error were not waived, most of the single-sentence arguments for each point of error reflect Father's disagreement with how the Family Court considered, assessed, and/or weighed the evidence; these actions are the province of the Family Court as factfinder. See In re JK, 149 Hawai'i at 409-10, 491 P.3d at 1188-89.

Father also asserts, without citation to authority and without pointing to support in the record, that DHS did not provide Father with a reasonable opportunity to reunify with the Children if he did not live with Mother. He similarly asserts that there is no clear and convincing evidence that he and

Mother are unwilling/unable to provide a safe home for the Children. These assertions are not accompanied by argument or analysis. See Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawai'i 438, 480, 164 P.3d 696, 738 (2007) (finding that the appellants failed to demonstrate error because they "d[id] not point to anything in the record or provide any analysis that would guide this court in determining the validity of their contention"); HRAP Rule 28(b)(7) (requiring argument to be supported by legal authority and to identify "parts of the record relied on"). Father has failed to demonstrate any error of the Family Court.

Therefore, we affirm the September 29, 2023 Orders Terminating Parental Rights respectively entered in FC-S No. 14-00192 and FC-S No. 21-00212, and the October 4, 2023 Order Appointing Co-Guardians of the Minor entered in 1FGD-23-0000056.

DATED: Honolulu, Hawai'i, September 4, 2026.

On the briefs:

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Chief Judge

/s/ Sonja M.P. McCullen
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