

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27942

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

In the Interest of B.I.N.

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 AUG 31 AM 11:01

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 04-09873)

MOTION TO DISMISS FOR
LACK OF APPELLATE JURISDICTION

ORDER GRANTING PETITIONER-APPELLEE DEPARTMENT OF
HUMAN SERVICES' MOTION TO DISMISS THIS APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Petitioner-Appellee Department of Human Services' (Appellee DHS) July 24, 2006 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Father-Appellant's August 28, 2006 memorandum in opposition to Appellee DHS's motion to dismiss, and (3) the record, it appears that we lack jurisdiction over Father-Appellant's appeal from the April 26, 2006 order that divested Father-Appellant of his parental and custodial rights over Father-Appellant's minor child and awarded the State of Hawai'i Director of Human Services with permanent custody over the minor child. Under HRS § 571-54 (1993), "appeals in family court cases, as in other civil cases, may be taken only from (1) a final judgment, order, or decree,

. . . or (2) a certified interlocutory order." In re Doe, 96 Hawai'i 272, 283, 30 P.3d 878, 889 (2001) (citations omitted). At the time when Father-Appellant filed his May 18, 2006 notice of appeal, the April 26, 2006 order was not, by itself, an appealable final order under HRS § 571-54 (1993). "By the plain language of the statute, a party desiring to appeal from an order entered in a proceeding governed by HRS § 571-54 is required to file a motion for reconsideration." In re Doe Children, 94 Hawai'i 485, 486, 17 P.3d 217, 218 (2001). "Thus, there is no appealable order until the family court resolves the motion for reconsideration." Id. Although 2006 Hawai'i Sessions Laws Act 3 (Act 3) amended HRS § 571-54 by repealing the requirement for a motion for reconsideration under these circumstances, Father-Appellant filed his May 18, 2006 notice of appeal before the July 1, 2006 effective date of Act 3, and, thus, the amendment under Act 3 does not apply to this case.

Father-Appellant did not file a motion for reconsideration within twenty days after entry of the April 26, 2006 order, as HRS § 571-54 (1993) required. Therefore, Father-Appellant failed to perfect his right to assert an appeal under HRS § 571-54 (1993), and there is no appealable order. Absent an appealable order, we lack jurisdiction over this case. Accordingly,

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IT IS HEREBY ORDERED that Petitioner-Appellee's motion to dismiss this appeal for lack of appellate jurisdiction is granted.

DATED: Honolulu, Hawai'i, August 31, 2006.

James A. Burns
Chief Judge

[Signature]
Associate Judge

Daniel R. Foley
Associate Judge