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NO. CAAP-26-0000353

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF O.A.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 23-00006)

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

Self-represented Respondent-Appellant V.C. (**Mother**) appeals from the Family Court of the First Circuit's (**Family Court**) April 2, 2026 "Order[] Regarding Motion to Set Aside the Termination of Parental Rights of Mother" (**Order**).[1] On appeal, Mother's points of error, which we consolidate for clarity, are that the Family Court erred by: (1) finding that Mother and Respondent-Appellee J.A. (**Father**) were present at the June 25, 2025 hearing on Father's Motion for Immediate Review; (2) failing to consider Mother's claims of ineffective assistance of counsel; (3) concluding that Mother received adequate notice of the May 12, 2025 hearing on Petitioner-Appellee Department of Human Services' (**DHS**) motion to terminate

[1] The Honorable Jessi L.K. Hall presided.

parental rights; (4) concluding that Mother's relinquishment of her parental rights was knowing, intelligent, and voluntary, and not procured by misrepresentation; and (5) failing to address structural error in the proceedings.[2]

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 affirm.

I. Background

On February 2, 2023, DHS filed a Petition for Temporary Foster Custody of O.A. (**Child**). At a hearing on February 6, 2023, at which Mother and Father were represented by court-appointed counsel, the Family Court ordered that Child remain in temporary foster custody of DHS.

On March 4, 2024, Mother's counsel moved to withdraw because Mother requested new counsel. On March 6, 2024, the Family Court appointed Jacob G. Delaplane to represent Mother.[3]

On August 9, 2024, DHS filed a Motion to Terminate Parental Rights. On May 12, 2025, Mother and Father stipulated to termination of their parental rights and DHS was appointed permanent custodian of the Child. As the Family Court stated in its Findings of Fact and Conclusions of Law (**FOFs/COLs**) (entered on June 5, 2026), "On May 12, 2025, Mother, Father and their respective counsels were present. After the advice and counsel

[2] Mother's opening and reply briefs do not comply with Rule 11, Rules Expediting Child Protective Appeals, and appear to cite authorities that do not support the propositions asserted. Nonetheless, to promote access to justice, we do not foreclose appellate review and address her arguments to the extent discernible. See Erum v. Llego, 147 Hawaiʻi 368, 380-81, 465 P.3d 815, 827-28 (2020). Additionally, Mother filed a Motion for Leave to Proceed In Forma Pauperis on October 2, 2026, in which she asks for leave to proceed "without payment of fees and costs." Mother's Motion is granted with respect to the appellate filing fee; she has not identified any other costs for which she seeks a waiver.

[3] The Honorable Rebecca A. Copeland entered the March 6, 2024 order.

of their court appointed attorneys and colloquy by the court, both Mother and Father knowingly and voluntarily stipulated to the DHS's Motion to Terminate Parental Rights filed on August 9, 2024 and the Permanent Plan dated August 3, 2024." The Family Court also found:

> 37. At the May 12, 2025 hearing, Mother was crying and did state she felt forced to agree. Court informed Mother that if she feels forced to agree, then the Court could not accept her stipulation. Mother took some time and then chose to stipulate to the Motion to Terminate Parental Rights. The Court asked Mother multiple times whether she was sure she wanted to agree to the motion and reminded her that she did not have to agree if she did not want to.
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> . . . .
>
> 121. Mother's testimony was credible on May 12, 2025, when she knowingly, voluntarily, and intelligently stipulated to the Motion to Terminate Parental Rights.

The Family Court's May 13, 2025 Order Terminating Parental Rights (**TPR Order**) ordered:

> 17. Court ordered that parents are to remain as parties to the case, and DHS shall arrange two (2) supervised visits a week at minimum and more if the resource caregiver can assist;
>
> 18. Parents' counsels shall remain on this matter until adoption petition is heard[.]

The Family Court did not hold a trial, but ruled that "Child's legal mother, [and] legal father, adjudicated, presumed, or concerned natural father, as defined under HRS Chapter 578A, [are] not presently willing and able to provide the Child with a safe family home, even with the assistance of a service plan." Mother did not file a direct appeal from the TPR Order.

On June 16, 2025, Father — through his court appointed counsel, Crystal M. Asano — filed a Motion for Immediate Review. Asano's declaration states she was informed that, pursuant to the May 12, 2025 "settlement," Father and Mother would "have visits once a week with the idea that [the resource caregiver] would transition to doing the visits for parents before and

after the adoption takes place in the child's best interest" and that "hardly any visits have taken place." (Emphasis added.) On June 25, 2025, the Family Court heard and granted Father's motion, with the order stating that the "Court suggested all parties use a computer app to coordinate[.]"

On August 22, 2025, the Family Court entered an order entitled "Orders Regarding Permanency Hearing." The August 22, 2025 order does not reflect the presence of Mother, Father, or their court-appointed counsel at the permanency hearing (held on August 19). The Family Court found that the adoption of Child was granted in 1FAN-25-0000344; the Family Court revoked the award of permanent custody to DHS, terminated jurisdiction, and discharged court-appointed counsel for Mother and Father.

In March 2026, Mother — now self-represented — filed a "Motion to Set Aside the Termination of Parental Rights of [Mother]" (**Motion to Set Aside**) and an "Ex Parte Motion and Declaration to Expedite Hearing and Order" to expedite the hearing on the Motion to Set Aside. Mother declared, under penalty of perjury, that she "did not knowingly or voluntarily consent to the termination of [her] parental rights"; that her court-appointed attorney told her she would "definitely lose" if she went to trial; that her attorney told her that termination of her parental rights "was 'the only option' to remain in contact with [her] child on a significantly reduced visitation schedule"; and that her attorney "never mentioned that post-adoption visitation agreements are unenforceable in the State of Hawaiʻi."[4] She also declared:

> After the termination hearing concluded, I requested assistance with filing and [sic] appeal or filing a motion for reconsideration to which Mr. [Delaplane] stated, "I'm

[4] To be clear, these are Mother's allegations; this court makes no findings regarding their veracity or whether Mother's attorney provided ineffective assistance of counsel.

> not your attorney anymore", even though the court ordered him to remain my attorney and provide necessary legal assistance until the adoption of [Child] had been finalized.

Mother further declared that her attorney did not submit relevant information regarding her potential ability to provide a safe home for Child and that her attorney did not respond to her inquiries prior to the termination hearing. Additionally, Mother declared that she only learned that the post-adoption visitation agreement was unenforceable when adoptive mother — who had, according to Mother's attorney, agreed to visitation — delayed the visits and then, after two months, informed Mother that she (adoptive mother) had moved off-island.

On March 31, 2026, the Family Court heard Mother's Motion to Set Aside; both Mother and Father appeared without counsel. The Family Court entered a written order denying the Motion to Set Aside on April 2, 2026. In its FOFs/COLs, the Family Court explained that "Mother's Motion to Set Aside . . . was filed ten months after parents stipulated to the Motion to Terminate Parental Rights. Ten months is not a reasonable period of time under these circumstances." The Family Court also ruled that because "[n]o motion to set aside the adoption was filed in this matter, . . . the order granting the adoption remains in full force and effect."

Mother filed her Notice of Appeal on April 30, 2026, and on June 5, 2026, the Family Court entered its FOFs/COLs.

II. Standards of Review

Mother's Motion to Set Aside does not expressly mention Hawaiʻi Family Court Rules (**HFCR**) Rule 60(b)(6) (2015). Nevertheless, this appears to be the proper lens through which to view her arguments: Mother did not appeal directly from the TPR Order, and she gives various reasons for attempting to set aside an otherwise final order of the Family Court.

Additionally, the Hawai‘i Supreme Court has held that "Rule 60(b)(6) was an appropriate vehicle for raising ineffective assistance of counsel" post-termination (though with an important caveat, as discussed more fully infra). See In re RGB, 123 Hawai‘i 1, 22, 229 P.3d 1066, 1087 (2010).

In reviewing the denial of an HFCR Rule 60(b)(6) motion, the Supreme Court has explained:

> The family court's denial of a motion under HFCR Rule 60(b)(6) is reviewed for abuse of discretion.
>
> [S]ince Rule 60(b)(6) relief is contrary to the general rule favoring finality of actions, the court must carefully weigh all of the conflicting considerations inherent in such applications. Once the court has made a determination to grant or deny relief, the exercise of its discretion will not be set aside unless the appellate court is persuaded that, under the circumstances of the case, the court abused its discretion.
>
> An abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant. In addition, the burden of establishing abuse of discretion is on appellant, and a strong showing is required to establish it.

Id. at 16–17, 229 P.3d at 1081–82 (cleaned up; formatting altered).

Although the denial of a Rule 60(b)(6) motion is generally reviewed for an abuse of discretion, id., "[t]he timeliness of a motion brought pursuant to HFCR Rule 60(b) implicates the jurisdiction of the family court" and "[t]he existence of jurisdiction is a question of law that we review de novo under the right/wrong standard." Meyers v. Meyers, 151 Hawai‘i 492, 497, 517 P.3d 775, 780 (App. 2022) (cleaned up).

III. Discussion

To succeed on an HFCR Rule 60(b)(6) motion, "the movant must show that (1) the motion is based on some reason other than those specifically stated in clauses 60(b)(1) through (5); (2) the reason urged is such as to justify the relief; and

(3) the motion is made within a reasonable time." Hayashi v. Hayashi, 4 Haw. App. 286, 290, 666 P.2d 171, 174 (1983). Here, the Family Court's FOFs/COLs addressed the third prong only, concluding that Mother's Motion to Set Aside was not made within a reasonable time "under these circumstances."

As the Hawaiʻi Supreme Court has made clear, "Parents faced with losing their parental rights have a right to counsel under the Hawaiʻi Constitution's far-reaching due process clause." Int. of JH, 152 Hawaiʻi 373, 378, 526 P.3d 350, 355 (2023). In this case, Mother has alleged that, during the period after the TPR Hearing and before her court-appointed counsel was discharged (approximately three months later), her counsel refused to assist her with filing an appeal (or a motion for reconsideration) to challenge the TPR Order. If true, this is the type of error that might "deprive[] the parent of a fundamentally fair process." JH, 152 Hawaiʻi at 380, 526 P.3d at 357.

However, in RGB, the Hawaiʻi Supreme Court stated:

> We note that [the child] has not yet been adopted, and that this case is distinguishable from one in which adoption has already occurred. Our conclusion therefore does not authorize a challenge to the termination of parental rights based on ineffective assistance of counsel in a case where adoption of the child has already taken place.

123 Hawaiʻi at 22 n.20, 229 P.3d at 1087 n.20 (emphasis added). There is good reason for such a rule: "Due to the immeasurable damage a child may suffer amidst the uncertainty that comes with such collateral attacks, it is in the child's best interest and overall well being to limit the potential for years of litigation and instability." Id. at 26, 229 P.3d at 1091 (quoting Baker v. Marion Cnty. Off. of Fam. & Child., 810 N.E.2d 1035, 1040 (Ind. 2004)) (block quote formatting omitted).

Here, Child's adoption was finalized in August 2025. Mother did not file her Motion to Set Aside until March 2026. Her challenge was untimely.

Mother's other points of error also fail for the same reason. An alleged clear error in the Family Court's FOFs regarding Mother's and Father's attendance at a court hearing (point of error #1), deficient notice (point of error #2), lack of voluntariness in stipulating to relinquishment of parental rights (point of error #4), and structural error (point of error #5)[5] could have been brought on direct appeal. Instead, Mother's Motion to Set Aside came seven months after Child's adoption. These collateral challenges are all untimely given the finality of the adoption.

For the foregoing reasons, we affirm the Family Court's April 2, 2026 "Order[] Regarding Motion to Set Aside the Termination of Parental Rights of Mother."

Dated: Honolulu, Hawaiʻi, November 20, 2026.

On the briefs:

V.C.,
Self-represented
Respondent-Appellant.

Jonathan M. Fujiyama,
Julio C. Herrera,
Derek D. Peterson,
and Kellie M. Kersten,
Deputy Attorneys General,
for Petitioner-Appellee.

/s/ Karen T. Nakasone
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Daniel M. Gluck
Associate Judge

[5] Mother's argument appears to be that the cumulative impact of the above-referenced errors constitutes structural error.