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NO. CAAP-26-0000142

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF A.G.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 26-00006)

SUMMARY DISPOSITION ORDER
(By: Wadsworth, Presiding Judge, and McCullen and Gluck, JJ.)

Mother-Appellant (**Mother**) and Father-Cross-Appellant (**Father**) appeal from the February 26, 2026 *Orders Concerning . . . Continued Contested Return Hearing* (**Foster Custody Order**) entered in the Family Court of the First Circuit (**family court**). Following a contested trial, the family court awarded foster custody of A.G. (**Child**) to Petitioner-Appellee Department of Human Services (**DHS**).

On appeal, Mother contends that the evidence was insufficient for the family court to find by a preponderance of the evidence that it had jurisdiction pursuant to Hawaii Revised Statutes (**HRS**) §§ 571-11(9) (2018 & Supp. 2025) and 587A-5 (2018), to award foster custody to DHS, and to order the service plan dated January 12, 2026 against Mother. Relatedly, Mother challenges the following aspects of the family court's March 30, 2026 *Findings of Fact and Conclusions of Law* (**FOFs/COLs**):[1/]

[1/] The FOFs are divided into several sections. Sections I. and II. are separately numbered, each starting with "1." Beginning with Section III., (continued...)

Section II., FOFs 4, 30, 38, and 41; Sections III.-XI., FOFs 7, 8, 16, 17, 22-24, 32, 37-40, 45, 50, 64, 76, 98, 99, 102, 104, 105, 109, 113-122, 124, 126, and 127; and COLs 11-19, and 22.

Father summarily challenges the same FOFs and COLs as Mother and additionally challenges Section II., FOF 52; Section III., FOF 2; and COLs 12 and 14.

After reviewing the record on appeal and the relevant legal authorities, and giving due consideration to the issues raised and the arguments advanced by the parties, we resolve Mother's and Father's (together, **Parents**) contentions as follows, and affirm.

A. Mother's Contentions

1. Assumed Facts Not in Evidence

Mother contends that in entering the Foster Custody Order, the family court "assumed facts that w[ere] not in evidence," which violated her fundamental right to due process. Specifically, Mother argues that the family court assumed without evidence that Parents questioned whether the Child – who was born prematurely and weighed one pound at birth – needed supplemental oxygen, adjusted medical equipment against medical advice, and objected to using "Western medication" as treatment for their mental health diagnoses. Mother further argues there is no evidence to support the family court's findings that (a) Parents' unresolved mental health issues and lack of coherent thinking places the Child at risk of neglect and harm if the Child is placed in their care and custody, (b) Parents are unable or unwilling to provide the Child with a safe family home; and (c) Parents' behavior is a strong indicator they are homeless. Mother also contends that the family court erroneously found that Parents failed to prepare for the discharge of the Child from the hospital, even though Father testified that their home state is

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[1/] (...continued)
the FOFs are consecutively numbered, starting with "1," without regard to section number. The FOFs contain two consecutive sections labeled "IV." The second section, "IV. Mental Health," should correctly be labeled, "V. Mental Health." The FOFs also contain two sections labeled "XI." The first section labeled "XI. Assessments" should correctly be labeled, "IX. Assessments." For purposes of clarity, we will refer to the corrected section numbers in this disposition.

Arkansas, the Child was born in Hawai‘i when Parents were here on vacation, the Child's discharge date fluctuated, and Father provided proof of medical coverage for the Child effective in all states the day that DHS took custody of the Child.

We review the family court's FOFs for clear error and its COLs *de novo*. Fisher v. Fisher, 111 Hawai‘i 41, 46, 137 P.3d 355, 360 (2006) (quoting In re Doe, 95 Hawai‘i 183, 190, 20 P.3d 616, 623 (2001)).

> A[n] 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, [we are] 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.

Id. (internal quotation marks omitted).

A family court's determination as to whether a parent is willing and able to provide a safe family home for their child presents a mixed question of law and fact reviewed under the clearly erroneous standard. Doe, 95 Hawai‘i at 190, 20 P.3d at 623. "Moreover, the family court is given much leeway in its examination of the reports concerning a child's care, custody, and welfare, and its conclusions in this regard, if supported by the record and not clearly erroneous, must stand on appeal." Id. (brackets and internal quotation marks omitted) (quoting In re Doe, 89 Hawai‘i 477, 487, 974 P.2d 1067, 1077 (App. 1999)).

The challenged FOFs are supported by: (1) the testimony of DHS social worker Jessica Wong-Sumida (**Wong-Sumida**), who was qualified as an expert in social work, child protection and child welfare; (2) DHS's January 9, 2026 *Report for Orders for Protective Custody and Temporary Foster Custody*, which was prepared by Wong-Sumida and admitted as State's Exhibit 1; and (3) the January 12, 2026 *Safe Family Home Report*, which was prepared by Wong-Sumida and admitted as Exhibit 2.

As to State's Exhibits 1 and 2, HRS § 587A-18(a) (2018) requires DHS to file certain written reports with the court concurrent with the filing of a petition invoking the court's jurisdiction under the Child Protective Act, Chapter 587A, and no

less than fifteen days before a scheduled return hearing. HRS § 587A-18(d) states, "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."

Here, Mother's counsel cross-examined Wong-Sumida, and the family court properly relied on Exhibits 1 and 2, as reflected in COLs 11 and 17. Further, the family court found Wong-Sumida to be a credible witness and found Father not to be a credible witness.[2/] Any purported conflict between Father's testimony and DHS's evidence, including Wong-Sumida's testimony, was for the family court to resolve. See DL v. CL, 146 Hawai‘i 328, 336, 463 P.3d 985, 993 (2020) (issues dependent upon the credibility of witnesses and the weight of the evidence are within the province of the trier of fact (quoting Doe, 95 Hawai‘i at 190, 20 P.3d at 623)).

Substantial evidence supports the challenged FOFs and COLs, which present mixed issues of fact and law. They are not clearly erroneous, and there was no due process violation.

2. Shifting the Burden of Proof

Mother contends that the family court "committed a structural legal error by unconstitutionally shifting the burden of proof to the Parents rather than the DHS . . . ." (Capitalization altered.) She argues that this "shift" is reflected in the following FOFs:

> **II. Background and Procedural History**
>
> . . . .
>
> 41. Mother and Father made an oral motion to dismiss the petition and return the Child to their care, arguing that Father's Exhibit F-1 is evidence of medical coverage in Arkansas obtained for the Child prior to the [temporary foster custody (TFC)] hearing. The Parents failed to present arguments or evidence of a stable residence capable of supporting the Subject Child's continued oxygen needs in the State of Hawai‘i or elsewhere and/or a basic understanding of the Child's needs.

[2/] Mother did not testify or produce witnesses or exhibits.

> . . . .
>
> **[V.] Mental Health**
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> . . . .
>
> 23. The Parents failed to provide any evidence of consistent mental health treatment from a therapeutic provider.
>
> 24. The Parents failed to present any evidence of a legal medical marijuana card or a valid medical prescription for marijuana.
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> . . . .
>
> 38. No mental health professional treating the Parents has recommended that the Subject Child be reunified with Mother or Father.

Mother further argues that DHS had the burden of proof, and because the family court made findings by improperly shifting the burden of proof to Parents, COLs 11-22 are erroneous.

DHS presented evidence – and Parents do not challenge the family court's related findings – that hospital staff informed Parents that they needed housing capable of supporting an oxygen machine for the Child. Section II., FOF 23. See Balogh v. Balogh, 134 Hawai‘i 29, 33 n.3, 332 P.3d 631, 635 n.3 (2014) (unchallenged findings of fact by the family court are binding on the appellate court). Parents were told the Child was medically fragile and required oxygen to survive, and could not be discharged without confirmed medical coverage. Section II., FOF 24. Hospital staff reported ongoing concerns that the Child might not survive air transport without necessary oxygen. Section II., FOFs 14, 24, 27. Although Father claimed to own numerous homes in Arkansas, Father failed to present evidence of those homes and on the second day of trial testified from Oregon, where Parents had applied for government assistance benefits. Section II., FOFs 46, 50, 51. The family court's FOF 41 – that Parents failed to present evidence of stable housing capable of supporting the Child's need for oxygen – is not an improper shifting of the burden of proof. Rather, it is a finding, after DHS introduced evidence raising safety concerns about the Child, that the family court did not find Parents' evidence, consisting primarily of Father's testimony, either credible or persuasive.

DHS also presented evidence – and Parents do not challenge the family court's related findings – that Mother reported having Post-Traumatic Stress Disorder, anxiety, and diabetes; using tetrahydrocannabinol (**THC**); and having a medical marijuana card from another state. Section II., FOF 7; Section V., Mental Health, FOF 20. DHS similarly presented evidence – and Parents do not challenge the family court's related findings – that Father reported an unspecified form of mental health diagnosis and actively using THC-acid. Section II., FOF 8; Section V., Mental Health, FOF 21. FOFs 23, 24, and 38 (quoted supra) simply reflect Parents' failure to rebut DHS's evidence. The family court did not commit structural error by improperly shifting the burden of proof to Parents.

B. Father's Contentions

Father joins Mother's contentions. For the reasons stated above, those contentions fail and Father's effort to piggyback on them likewise fails. Father additionally challenges Section II., FOF 52, along with COLs 12 and 14, and Section III., FOF 2.

As to FOF 52 and COLs 12 and 14, Father contends that the record lacks substantial evidence to support the findings that DHS made reasonable efforts (a) to prevent or eliminate the need for removal of the Child from the family home, and (b) to finalize the permanency plan, which was reunification. Father argues that DHS did not make reasonable efforts to unify Father with the Child and did not provide Father a reasonable opportunity for reunification.

Substantial evidence supports the challenged FOFs and COLs, which present mixed issues of fact and law. That evidence, as reflected in numerous unchallenged FOFs, includes the following: The day after the Child was born, DHS referred the family to Family Strengthening Services upon receiving a report of concern for the Child. Section II., FOF 3. When Father identified paternal grandmother as a proposed safety plan participant, DHS spoke with paternal grandmother and requested her identification to perform background clearances, which was

not provided. Section II., FOFs 16, 18. At a second multi-disciplinary team meeting, parents discussed relocating to Arkansas and were informed that stable housing capable of supporting an oxygen machine for the Child was required. Section II., FOF 23. Father failed to present any supporting evidence of an address in Arkansas. Section II., FOF 46; Section VII., FOF 59. Parents often changed their telephone numbers and did not keep hospital staff or DHS informed of their current phone number. Section II., FOF 26; Section V., FOF 35. Hospital staff offered multiple resources to Parents, which they declined to pursue. Section II., FOF 28.

In addition, Father testified that between January 15, 2026, when trial started, and February 25, 2026, when trial concluded, Parents left Hawai‘i and traveled through several states, including Arkansas, Texas and Oregon. Although Father claimed his residence was in Arkansas, he applied for government food assistance in Oregon. When he testified via Zoom on February 25, 2026, Father stated he was in Samson, Oregon at a friend's business conference. Father also appeared to confirm that he did not provide DHS with an address in Arkansas until four or five days prior to February 25, 2025, because at first he planned to go to his mother's home. Given Parents' shifting plans, the services offered through the hospital, the Child's medical needs, and DHS's attempts to follow up when Parents provided information, the family court did not clearly err in finding that DHS made reasonable efforts to prevent or eliminate the need to remove the Child from the family home.

As to Section III., FOF 2, Father challenges the finding that the Child has resided in Honolulu throughout the pendency of this case. He argues that Parents resided in Arkansas, Mother gave birth prematurely while in Hawai‘i, Parents had no intent to move and reside in Hawai‘i, and "the Child did not, on her own, establish residency in Hawai‘i[.]"

Father does not dispute Section II., FOFs 2 and 34, which establish that (a) the Child was born at Kaiser Permanente Medical Center after Mother was flown from Maui to Oahu, and (b) on January 9, 2026, the Honolulu Police Department took the Child

into protective custody and transferred custody to DHS, which assumed temporary foster custody. The Child never left the State of Hawai‘i and was brought to court by the resource caregiver on the last day of trial.

HRS § 587A-5 states:

> Pursuant to section 571-11(9), the court shall have exclusive original jurisdiction:
>
> (1) In a child protective proceeding concerning any child who is or was found within the State at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court's finding that the child's physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family; and
>
> (2) In any prior child protective proceeding under chapter 587, the former Child Protective Act.

Whether or not Parents' residence was outside the State of Hawai‘i, the Child was born in and never left the state. The family court therefore had jurisdiction over the underlying proceeding under HRS § 587A-5.

C. Conclusion

For the reasons discussed above, the February 26, 2026 Foster Custody Order is affirmed.

DATED: Honolulu, Hawai‘i, October 30, 2026.

On the briefs:

Tae Chin Kim
for Mother-Appellant.

Crystal M. Asano
for Father-Cross-Appellant.

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Deputy Attorneys General,
for Petitioner-Appellee.

/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Daniel M. Gluck
Associate Judge