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NO. CAAP-25-0000580

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

IN THE INTEREST OF T.C. AND R.C.

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(CASE NO. FC-S 19-0021K)

SUMMARY DISPOSITION ORDER

(By: Wadsworth, Presiding Judge, McCullen and Guidry, JJ.)

Mother-Appellant T.C. (**Mother**) appeals from the Family Court of the Third Circuit's August 8, 2025 "Order Related to Periodic Review and Permanency Hearing" (**August 8, 2025 Order**), ordering the State of Hawai'i, Department of Human Services (**DHS**) to proceed with legal guardianship of Mother's two children by their paternal grandparents, who live out of state, consistent with DHS's July 7, 2025 "Updated Permanent Plan" (**July 7, 2025 Updated Permanent Plan** or **the Plan**).¹ (Formatting altered.)

¹ The Honorable Ann S. Datta presided.

On appeal, in her points of error (**POE**), Mother challenges in part the family court's admission of the July 7, 2025 Updated Permanent Plan into evidence without first allowing her the opportunity to review (POE A), have an evidentiary hearing (POE B) on, or cross-examine the preparer of (POE C) the Plan. We resolve Mother's appeal on the above grounds and do not reach Mother's remaining points.²

² Mother's POE are presented as follows:

A. The family court erred in refusing to provide Mother with an opportunity to receive and review the Updated Permanent Plan filed July 7, 2025, before receiving it into evidence and ordering its implementation. While [DHS] represented at the July 15, 2025 [Periodic Review and Permanency Hearing (**July 15, 2025 Hearing**)] that it had mailed the document to Mother's counsel on July 7, 2025, Mother's counsel preserved this point on appeal by informing the Court that he had not received it (July 15, 2025 TX at p.4-5), by requesting a continuance, and requesting an evidentiary hearing.

B. The family court erred in refusing to provide [M]other with an opportunity to have an evidentiary hearing on the July 7, 2025 [Updated Permanent Plan]. Mother's counsel preserved this point on appeal by repeatedly request[ing] an evidentiary hearing at the July 15, 2025 [H]earing (July 15, 2025 tx p.7 lines 1-2; 7-11; p. 8-9).

C. The family court erred in admitting the July 3, 2025 Safe Family Home Report and July 7, 2025 [Updated Permanent Plan] into evidence without giving Mother an opportunity to cross-examine the makers of those reports. [Hawaii's Revised Statutes] [§] 587A-18(d) expressly provides parties with a statutory right to examine the makers of reports prior to their admission into evidence. Mother's counsel preserved this point on appeal by repeatedly objecting at the July 15, 2025 [H]earing that the makers of the reports themselves were not made available for cross-examination (July 15, 2025 TX p.10, 11, 16, 20, 26).

D. The family court erred when it found at item H, page 2, that "each term, condition, and consequence of the Updated Permanent Plan dated July 7, 2025 . . . has been

(continued . . .)

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explained to and is understood by each party present at the hearing". Mother's counsel informed the Court that he had not even received the report yet. (July 15, 2025 TX at p.4-5). There was no colloquy between the Court and Mother (or Father) as to the terms, conditions, or consequences of the July 7, 2025 [Updated Permanent Plan]. There was no evidence presented that the terms and conditions and consequences of said plan were explained to or understood by Mother (or any other party), because they were not. Mother preserved this point on appeal by advising the Court [that Mother's counsel] (and thus, Mother) had not received the report, requesting a continuance, repeatedly requesting an evidentiary hearing, refusing to approve the proposed order, and otherwise objecting to the nature of the proceedings. (July 15, 2025 TX p.4-5, p.7-9).

E. The family court erred when it made all additional findings on pages 2 and 3 of the Order filed July 7, 2025 as follows:

- B. The [C]hildren's current placement is safe and appropriate;
- C. Under the circumstances that are presented in this case, the DHS has made reasonable efforts to finalize the concurrent permanency plan which in this case is reunification or legal guardianship without termination of parental rights;
- D. The parties have not made sufficient progress toward resolving the problems that necessitated placements[;]
- F. Each party present at the hearing understands that . . . etc.[;]
- G. Each term, condition, and consequence of the Family Service Plan dated March 7, 2024, has been explained to and is understood by each party at the hearing[;]
- I. ". . . the DHS has documented in its report **and on the record at the hearing** the compelling reasons why it is not in the best interest of the [C]hildren to file a motion to terminate parental rights at this time"[;]

(continued . . .)

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the issues raised and the arguments advanced, we resolve this appeal as discussed below and vacate and remand.

We recount the factual and procedural background only as relevant to the instant appeal. Mother has two minor children (collectively, **the Children**) from her previous marriage to J.C. (**Father**): a daughter, T.C., born in 2009, and a son, R.C., born in 2012. Mother and Father divorced in 2015.

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- K. The [C]hildren in foster care were given actual notice of this hearing by written notice;
- L. The [C]hildren have been consulted, in an age appropriate manner, about the proposed permanency and/or transition goal[;]
- M. The court has considered in-state and out of state placement(s) and finds that the [C]hildren's current out of state placement is safe, appropriate and in the best interest of the [C]hildren; [and]
- N. The DHS has made reasonable efforts to . . . "[.]

There was not sufficient evidence in the record to support those findings absent an evidentiary hearing. There were no colloquies on the record as stated in the findings. These errors were compounded by the fact that the judge sitting at the July 15, 2025 [H]earing was a per diem who had not previously presided over any proceedings in the case, and did not demonstrate any familiarity with the record, so could not have "considered" alternate placements or made best interest findings at all.

(Formatting altered.)

Mother lives on Hawai'i Island; Father has at various times lived in Idaho or Utah.

In 2023, the Children were placed with their paternal grandparents in Idaho. In a January 23, 2024 report to the family court, the Children's guardian ad litem (**GAL**) recommended legal guardianship as the long-term goal:

Legal Guardianship should be the long term goal for this case, as it is clear that Father cannot provide a safe family home in the reasonably foreseeable future. It appears that Mother may be able to provide a safe home for the [C]hildren when she is released, but the timeline of that is unclear – and Mother would have to have a significant period of demonstrable safety before a return to her home could be made.

A Periodic Review and Permanency Hearing was scheduled for July 15, 2025 (**July 15, 2025 Hearing**). On July 7, 2025, DHS filed its "Updated Permanent Plan," which was signed by Wendy Jo Robinson (**Robinson**) of West Hawai'i Child Welfare Services. The July 7, 2025 Updated Permanent Plan again recommended legal guardianship as the long-term goal:

DHS believes that it is in the [C]hildren's best interest to be placed under a Legal Guardianship to their current relative caretakers [without termination of parental rights]. [TC] and [RC] have languished in foster care for too long. Mother and Father are unable to provide a safe family home for them within a reasonable time period even with the assistance of a service plan. Guardianship in lieu of adoption is being sought at the [C]hildren's request.

(Formatting altered.)

At the outset of the July 15, 2025 Hearing, Mother's attorney objected to the family court receiving the July 7, 2025 Updated Permanent Plan into evidence on the basis that he had

not received service of the Plan at his Waimea address, despite the Certificate of Service indicating it had been mailed on July 7, 2025. Mother's attorney further explained that, although he was sent a copy of the July 7, 2025 Updated Permanent Plan by email, he had been unable to open the attachment after two attempts because the file was encrypted.

Mother's attorney nevertheless acknowledged that he was aware of and objected to the contents of the July 7, 2025 Updated Permanent Plan: "But I know what the permanent plan is. And I want to object to the permanency plan and request an evidentiary hearing. My position is that the permanency plan should not be guardianship but rather a reunification with [M]other with the assistance of a service plan." (Formatting altered.) Mother further challenged the family court's admission of the Plan into evidence on the basis that she was "entitled to cross-examine the maker of the report, which is Wendy Robinson, not anyone else."

DHS argued that it, not Robinson, "prepared that report" and offered DHS Supervisor Amber Millon (**Millon**) to be cross-examined regarding the July 7, 2025 Updated Permanent Plan and its creation. On cross-examination, Millon testified that she was standing in for Robinson because Robinson was on personal leave; the July 7, 2025 Updated Permanent Plan "was prepared by Wendy Robinson, as well as our staff in the office";

and "Robinson is the main signature on there." Millon further explained that she had not "read the whole report," but rather "vaguely looked over the report . . . because it is not mine." Millon also testified that she "briefly" discussed the case with Robinson – "about 10 minutes with her" – and that Robinson "met with [M]other and [F]ather and . . . was standing by her report."

At the close of cross-examination, Mother again "strenuously" objected to the family court receiving the July 7, 2025 Updated Permanent Plan into evidence. The family court again overruled the objection and received the July 7, 2025 Updated Permanent Plan into evidence. The family court then orally found that "[t]he proper concurrent permanency plan is reunification or legal guardianship without termination of parental rights."

Following the July 15, 2025 Hearing, the family court entered its August 8, 2025 Order, which contained the July 7, 2025 Updated Permanent Plan. Accordingly, the family court ordered that "[t]he proper concurrent permanency plan is reunification or legal guardianship without termination of parental rights."

Mother timely appealed. Approximately two weeks later, Mother sought a stay of the guardianship proceedings pending appeal, which the family court granted in part. The

family court struck the September 19, September 23, October 7, and October 21, 2025 contested evidentiary hearings from the calendar.

In her opening brief, Mother requests that the August 8, 2025 Order "be vacated and remanded because Mother did not have a meaningful opportunity to present any evidence pertaining to the challenged findings, her substantial change of circumstance, or to cross-examine the makers of the reports received into evidence."

In its Notice of No Answering Brief, DHS "does not oppose any of the relief sought" in Mother's opening brief, namely Mother's request for an "opportunity to present any evidence pertaining to the challenged findings or to cross-examine the preparer of the reports received into evidence."³

³ On August 20, 2026, this court ordered supplemental briefing to address whether subsequent developments in case numbers FC-S 19-0021K and 3FGD-25-000008 rendered this appeal moot. In particular, this court noted that the Children "may have been reunified with Mother on or about July 1, 2026."

On September 2, 2026, DHS timely filed its supplemental brief, explaining that "significant changes in case direction" rendered Mother's appeal moot. Specifically, DHS "has determined that Mother can provide a safe family home with the assistance of a service plan, withdrawn its legal guardianship petition, and recommend[ed] the return of the Children to Mother's care as soon as deemed appropriate." DHS acknowledges that "the Children are not ready yet" to be reunified with Mother, but "believes that reunification with Mother is appropriate" and "is working with the GAL to get the Children comfortable enough to return to Mother's care."

On September 3, 2026, Mother timely filed her supplemental brief, arguing that the Children "have not been reunified with Mother," the July 7, 2025 Updated Permanent Plan "has not itself been withdrawn or judicially set aside, and the August 8, 2025 Order challenged in this appeal remains

(continued . . .)

(1) Mother contends in POE A that the family court improperly received the July 7, 2025 Updated Permanent Plan into evidence because she was not afforded "an opportunity to receive and review" it beforehand.

We note Mother does not cite any legal authority in support of her argument, which consists of a single conclusory paragraph, and this court may deem the argument waived. See Kienker v. Bauer, 110 Hawai'i 97, 104 n.12, 129 P.3d 1125, 1132 n.12 (2006) ("This argument consists of one paragraph and neither cites law nor contains cites to the record. The appellate courts are not obligated to search the record to crystallize the parties' arguments. Accordingly, this argument is not considered." (citation omitted)). Nevertheless, we address Mother's argument to the extent we can discern.

As this court has previously recognized, Mother's liberty interest in the care, custody, and control of the Children is subject to the protections of procedural due process:

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unvacated." Mother argues "DHS's present recommendation favoring reunification does not provide Mother the effective relief she seeks and does not eliminate the continuing effect of the procedural errors challenged on appeal."

As it appears that Mother's contentions on appeal have not been resolved through subsequent developments, we determine that Mother's appeal is not moot and address the merits. See In re Doe Children, 105 Hawai'i 38, 56-57, 93 P.3d 1145, 1163-64 (2004).

Mother has a fundamental liberty interest in the right of care, custody, and control of the Children, and thus "the State may not deprive her of this interest without providing a fair procedure for deprivation." Doe v. Doe, 120 Hawai'i 149, 168, 202 P.3d 610, 629 (App. 2009) (citations omitted). "At its core, procedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." Id. (emphasis added) (quoting State v. Bani, 97 Hawai'i 285, 293, 36 P.3d 1255, 1263 (2001)).

In re TC, 150 Hawai'i 328, 500 P.3d 513, No. CAAP-21-0000053, 2021 WL 6054831, at *3 (App. Dec. 20, 2021) (SDO).

"The due process floor entails 'notice and an opportunity to be heard at a meaningful time and in a meaningful manner.'" In re JH, 152 Hawai'i 373, 380-81, 526 P.3d 350, 357-58 (2023) (quoting In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002)). "Context shapes the process that is due." Id.

Here, Mother's attorney stated at the July 15, 2025 Hearing that he had not received service of the July 7, 2025 Updated Permanent Plan, despite the Certificate of Service indicating that it was mailed on July 7, 2025.

Under the Hawai'i Family Court Rules (**HFCR**), "[s]ervice by mail is complete upon mailing." HFCR Rule 5(c)(3). However, "[a] party who has been prejudiced by failure to receive due notice or to be served, or who has been prejudiced by reason that service was made by mail, may apply to the court for appropriate relief." HFCR Rule 5(d).

Viewed in context, the family court's decision to go forward with the July 15, 2025 Hearing and to receive the

July 7, 2025 Updated Permanent Plan into evidence – despite Mother not having had an opportunity to review it with her attorney beforehand – violated Mother's due process rights, as her opportunity to be heard was not meaningful without reviewing the Plan. See In re JH, 152 Hawai'i at 380-81, 526 P.3d at 357-58; In re TC, 2021 WL 6054831, at *3.

Thus, the family court abused its discretion by not providing Mother an opportunity to review the July 7, 2025 Updated Permanent Plan before receiving it into evidence at the July 15, 2025 Hearing.

(2) We turn next to POE C, where Mother contends the family court improperly received the July 7, 2025 Updated Permanent Plan into evidence because DHS did not offer the preparer of the Plan for cross-examination as required under Hawai'i Revised Statutes (**HRS**) § 587A-18(d) (2018). Mother makes the same arguments regarding the July 3, 2025 Safe Family Home Report.

HRS § 587A-18(d) provides, "A written report submitted pursuant to this section shall be admissible and relied upon to the extent of its probative value in any proceeding under this chapter, subject to the right of any party to examine or cross-examine the preparer of the report." (Emphasis added.) HRS chapter 587A does not define the term "preparer of the report." See HRS § 587A-4 (2018).

"[A]dmission of a report into evidence under HRS § 587A-18(d) is not contingent upon actual cross examination of the preparer of the report, however such admission subjects the preparer of a report to cross examination." In re TC, 2021 WL 6054831, at *4. DHS may call as a witness an employee other than the preparer of the report, so long as the preparer was not subpoenaed or otherwise compelled to attend the hearing. E.g., In re EAC, 152 Hawai'i 192, 524 P.3d 383, No. CAAP-22-0000381, 2023 WL 1462794, at *3 (App. Feb. 2, 2023) (SDO) ("DHS listed Fitzpatrick, not Dosland, on its witness list for the contested case hearing. The record does not indicate that Father or Mother subpoenaed Dosland or otherwise moved to compel her attendance to testify at the contested case hearing. The family court does not abuse its discretion by not requiring testimony from a witness who was not listed, called, subpoenaed, or otherwise required to appear at the contested case hearing." (citation omitted)).

Here, Robinson is properly considered the preparer of the July 7, 2025 Updated Permanent Plan, because Millon testified the Plan "was prepared by Wendy Robinson, as well as our staff in the office"; "Robinson is the main signature on there"; and Robinson "is the writer" of the "new material in the report[.]" (Emphasis added.) Millon admittedly "didn't read all of the report because it is not mine"; "vaguely looked over

the report"; and "briefly" discussed the case with Robinson for "about 10 minutes." Millon also testified that she was standing in for Robinson while Robinson was on leave and that Robinson would have been "available at another date[.]"

As such, the family court's admission of the July 7, 2025 Updated Permanent Plan subjected Robinson, as the preparer of the report, to cross-examination. See In re TC, 2021 WL 6054831, at *4. Nothing in the record suggests DHS gave Mother notice of its intent to offer Millon in Robinson's stead. See In re EAC, 2023 WL 1462794, at *3. Thus, the family court should have permitted Mother the opportunity to cross-examine Robinson as the preparer of the July 7, 2025 Updated Permanent Plan, and its failure to do so was error. E.g., In re TC, 2021 WL 6054831, at *4 ("[T]he Family Court did not err by admitting into evidence DHS's Permanent Plan filed on November 23, 2020; however, admission of this report meant that Mother should have been allowed to examine or cross-examine those who prepared that report or any DHS report admitted and relied upon by the Family Court.").

(3) Finally, Mother contends in POE B that the family court erred when it refused to conduct an evidentiary hearing before entering its August 8, 2025 Order. Mother notes that she was present and prepared to offer evidence regarding her substantial change in circumstances following her incarceration.

To reiterate, "procedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." Id. at *3 (citation modified). And, as this court has explained, guardianship implicates a parent's fundamental liberty interest:

However, although a guardianship may not absolutely and irrevocably supersede all the rights of a parent, it certainly supersedes many of these parental rights, such as the right to the custody of and to provide care for the child. See HRS § 560:5-208(a) (2018) ("Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare."); 39 Am. Jur. 2d Guardian and Ward § 90 (2025) ("Until the guardianship of a minor child is terminated, the guardian's right to custody of the minor is superior to that of the minor's parent."). Therefore, the fundamental liberty interest of a parent in the care, custody, and control of their child is implicated in guardianship proceedings.

In re Guardianship of I.W., 157 Hawai'i 437, 579 P.3d 899, Nos. CAAP-23-0000356 and CAAP-23-0000598, 2025 WL 3215249, at *15 (App. Nov. 18, 2025) (mem. op.).

Here, the family court ordered that the July 7, 2025 Updated Permanent Plan be implemented, which included legal guardianship of the Children without termination of parental rights. Awarding legal guardianship to the Children's paternal grandparents constitutes a significant infringement upon Mother's fundamental liberty interest in the right of care, custody, and control of the Children, even if her parental rights were not terminated. See, e.g., id.

Because Mother was not afforded an opportunity "to be heard at a meaningful time and in a meaningful manner" through an evidentiary hearing on her changed circumstances prior to the family court's ruling, the family court erred. See In re TC, 2021 WL 6054831, at *3 (emphasis omitted) (quoting Doe, 120 Hawai'i at 168, 202 P.3d at 629).

Based on the foregoing, we vacate the family court's August 8, 2025 Order and remand the case for proceedings consistent with this summary disposition order.

DATED: Honolulu, Hawai'i, October 20, 2026.

On the briefs:

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/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge