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IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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J.T., Petitioner-Appellee, v.
M.R., Respondent-Appellant

NO. CAAP-25-0000100
(Consolidated with No. CAAP-25-0000436)

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(CASE NO. 2PA211000129)

September 9, 2026

HIRAOKA, PRESIDING JUDGE, MCCULLEN AND GUIDRY, JJ.

OPINION OF THE COURT BY HIRAOKA, J.

In this highly contentious paternity action, M.R. (**Mother**) appeals from several post-judgment orders entered by the Family Court of the Second Circuit.¹ We hold that the family court abused its discretion by: (1) denying Mother's motion to remove a special master, which ultimately deprived her of due process and access to justice; (2) concluding that Mother was a vexatious litigant and imposing sanctions; and (3) modifying

¹ The Honorable Lance D. Collins presided over the post-judgment proceedings.

legal custody without applying the Hawaii Revised Statutes (**HRS**) § 571-46(b) best-interest-of-the-child factors or entering findings of fact and conclusions of law. We vacate the post-judgment orders at issue and remand to the family court with instructions.

I. BACKGROUND

Mother and J.T. (**Father**) are **Child's** natural parents. Father petitioned for custody, visitation, and support. The family court entered the October 28, **2022 Judgment Regarding Custody, Visitation, and Support After Trial**.² Mother and Father were awarded joint legal and physical custody, with equal timesharing.

Within a year, Mother and Father both moved for post-judgment relief. Mother requested sole legal and physical custody of Child and amendment of the timesharing and holiday schedule. Father requested sole legal and physical custody of Child, amendment of the holiday schedule, and an order that Child could not travel out of state.

The family court appointed a child custody evaluator. The custody evaluator's April 30, 2024 report stated "there has not been any evidence presented that should warrant a change from the last court order with regard to Physical and Legal custody." The evaluator didn't believe a collaborative co-parenting approach was possible because Mother and Father could not communicate. "[P]arallel parenting with strictly ordered structure" which would "mitigate the need for any communication

² The Honorable Loren K. Tilley II presided.

beyond major decision making" was recommended should joint custody be continued.

Mother's counsel withdrew in September 2024. On September 19, 2024, Mother (representing herself) filed a *Motion to Address Illegal Drug Use by Father's Caregivers and Family Members*. On October 17, 2024, the family court orally ordered: "Neither party shall be under the influence of any unprescribed medication or illegal drug in the presence of the minor child." Mother was directed to submit a form of order, but it doesn't appear she did.

On October 16, 2024, Mother filed a *Motion to Compel Discovery and Set Deposition Dates and Deadline for Interrogatories*. On October 23, 2024, Mother filed requests for answers to interrogatories to Father and to ten non-parties. The family court denied Mother's motion and struck the interrogatories to the non-parties.³

Trial on Mother's and Father's 2023 motions for post-judgment relief was held on December 11 and 12, 2024. The family court entered its **January 22, 2025 Order Granting in Part Father's Motion for Post-Decree Relief**. Joint legal and physical custody was continued, but Father was given tie-breaking authority for major decisions about Child. If Mother disagreed with Father's decision she was to present the issue to a special master. The special master was to prepare a proposed order for the family court. If Father's decision was affirmed, Mother was to pay the special master's costs. If Father's decision was

³ Interrogatories may only be served on parties. Hawai'i Family Court Rules Rule 33(a).

overruled, Father was to pay the special master's costs. If Father's decision was affirmed in part, the special master was to recommend apportionment of costs.

On January 24, 2025, the family court entered the *Order Appointing Special Master*. A lawyer was appointed to be the special master.

Also on January 24, 2025, the family court entered an order denying Mother's motion for post-judgment relief and motion to address illegal drug use.

On January 29, 2025, Mother moved for "reconsideration of the judgment entered on January 24, 2025," apparently intending to refer to the January 22, 2025 Order. Mother separately moved for a new trial. The family court entered orders denying reconsideration and denying a new trial.

Mother appealed from the January 22, 2025 Order and the January 24, 2025 order appointing special master, creating CAAP-25-0000100. We granted Mother's motion to proceed *in forma pauperis*. A copy of our order was filed in family court on March 13, 2025.

On March 31, 2025, Mother filed a motion to remove the special master.

On April 7, 2025, Mother moved for recusal of the family court judge.

On April 15, 2025, Father moved for sole legal custody of Child and an order designating Mother a vexatious litigant. Mother filed an objection to Father's motion and a separate motion to strike Father's motion.

The family court held an evidentiary hearing on April 17, 2025. The court orally denied Mother's motion for recusal. It orally denied Mother's motion to remove the special master, found the motion "was made in bad faith and frivolous," and sanctioned Mother \$100 to be paid to Father's counsel. The court continued the evidentiary hearing to May 22, 2025, and orally awarded Father temporary sole legal custody of Child.

A written order denying Mother's motion for recusal was entered on April 17, 2025. The record does not contain a written order denying Mother's motion to remove the special master or imposing the \$100 sanction on Mother.

On April 22, 2025, Mother requested findings of fact and conclusions of law on the April 17, 2025 orders, moved for reconsideration of the oral order denying her motion to remove the special master and imposing sanctions, and moved for reconsideration of the oral temporary legal custody order.

On May 6, 2025, Mother filed an *Emergency ex Parte Motion to Stay Enforcement of April 17, 2025 Order Pending Evidentiary Hearing or Trial*.

On May 7, 2025, Mother subpoenaed a police officer to appear at the May 22, 2025 continued evidentiary hearing.

On May 8, 2025, the family court entered orders denying Mother's motions for reconsideration and her motion to stay enforcement.

On May 9, 2025, the family court entered an order denying Mother's request for findings of fact and conclusions of law.

On May 19, 2025, the family court entered an order awarding "temporary sole legal custody" of Child to Father. The order also "temporarily suspended" the special master process "due to Father being awarded temporary sole legal custody, as there is no need for Father's tie-breaking authority to be reviewed."

The continued evidentiary hearing on Father's motion for sole legal custody of Child and to designate Mother a vexatious litigant was held on May 22, 2025. During the hearing the family court addressed the police officer who Mother subpoenaed:

You are excused from your subpoena at this time. We do not have an evidentiary hearing set today, and so I'm not sure why exactly you were subpoenaed, but you are excused. And I'm also going to be issuing a sanction to [Mother] in the amount of \$150 payable forthwith to the County of Maui for issuing the subpoena to -- improperly to Sergeant Kuamo'o and taking time out of his morning to have to be here. All right.

On May 27, 2025, the family court entered its *Findings of Fact, Conclusions of Law and Order Determining [Mother] to Be a [sic] HRS § 634J-1 "Vexatious Litigant."*

Mother appealed, creating CAAP-25-0000436. We granted Mother's motion to proceed *in forma pauperis* and consolidated her appeals.

The *Order Regarding Continued Hearing and [Mother]'s Motion to Strike Father's Motion for Post-Decree Relief* was entered on August 19, 2025. It denied Father's motion and "awarded temporary joint legal custody" of Child to Mother and Father, with Father having "tie breaking authority." The order also "temporarily suspended" the special master process and provided:

5. [The family] Court sanctioned [Mother] \$150.00 to be paid by [Mother] forthwith to the County of Maui.
6. The [family] Court Ordered for any approved Non-Evidentiary Motion filed by [Mother], a security of \$2500 and any approved evidentiary motion filed by [Mother], a security of \$7,500 to be paid by [Mother] and held in trust with the Clerk of the Court.

II. POINTS OF ERROR

Mother's opening brief was filed by an attorney from the Hawai'i Appellate Pro Bono Program. It states three points of error: (1) the family court erred by appointing a special master, denying Mother's motion to remove the special master, and denying Mother's motion for reconsideration; (2) the family court erred by designating Mother a vexatious litigant and imposing sanctions; and (3) the family court erred by modifying legal custody without announcing or entering findings of fact.

III. STANDARDS OF REVIEW

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." Hamilton v. Hamilton, 138 Hawai'i 185, 197, 378 P.3d 901, 913 (2016). The family court abuses its discretion if it disregards rules or principles of law or practice to the substantial detriment of a party litigant; fails to exercise its equitable discretion; or its decision clearly exceeds the bounds of reason. Id.

We review the appointment or removal of a special master for abuse of discretion. In re Est. of Damon, 119 Hawai'i 500, 503, 199 P.3d 89, 92 (2008).

We review the imposition of sanctions for abuse of discretion. LaPeter v. LaPeter, 144 Hawai'i 295, 304, 439 P.3d 247, 256 (App. 2019).

We review a vexatious litigant determination for abuse of discretion. Trs. of Est. of Bishop v. Au, 146 Hawai'i 272, 278, 463 P.3d 929, 935 (2020).

IV. DISCUSSION

A. The family court abused its discretion by denying Mother's motion to remove the special master.

Father contends Mother's challenges to the special master orders are moot because the family court "suspended the special master process and intends to remove it once it has jurisdiction again." The issue is not moot because the family court "temporarily suspended" the special master process; it did not remove the special master or rescind the special master procedure. And Mother's motion to remove the special master was the basis for the family court fining Mother and finding her a vexatious litigant.

Hawai'i Family Court Rules (**HFCR**) Rule 53 provides:

(a) Appointment. The court may appoint a . . . special master . . . to perform specific acts and/or obtain specific evidence to assist the court.

(b) Compensation. A master (except a volunteer settlement master) shall be compensated as determined by the court, and shall be paid out of any fund or subject matter of the action, which is in the custody and control of the court, or by one or more of the parties themselves, as the court may direct. . . .

(c) Reference. A reference to a master shall be made for good cause. A party may move for the appointment of a master. The court may appoint a master on its own initiative after affording the parties an opportunity to be heard.

. . . .

(e) Report. The order of reference to a master shall specify the date by which the master's report shall be completed, served on all parties, and filed with the court.

No party requested a special master. Appointment of a special master was not addressed during the trial on Mother's and Father's post-judgment motions. The family court ordered it on its own during the December 26, 2024 post-trial hearing, without first seeking input from the parties. The court stated:

So the Court is going to adopt Father's proposed parenting plan with some modifications.

The first is that the parents will have joint legal custody of the minor's [sic] [Child]. But Father will have a [sic] tie-breaking authority. If Mother disagrees with Father's decision, she will address her disagreement to a Special Master who I'm going to appoint by filing a written request and presenting all evidence to that Special Master. And after a hearing from the parties, the Special Master will prepare a recommended findings and conclusions and a decision in the form of a proposed order. And the Special Master will file the recommendations and proposed order and either party will have 10 days to take exceptions to the recommendations in the proposed order otherwise the order will be filed as the Court's decision. If Father's decision is upheld, then Mother shall pay the cost of the Special Master. If Father's decision is upheld in part, the Special Master will also include recommendations for the equitable apportionment of costs. And if Father's decision is overruled, Father will pay the cost of the Special Master.

The family court explained to Mother:

I have created a Special Master process so that his -- if you disagree with [Father's] decision, that you have the ability to not have to wait 18 months to have somebody make a decision that you have a -- should be less expensive and more convenient process to have actual disputes resolved by somebody in a much quicker time so that you don't have to wait a long time to have an evidentiary hearing before a judge.

Mother expressed concern she couldn't afford the special master fees, but the family court told her she'd only have to pay if the special master disagreed with her:

[MOTHER]: -- my concern is the disparity between income between the two parties. And at this point, like,

I'm -- need to file for some sort of exemption from fees because I can't afford -- I proposed a free parenting therapist through my insurance which was denied and proposed a couple free parenting therapists through my insurance which have been denied. But I can't afford any payment of any Special Masters or any payment of anybody else at this point because I --

THE COURT: Well, I know and that's the thing is that -- but this only comes into play if you actually have a legitimate dispute with -- if you get to the point where you folks don't agree, [Father] makes a call and breaks the tie that you don't agree with, this process only comes into play at that time. And you're only responsible for the costs if the -- if the Special Master completely agrees with [Father] and doesn't agree with you. So it's really under -- it should be under normal co-parenting circumstances, a process that's never used. But it's entirely up to you. If you feel like you need to dispute every single thing that he does, then it's going to end up -- you know, there's going to be a cost to it. But I'm ordering this because I think that this is a -- it's in the best interest of your child to have what I consider to be the sort of disputes between co-parents resolved quickly and more efficiently than having these long drawn out court processes where things don't get resolved for a long time.

The January 22, 2025 Order provided:

2. SPECIAL MASTER. If Mother disagrees with a tie breaking decision made by Father she may address her disagreement to the Special Master by filing a written request and presenting all evidence to the Special Master.
 - a. After a hearing on the disagreement the Special Master will prepare a written finding and conclusion with a decision. The written finding shall be filed with the court in the form of a Proposed Order.
 - b. Either Party will have ten days to make an exception to the recommendations otherwise the Order will be filed as the courts [sic] decision. If either Party disagrees with the recommendations they may request a hearing with the Family Court.
 - c. If Father's decision is upheld then Mother shall pay the costs of the special master. If Father's decision is upheld in part then the Special Master will include recommendations on the apportionment of costs. If Father's decision is overruled then Father shall pay the cost of the Special Master.
 - d. A separate Order naming the Special Master will be filed with the Courts. If the appointed Special Master is unable or unwilling to continue with their appointment the Parties can file a Non-Hearing Motion for the appointment of a new Special Master if they cannot agree on a new Special Master.

The January 22, 2025 Order did not specify the date by which the special master's report must be completed, as required by HFCR Rule 53(e), despite the family court's stated rationale that "it's in the best interest of your child to have . . . disputes between co-parents resolved quickly[.]"

Mother's *Motion to Remove Special Master* was filed on March 31, 2025. She argued:

[The special master] requires a **\$1,500 retainer** before beginning work. This financial requirement stands in direct contradiction to the appellate court's order granting Mother **in forma pauperis** status. The denial of Mother's request for a fee waiver creates an **access to justice issue**, effectively barring her from participation due to inability to pay.

. . . .

- o The current arrangement establishes a **"pay-to-play" dynamic**, where only the party who can afford the retainer is guaranteed participation.
- o This dynamic disproportionately impacts Mother, a self-represented litigant with proven financial limitations, and violates the principle of **equal access to justice**.
- o The Special Master's refusal to consider a waiver or sliding scale, even when informed of the [*in forma pauperis*] ruling, **effectively excludes Mother from full participation** in a court-ordered process.

(emphasis in original).

Mother pointed out she had proposed a no-fee "qualified licensed therapist" as a special master during the post-trial hearing, but the family court appointed a lawyer instead.

The record does not contain an order disposing of Mother's Motion to Remove Special Master. However, during the April 17, 2025 hearing on Father's motion to have Mother declared a vexatious litigant, this exchange took place:

THE COURT: Okay. Well, let me ask you this. If you were unwilling to participate in the Special Master process, are you -- do you have an objection to [Father] having sole legal custody of your child?

[MOTHER]: I'm very willing to participate in the Special Master process, but I would like a Special Master that I can afford. I can't afford \$1,500 and --

THE COURT: Okay. Well -- well, let me ask you, [Mother]. What is the issue that [Father] has -- what is the issue that [Father]'s made a tie-breaking on [sic] that you don't agree with?

[MOTHER]: I -- I don't -- I -- we haven't had an issue --

THE COURT: Okay.

[MOTHER]: Okay. Wait. Can we pick -- can I --

THE COURT: I'm -- no, no, no. Stop. Stop. No. I'm denying your motion and I'm sanctioning you a \$100 for filing the motion. I find that it's frivolous and made in --

[MOTHER]: Okay.

THE COURT: -- bad faith. No, and we're not having a discussion about it --

[MOTHER]: Which motion --

THE COURT: -- no.

[MOTHER]: -- are you denying?

THE COURT: Your motion to -- motion to remove Special Master for conflict of interest and financial hardship. I'm denying it --

[MOTHER]: Okay. And --

THE COURT: No, no --

[MOTHER]: -- may I please --

THE COURT: No, don't --

[MOTHER]: -- may I please finish --

THE COURT: -- no -- stop.

[MOTHER]: -- what I'm saying?

THE COURT: No. No. You cannot. I'm finding that that motion was frivolous and it was made in bad faith. The -- you don't even have a conflict yet and --

[MOTHER]: I do. I --

THE COURT: -- no, no, no. You -- no more. I already asked you --

[MOTHER]: I -- you didn't --

THE COURT: -- and you said --

[MOTHER]: -- let me finish what I'm saying.

THE COURT: No, no, I don't want you to say anymore because I'm finding that this motion was made in bad faith and frivolous. No, I don't want to hear anymore about this.

[MOTHER]: I'd like to please state one thing for the
--

THE COURT: No.

[MOTHER]: -- record, Your Honor.

THE COURT: I don't -- I don't want to hear it. I don't want to hear it right now. You -- I think what you are not appreciating that this is a very expensive process. So every time that you file something, especially like these motions like the discovery motion which was completely not based on the rule, and I denied it without a hearing to avoid everybody having to go through the expense of having to oppose it. And then you -- then you use it as a basis to say that I should be removed as the judge when I'm trying to save you and the other side money. No, this motion to remove the Special Master, if there's no dispute --

[MOTHER]: There was, Your Honor.

THE COURT: -- and you're already --

[MOTHER]: I would like to please state -- please.

THE COURT: Okay. What's the dispute that absolutely
--

[MOTHER]: I have sent two e-mails to [Father]. We had Jewish holidays that past -- the holiday of Purim and the holiday of Passover. And as a legal joint tie-breaking authority, he has the legal -- that's a -- access to religion is a legal concern. And my request was for him to bring the child to temple to participate. I didn't ask for custody. I asked for the child to participate in the Purim holiday at the temple, and I asked again for the Passover, and those were sent within over a month ago.

THE COURT: All right. I am maintaining that this motion was frivolous and filed in bad faith. This issue you raised when I made my ruling, and I already determined what the holiday schedule was. So there isn't a dispute that he has tie-breaking authority over it. I had already ruled on that, so I am maintaining that this motion was made in bad faith and was frivolous, and I am going to sanction you \$100.

[MOTHER]: So how do we -- how do I get access to a Jewish holiday, then?

THE COURT: I can't give you legal advice, but, you know, your -- you -- in your other motion you said there's res judicata. In your objections, you say there's res judicata. And what the Court's already decided, the Court's already decided. But you're now here arguing the exact opposite that apparently if I make a decision that it's always open to reinterpretation or further proceedings but [Father] can't do that. So, you know, I'm not going to tell

you what you should do or what you can do. But I'm just telling you the motion that you filed regarding the Special Master was made in bad faith and it's frivolous, and I'm sanctioning \$100 for filing it and I'm denying it.

On April 22, 2025, Mother moved for reconsideration of the oral order denying her motion to remove the special master and imposition of the \$100 sanction. Attached to the motion was an email from the special master's office stating, "We do not work without a retainer up front."

The family court denied reconsideration. The order incorrectly stated the "appointment of the Special Master complies with the requirements of Rule 53, HFCRs." The order also stated:

The arguments regarding financial hardship are without merit. Mother would not be financially responsible for any meritorious issue in dispute between the parents that she may raise through the Special Master. She would only be responsible ultimately for issues that lack merit.

[Mother]'s contention that she has not been given due process lacks merit.

We hold that the family court abused its discretion by denying Mother's motion to remove the special master. Doing so deprived Mother of due process and access to justice. The special master required that Mother pay a \$1,500 retainer before he would work on a dispute over Father's tie-breaking authority. Even if the special master recommended the family court rule in Mother's favor (so that Father would have to reimburse Mother's payment of the retainer fee), Mother is indigent (she was granted *in forma pauperis* status in these appeals) and unable to pay the retainer fee up front. Her hands were tied because she could be sanctioned if she moved for relief from Father's decision without following the special master procedure.

[A] parent's right to the care, custody, and control of the parent's child is a fundamental liberty interest protected by the United States and Hawai'i constitutions and entitled to due process protection. In a child custody context, we have specifically stated that the State may not deprive a parent of the fundamental liberty interest in the care, custody, and control of a child

without providing a fair procedure for the deprivation. Furthermore, the Supreme Court has said that parental rights cannot be denied without an opportunity for them to be heard at a meaningful time and in a meaningful manner.

DJ v. CJ, 147 Hawai'i 2, 17, 464 P.3d 790, 805 (2020) (quoting In Re Doe, 108 Hawai'i 144, 157, 118 P.3d 54, 67 (2005)).

Under these circumstances, the special master procedure deprived Mother of her constitutional right to due process and of access to the courts. See Doe v. Doe, 118 Hawai'i 293, 307, 188 P.3d 807, 821 (App. 2008) (noting that "the State's imposition of substantial filing and other fees upon indigents seeking divorces was held to deny them due process") (quoting Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 n.5 (1982) (citing Boddie v. Connecticut, 401 U.S. 371, 377 (1971))). The family court thus abused its discretion by denying Mother's motion to remove the special master. If Mother paid the \$100 sanction, the family court shall on remand order repayment to Mother.

B. The family court abused its discretion by determining that Mother was a vexatious litigant and imposing sanctions.

Father's April 15, 2025 motion for post-decree relief requested a determination that Mother was a vexatious litigant. HRS § 634J-1 (2016) provides in part:

"Vexatious litigant" means a plaintiff who does any of the following:

. . . .

- (3) In any litigation while acting in propria persona, files, in bad faith, unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay[.]

The *Findings of Fact, Conclusions of Law and Order Determining [Mother] to Be a [sic] HRS § 634J-1 "Vexatious Litigant"* was entered on May 27, 2025. The order included a \$150 sanction against Mother, to be paid to the County of Maui, for serving a police officer with a subpoena to appear at the May 22, 2025 continued hearing on Father's motion. The family court found and concluded:

Respondent [Mother] is a "person who commences, institutes or maintains litigation or causes it to be commenced, instituted, or maintained" and therefore a Plaintiff as defined by HRS § 634J-1.

The conclusion was wrong. HRS § 634J-1 defines "vexatious litigant" as "a plaintiff who does any of the following" HRS § 634J-1 states:

"Plaintiff" means the person who commences, institutes or maintains litigation or causes it to be commenced, instituted, or maintained, including an attorney at law acting on the attorney's own behalf.

This paternity action was commenced by Father. Mother is the respondent. "HRS § 634J-1's definition of 'plaintiff' does not encompass a litigant who maintains litigation by filing motions in the litigant's capacity as a defendant." Au, 146 Hawai'i at 280, 463 P.3d at 937.

The legislative history of HRS chapter 634J demonstrates that the inclusion of the bad faith requirement in HRS § 634J-1(2) and (3) was intended to limit the definition of vexatious litigant to those **plaintiffs** who attempt to

relitigate in bad faith and who intentionally abuse the system by filing frivolous claims or deliberately cause unnecessary delay.

Id. at 281-82, 463 P.3d at 938-39 (emphasis added).

Mother, as the respondent, could not be a vexatious litigant under HRS § 634J-1 even if she, "while acting in propria persona, files, in bad faith, unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay[.]" The family court's determination that Mother was a vexatious litigant "disregarded rules or principles of law or practice to the substantial detriment of" Mother. Au, 146 Hawai'i at 278, 463 P.3d at 935.

But we caution that the limitations of HRS § 634J-1 do not give self-represented litigants who are not plaintiffs free reign to engage in inappropriate behavior. Other remedies are available to opposing parties. See, e.g., Hawai'i Rules of Civil Procedure Rules 11(c), 16(f), 26(h), 30(d)(3), and 37; HFCR Rules 2.1, 11, 26(g)(2), 30(d)(3), 37, 58(c), 94(f), and 94.1(c).

The family court also abused its discretion by sanctioning Mother \$150 for serving a police officer with a subpoena to appear at the May 22, 2025 continued hearing. "The court's sanction order must inform the person sanctioned of the authority pursuant to which the sanction was imposed." LaPeter, 144 Hawai'i at 309, 439 P.3d at 261. The family court failed to state its authority for imposing the sanction.

And a court may not sanction a party "without a specific finding of bad faith" based on "clear and convincing

evidence." Id. Here, the family court stated, "We do not have an evidentiary hearing set today[.]" But during the April 17, 2025 evidentiary hearing, when the court discussed a continuance, Mother stated "I'd like to call the witnesses, the police officers that are being cited[.]"

The family court set the continued hearing for "May 22nd at 11:30."

Mother asked, "And is that an evidentiary hearing? Is that -- what is the May 22nd? Is that just a continuance to set . . . the hearing or?"

The court responded, "It's just a continuance of the motion."

During the April 17 hearing both parties were sworn and testified. Neither party rested. The family court did not close the evidentiary part of the hearing and never told Mother it would not receive evidence during the continued hearing. On this record, sanctioning Mother for issuing a subpoena for the continued hearing, without citing authority for the sanction or making findings that Mother had acted in bad faith, was a clear abuse of discretion.

The May 27, 2025 *Findings of Fact, Conclusions of Law and Order Determining [Mother] to Be a [sic] HRS § 634J-1 "Vexatious Litigant"* is vacated. If Mother paid the \$150 sanction, the family court shall on remand enter an order directing repayment to Mother.

C. The family court abused its discretion by modifying joint legal custody without making best-interest-of-the-child findings and conclusions under HRS § 571-46.

The 2022 Judgment awarded Mother and Father joint legal custody. They were to "mutually make major decisions regarding" Child. The custody evaluator's 2024 report stated there was no evidence warranting a change of physical or legal custody. The January 22, 2025 Order modified legal custody by giving Father tie-breaking authority over major decisions for Child. Mother contends the family court erred by modifying legal custody without making written findings about Child's best interests.

HRS § 571-46 (2018) establishes criteria and procedures for awarding custody and visitation based on the best interests of the child. Subsection (a) lists seventeen "standards, considerations, and procedures" to guide the family court in awarding or modifying custody. Subsection (b) lists sixteen non-exclusive factors that the family court "shall consider" to determine "what constitutes the best interest of the child" under the statute.

1. The January 22, 2025 Order.

During the December 26, 2024 hearing, Mother asked the family court why it was giving Father tie-breaking authority. The court explained:

THE COURT: Well -- yeah, and I feel that some of your actions are unreasonable and were detrimental to the child. So while I agree that the way that Father handled the Kamehameha Preschool issue probably wasn't ideal, I don't think it was in the best interest of your child to prevent your child from being possibly admitted to the Kamehameha Preschool. So that is just one example, but I do feel that your child is suffering by this sort of high conflict parenting that's going on between you and [Father], and I

feel unbalanced from the evidence that was presented that if one of you has to have tie-breaking authority, I think that he at this moment is in the better position to make that decision. But I have created a Special Master process so that his -- if you disagree with his decision, that you have the ability to not have to wait 18 months to have somebody make a decision that you have a -- should be less expensive and more convenient process to have actual disputes resolved by somebody in a much quicker time so that you don't have to wait a long time to have an evidentiary hearing before a judge.

[MOTHER]: Would you feel comfortable sharing any other actions that you felt were unreasonable or detrimental to the child?

THE COURT: I'm not going to put all of my findings on the record today --

[MOTHER]: Okay.

THE COURT: -- so. But I -- you know, having sat through the thing is I -- I think, you know, in my view, I -- there's no question that both of you care about your child very much. However, I -- and this is, of course, my view and my review of the evidence, in my view it seems that in addition to the concerns about your child that there is something extra going on in how you co-parent that has to do with [FATHER] and not your child. And I think that that is slightly bending the antenna about good co-parenting, and so that's something if -- I'm not going to order you to, you know, go into therapy about it, but that would be something that would be a suitable topic for a therapist. And I don't think you're doing anything with malintent, but I do think that there's -- that there's something involving [FATHER] that is contaminating your ability to best and effectively co-parent. And so that is the concern that I have, but I feel that it's a relatively minor concern that can be addressed in the way that I proposed it, and so that you have an immediate process to resolve any, like reasonable disputes, you know, where he may have made the wrong call. That's why I'm doing the Special Master process so that you folks have a more -- less expensive and a quicker way of -- if there are real disputes, to resolve them.

The family court did not announce findings of fact or conclusions of law applying the HRS § 571-46(b) "best interests of the child" factors during the hearing.

The January 22, 2025 Order did not contain findings or conclusions applying the HRS § 571-46(b) factors.

After Mother filed her notice of appeal, the family court did not enter the requisite findings of fact and

conclusions of law to enable meaningful appellate review under HFCR Rule 52(a).⁴

On this record, we conclude the family court abused its discretion by giving Father tie-breaking authority – modifying legal custody – without making findings of fact or conclusions of law applying the HRS § 571-46 "best interests of the child" standards, considerations, procedures, and factors.

2. The temporary sole legal custody orders.

During the April 17, 2025 evidentiary hearing the family court orally awarded Father temporary sole legal custody of Child. Mother asked, "what was the reasoning -- the legal reasoning for temporarily granting sole legal custody [to Father]?" The family court responded:

THE COURT: Based on the credibility of the witnesses and the testimony that was provided, in the Court's view, it is in the best interest of the child temporarily to have Father have sole legal custody until we can address the matter substantively on May 22nd at 11:30.

The family court did not reference or analyze any of the HRS § 571-46(b) "best interests of the child" factors. The court actually acknowledged it had not "substantively" addressed the matter of legal custody.

The May 8, 2025 *Order Denying [Mother]'s Motion for Reconsideration of Temporary Legal Custody Order Entered April 17, 2025* did not contain findings or conclusions or an HRS § 571-46(b) analysis.

⁴ HFCR Rule 52 provides:

(a) [U]pon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law.

The May 19, 2025 *Order Granting in Part Father's Motion for Post-Decree Relief, Filed April 15, 2025* "awarded temporary sole legal custody" of Child to Father, but did not contain findings or conclusions or an HRS § 571-46(b) analysis.

The family court failed to enter findings of fact and conclusions of law under HFCR Rule 52(a) after Mother filed her second notice of appeal.

Father argues the issue of temporary sole legal custody is moot because the family court eventually restored joint legal custody. The *capable of repetition, yet evading review* exception to the mootness doctrine applies here. See Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 5, 193 P.3d 839, 843 (2008).

On this record, we conclude the family court abused its discretion by awarding Father temporary sole legal custody without making findings of fact and conclusions of law applying the HRS § 571-46(b) "best interests of the child" factors. That is especially so because the family court modified legal custody against the written recommendation of the child custody evaluator.

3. The temporary international travel ban.

The 2022 Judgment allowed Child to travel interstate subject to conditions, and reserved the issue of international travel "until further order from the Family Court." Father's motion for post-judgment relief requested an order prohibiting all out-of-state travel with Child.

The transcripts of the December 11 and 12, 2024 trial and the December 26, 2024 post-trial hearing do not contain

evidence, argument, or a ruling about Child's international travel. Yet, the January 22, 2025 Order stated: "Once the minor child turns 8 years old the Parties shall be allowed to travel internationally with the child provided any international travel shall require 60 days advanced notice." The January 22, 2025 Order contains no findings of fact or conclusions of law or other explanation for the decision.

We conclude the family court abused its discretion by ordering a travel restriction that was neither litigated nor stipulated to by the parties, and for which no HRS § 571-46(b) best-interests-of-the-child analysis appears in the record.

4. Mother's arguments about Child's health insurance and child-related tax credits lack merit.

Mother argues the "January 22, 2025 Order omits the child's health insurance provision entirely, which was previously included in the 2022 Judgment." Mother is correct.

Mother argues the January 22, 2025 "Order does not clearly address allocation of child-related tax credits." Mother is correct; the January 22, 2025 Order does not address allocation of child-related tax credits at all.

Father points out that the January 22, 2025 Order did not modify the 2022 Judgment's provisions about Child's healthcare coverage or the schedule for claiming child tax credits. Father is correct.

Mother's argument that the family court should be ordered to "clarify and address the health insurance provision through written findings" and enter an "express ruling" on the

child tax credits "grounded in findings under HRS § 571-46(b)" are without merit. The provisions in the 2022 Judgment about Child's healthcare coverage and the schedule for claiming child tax credits remain in effect.

V. CONCLUSION

The following post-judgment orders are vacated: **(1)** the January 22, 2025 *Order Granting in Part Father's Motion for Post-Decree Relief*; **(2)** the January 24, 2025 *Order Appointing Special Master*; **(3)** the May 8, 2025 *Order Denying [Mother]'s Motion for Reconsideration of Order Denying Motion to Remove Speical [sic] Master and Imposing Sanctions*; **(4)** the May 19, 2025 *Order Granting in Part Father's Motion for Post-Decree Relief*; **(5)** the May 27, 2025 *Findings of Fact, Conclusions of Law and Order Determining [Mother] to Be a [sic] HRS § 634J-1 "Vexatious Litigant"*; and **(6)** the August 19, 2025 *Order Regarding Continued Hearing and [Mother]'s Motion to Strike Father's Motion for Post-Decree Relief, Filed April 15, 2025, Held May 22, 2025*.

This case is remanded to family court. On remand, the family court shall enter orders for return of the \$100 and \$150 sanctions imposed on Mother to the extent Mother has paid them. A different judge should preside over any further proceedings.

On the briefs:

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J.T.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge