

NO. 23558

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JANE DOE, Petitioner-Appellant, v.
JOHN DOE, Respondent-Appellee, and
DOE GOVERNMENTAL AGENCY, Respondent

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-P NO. 99-0568)

ORDER DISMISSING APPEAL AND PETITIONER-APPELLANT JANE DOE'S
JUNE 26, 2001 MOTION FOR LEAVE TO BRING
MOTION TO MODIFY THE ORDER FILED JUNE 16, 2000
(By: Burns, C.J., Watanabe and Foley, JJ.)

On May 6, 1999, Petitioner-Appellant Jane Doe (Mother) filed a Petition for Paternity alleging that she is the mother of, and that Respondent-Appellee John Doe (Father) is the father of, a male child (Child) born on May 27, 1998, in Honolulu, Hawaii. Mother sought an order adjudicating Father to be the father of Child. Mother sought to have custody of Child awarded to her subject to Father's rights of reasonable visitation. Mother sought an order requiring Father to pay past, present, and future child support, medical and dental insurance, uncovered medical and dental expenses, life insurance to secure child support, his share of the pregnancy and birth-related medical and hospital expenses, and for such other relief as may be appropriate.

The family court's September 20, 1999 Order states that "the hearing on DNA test results is continued to 8:30 a.m. Thursday, September 30, 1999."

The family court's October 1, 1999 Order states, in relevant part, as follows:

Mother is awarded temporary sole physical and legal custody of the child. Father shall have reasonable supervised visitation supervised by Mother. Visitation to be mutually agreed upon by the parties. Issues of child's name, birth expenses, medical insurance and child support arrearages and prospective child support shall be set for trial on January 10, 1999 at 8:30 a.m. Exhibits & Witness lists to be exchanged 12/27/99. Father shall pay child support of \$500.00/mth on the first of each month starting 10/1/99. Child support is subject to modification and is payable direct to Mother.

The June 16, 2000 Decision and Order entered by District Family Court Judge Marilyn Carlsmith states, in relevant part, as follows:

This matter came on for hearing on January 10, 2000. . . .

All issues had been previously resolved by stipulation between the parties with the exception of current child support for [Child], born May 27, 1998.

. . . [T]he court finds:

1. [Mother's] income is \$800 a month.
2. That [Father's] monthly income, based on the two years of most recent tax return is approximately \$10,542.
3. That child support according to the guidelines would be \$1240 a month.
4. That child support according to the child's reasonable needs is \$820 (being the \$2100 less \$700 sister's private school tuition, divided in half, and adding the cost of [M]other's health insurance premium attributed to [Child], e.g. \$120)[.]

5. Insofar as the guidelines amount exceeds the child's needs, the court finds that deviation is warranted due to exceptional circumstances; namely, that [Father's] income is extraordinarily high.¹

The court therefore orders:

[Father] to pay child support to [Mother] in the amount of \$820 a month, commencing February 5, 2000, payable in two equal installments of \$410 on the 5th and 20th of each month through CSEA by order of income assignment.

All prior requests for attorneys' fees are denied inasmuch as no testimony was adduced as to attorneys' fees.

(Footnote added.)

In this appeal, Mother is challenging the June 16, 2000 Decision and Order.

Mother's June 26, 2001 Motion for Leave to Bring Motion to Modify the Order Filed June 16, 2000 seeks leave from this court to bring a motion in the family court to modify the June 16, 2000 Decision and Order

to specify that Respondent-Appellee is the Father of her child as orally stipulated by the parties and omitted from the order, making the order determinative of the child's paternity and directing the Department of Health to add Father's name to the child's birth certificate. Petitioner-Appellant also moves to modify the Family Court Order of June 16, 2000 to provide for Mother's birth-related expense, both out-of-pocket and the insurance payments she incurred during her pregnancy.

In response, Father states, in relevant part, as follows:

Mother demands the immediate fix of the absence of father's name on the child's birth certificate. Father has conceded his paternity and has been paying handsome child support. Is it

¹ The fact the father's income is extraordinarily high is not an exceptional circumstance. The fact that father's high income would result in a computation higher than the reasonable needs of the child(ren) is an exceptional circumstance. Richardson v. Richardson, 8 Haw. App. 446, 456-8, 808 P.2d 1279, 1286-87 (1991).

really necessary to **right now** stop the Intermediate Court of Appeals and send this case back to Family Court? No, of course not.

(Emphasis in the original.)

We conclude that we lack appellate jurisdiction.

This case commenced on May 6, 1999, when Mother filed her Petition for Paternity. The family court has not yet entered an order deciding the primary issue of paternity. It has decided some of the other related issues, but not all of them. Clearly, the family court has not yet entered an order that determines all rights and liabilities of all parties and ends the litigation. Therefore, it has not entered an order that is final and appealable and this appeal is premature. Therefore,

IT IS HEREBY ORDERED that this appeal and Petitioner-Appellant Jane Doe's June 26, 2001 Motion for Leave to Bring Motion to Modify the Order Filed June 16, 2000, are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 29, 2001.

Chief Judge

Associate Judge

Associate Judge