

NO. 29517

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

IN THE MATTER OF THE ADOPTION OF  
A MALE CHILD, BORN ON JULY 25, 2004

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-A No. 08-1-015)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Watanabe, and Fujise, JJ.)

Following a tragic incident in which Male Child Born on July 25, 2004 (Child) witnessed the killing of his mother by his father (Father), the Family Court of the Third Circuit<sup>1</sup> (family court) terminated Father's parental and custodial duties and rights in Child and awarded permanent custody of Child to the State of Hawai'i Department of Human Services (DHS). On May 27, 2008, DHS filed a petition for adoption and consented to the adoption of Child by Child's maternal great-grandparents as being in Child's best interests. On June 18, 2008, Child's paternal grandparents filed a motion to intervene in the adoption proceeding "for the purpose of opposing the adoption until such time that [they] and their family have regular and normalized visitation rights with [Child]." Paternal grandparents argued that they "had regular and on-going contact with [Child] since his birth" and they and Child's cousins and aunts love Child and "want to be able to have visits with [Child] and want to be involved in his life."

At a June 19, 2008 hearing, paternal grandparents requested that (1) the adoption be postponed until they established regular visitation with Child because there is no guarantee of their continued contact once the adoption is granted; and (2) the family court should conduct an evidentiary hearing to receive the testimony of (a) paternal grandparents' therapist, (b) Child's guardian ad litem, (c) maternal

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<sup>1</sup> The Honorable Ben H. Gaddis presided.

great-grandparents, (d) paternal grandmother, and (e) paternal aunts.

Before ruling, the family court heard brief remarks from Child's guardian ad litem, maternal great-grandmother, and paternal grandmother. The family court also mentioned that it had reviewed and considered a statement from paternal grandparents' therapist, which was attached to the motion to intervene.

The family court orally denied the motion, finding that the intervention was not in Child's best interests and visitation with the paternal family should be "resolved at the child's own pace, . . . and not at anyone else's." With the consent of DHS and Child's guardian ad litem, the family court then orally granted the petition for adoption.

On September 10, 2008, the family court entered the adoption decree that named maternal great-grandparents as Child's adoptive parents. On November 13, 2008, the family court entered "Findings of Fact and Conclusions of Law; Order on the Motion to Permit Paternal Grandparents to Intervene as Parties[,]" denying paternal grandparents' motion for intervention (November 13, 2008 order denying intervention). This appeal followed.

Paternal grandparents advance the following points of error:

(1) "The [f]amily [c]ourt abused its discretion when it improperly denied [paternal grandparents] to present [sic] evidence on their Motion to Intervene in the instant case" and thereby "clearly violated [paternal grandparents'] due process rights, and denied them the ability to meaningfully participate in the [a]doption, and to create a record upon which relief could have been granted at either the [f]amily [c]ourt or [a]ppellate [c]ourt";

(2) The family court's Finding of Fact No. 4 that "'[t]here is no question that adoption of [Child] to the present care providers is in [Child's] best interest and that it needs to happen'" is unsupported by the record;

(3) "[T]here is no basis for the [f]amily [c]ourt's Findings of Fact [No.] 5 that the families will come together and work out some resolution in this case"; and

(4) The family court's Conclusion of Law No. 2 that "it is not in [Child's] best interest to grant [p]aternal [g]randparents['] motion to intervene" was based "upon an almost void record, that is inaccurate and incomplete[.]"

Upon a careful review of the record and the briefs submitted, and having given due consideration to the case law and statutes relevant to the arguments advanced and the issues raised, we respectfully disagree with paternal grandparents. While we acknowledge their desire to be assured of future contact with Child, we cannot conclude that the family court erred in denying their motion to intervene.

With respect to intervention, Hawai'i Family Court Rules Rule 24 (2006) states, in relevant part:

**INTERVENTION.**

(a) **Intervention of right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property, transaction or custody or visitation of a minor child which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

There is no Hawai'i statute that confers upon noncustodial grandparents an unconditional right to intervene in an adoption proceeding. See Hawaii Revised Statutes (HRS) § 578-2 (2006) (stating that consent to adoption must be obtained from, among other persons, the child's mother, father, or person/agency having legal custody of the child); HRS § 578-8(a) (2006) ("No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and any legal parent married to a petitioner, and any subject of the adoption whose consent is required, have personally appeared before the court, unless expressly excused by the court. After considering the petition and such evidence as the petitioners and

any other properly interested person may wish to present, the court may enter a decree of adoption[.]"); In re Adoption of Watson, 45 Haw. 69, 72-74, 80, 361 P.2d 1054, 1056-57, 1060 (1961) (holding that "[a]lthough a blood relative as paternal grandfather, appellant was not a necessary party to the adoption proceeding" and grandfather was "not a party entitled to appeal in the absence of a legal interest or custodial right" because "[a] person, whether related to a child or not, who does not have any legal interest or custodial right in and to the child, cannot assail an adoption decree on the basis that he was not made a party to or given notice of the adoption proceedings").

Other courts have similarly held that noncustodial grandparents have no protected interest in their grandchild's adoption proceedings. See Mullins v. Oregon, 57 F.3d 789, 797 (9th Cir. 1995) ("We therefore conclude that grandparents *qua* grandparents have no constitutionally protected liberty interest in the adoption of their children's offspring."); In re Adoption of Tompkins, 20 S.W.3d 385, 387-88 (Ark. 2000) (holding that "because [grandparents] had no court visitation rights regarding [child] prior to the initiation of the adoption proceedings and had never stood *in loco parentis* to their grandchildren[,] grandparents did not "have a sufficient interest in adoption proceedings to intervene for the limited purpose of offering such evidence as may be relevant to the focal issue, i.e., whether the proposed adoption is in the best interest of the children").

In addition, although paternal grandparents complain that they were denied an opportunity to meaningfully participate in the adoption proceeding, the record indicates that the family court allowed them to present their reasons for opposing Child's adoption. Before ruling at the June 19, 2008 hearing, the family court heard brief remarks from Child's guardian ad litem, maternal great-grandmother, and paternal grandmother, and the family court also acknowledged reviewing the statement from paternal grandparents' therapist, which was attached to the motion to intervene. Of the witnesses whom paternal grandparents desired to have testify at the hearing, paternal aunts were the

only ones who did not speak and there is no indication that they were present at the June 19, 2008 hearing.

In light of the foregoing, the November 13, 2008 order denying intervention is hereby affirmed.

DATED: Honolulu, Hawai'i, December 14, 2009.

On the briefs:

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