*** * * NOT FOR PUBLICATION * * ***

NO. 24611

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Interest of

JOHN DOE, Born on May 22, 1984

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 00-04244)

MEMORANDUM OPINION
(Moon, C.J., Levinson and Nakayama, JJ., and Circuit Judges Hirai and Marks, assigned, respectively, in place of Acoba, J., who is unavailable, and by reason of a vacancy)

On July 9, 2001, upon adjudicating minor-appellee John Doe (Minor) a law violator, the Family Court of the First Circuit, the Honorable Linda K.C. Luke presiding, ordered appellant Department of Health (DOH) to place Minor at the Cornell Abraxas New Morgan Academy (Cornell Abraxas) in Pennsylvania, a secure, residential sex offender treatment facility. The family court subsequently reaffirmed its decision on Minor's placement in orders entered on August 27, August 28, and September 18, 2001. On appeal, DOH, joined by the Department of Education (DOE) and the Department of Human Services (DHS) [hereinafter, collectively, the agencies] contend that the family court (1) lacked authority to order DOH to pay for Minor's placement at Cornell Abraxas and (2) clearly erred in determining that there was no equivalent facility in Hawaiʻi to provide Minor

with the appropriate level of care and treatment. For the reasons discussed herein, we agree with the agencies that the family court lacked authority to order DOH to pay for Minor's placement and, therefore, we do not address the family court's findings of fact. Accordingly, we vacate the family court's orders and remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

A. The Proceedings Leading to the Present Appeal

1. Petitions and Hearing Adjudicating Minor a Law Violator

On December 12, 1997, the Honolulu Police Department (HPD) filed a petition in the family court, alleging that, on June 4, 1997, Minor committed burglary in the first degree, in violation of HRS § 708-810(1)(c) (1993). The same day, prosecutors filed a petition in family court, alleging a separate charge of burglary in the first degree based on conduct that occurred on June 5, 1997. A hearing on the two petitions was not held until July 9, 2001 because Minor was residing in treatment facilities outside the state due to prior adjudications as a law violator.[1]

[1] On July 1, 1997, Minor was adjudicated a law violator on various charges, including three counts of sexual assault in the third degree. According to the record on appeal, Minor was placed at the Benchmark Behavioral Health Systems' Utah facility, a locked, highly secured facility that provided treatment for juvenile offenders. After being terminated from Benchmark's Utah facility for "assaultive behavior," Minor was placed at and terminated from other residential treatment programs on the mainland. Eventually, Minor was returned to Hawai'i and placed at the Hawai'i Youth Correctional Facility (HYCF) on April 12, 2001.

At the July 9, 2001 hearing, counsel representing the prosecution, Minor, DOE, and DOH were present. Also present was an unidentified person claiming to be an official representative of the HYCF who acknowledged that HYCF was Minor's current legal guardian.[2] Minor admitted the allegations in both petitions, i.e., that he had committed burglary in the first degree, and the family court adjudicated him a law violator pursuant to HRS § 571-11(1).

The family court then requested recommendations from the prosecution, the defense, DOH, and Minor's probation officer, Pamela Ono. Ono recommended that: (1) Minor be committed to the care and custody of the Executive Director of the Office of Youth Services for the period of his minority; (2) Minor be required to pay restitution; (3) DOH complete the application and admission process for residential treatment at Cornell Abraxas as soon as possible; and (4) the court order a review hearing within thirty days. Minor's counsel concurred with Ono's recommendations. The prosecutor recommended commitment at HYCF until age 19 and that Minor make restitution. DOH expressly took no position with respect to Minor's disposition. At the conclusion of the

[2] Although the record on appeal indicates that DOE and DOH were providing Minor with educational and mental health services under the Individuals with Disabilities Education Act (IDEA) and the Felix consent decree, it is not clear how or in what capacity DOE or DOH became parties to the petitions alleging criminal acts. Moreover, given that the family court ordered only DOH to pay for Minor's treatment, it does not appear that DOE and DHS are aggrieved parties for purposes of standing.

hearing, the family court adopted Ono's recommendations and ordered:

> 1. [M]inor is committed to the care and custody of the Executive Director of the Office of Youth Services until age 19. [M]inor is hereby released from probation and discharged from the court's jurisdiction and all existing orders are revoked subject to the Court's review of the HYCF furlough/treatment plan and restitution. MITTIMUS to issue forthwith.
>
> 2. [M]inor/parent(s)/guardian(s)/Representatives of [DOH] & [DOE] are ordered to return to Court for a review hearing on August 9, 2001 at 8:30 AM to review any proposed furlough to [the] Cornell Abraxas program as soon as possible and travel plans for out-of-state placement.
>
> 3. [DOH] is ordered to complete the application admission requirements to Cornell Abraxas as soon as possible. If that placement should not materialize, [DOH] is under court order to locate a highly-secured treatment facility as an alternative.
>
> 4. [M]inor/parent(s) shall make restitution as determined by the Court upon the filing of a Motion for Restitution by the Deputy Prosecuting Attorney within 30 day(s).
>
> 5. [M]inor is to undergo a vision test for correction if necessary.

2. Review Hearings

On August 9, 2001, the family court, the Honorable Paul T. Murakami presiding, held a review hearing to determine the status of Minor's placement. An attorney from the Department of the Attorney General (deputy AG) appeared at the hearing, stating that he represented DOH, DOE, and HYCF.[3] The deputy AG challenged the appropriateness of Minor's placement at Cornell Abraxas and submitted into evidence a DOH report, recommending that Minor be placed at the Queen's Family Treatment Center

[3] Throughout the hearings in the present case, the various deputy AGs appearing before the family court stated that they represented HYCF and DHS.

[hereinafter, Queen's] with appropriate therapy and sex offender treatment as necessary. When the family court noted that Judge Luke's July 9, 2001 order named Cornell Abraxas as the treatment facility for Minor, the deputy AG responded:

> The -- I believe the order does say that as an alternative, a suitable alternative facility, if found here that we would go forward with that. And we do believe we do have appropriate placement, based on the information provided to the Court and to the parties.
>
> In addition, the -- in order for the placement to occur the program would need a -- an [Interstate Compact on Placement of Children[4]] order. And one of the findings that would need -- that would need to be made on that order would be that there are no equivalent facilities for the child available in this jurisdiction and we don't believe that that is a decision or an appropriate finding that could be made at this time and therefore the placement could not be put forward.

The family court stated, "With all due respect to the parties present and with apologies as well as to you, counsel, I am not inclined to touch an order previously entered by the lead judge of the division. I'm basically the pinchhitter today." However, the court went on to state, "As far as I see it, this Cornell Abraxas is supposed to be first. If he is admitted, that's where he goes. That's the way I read the order. And if there's a question about that interpretation, you need to take it up with Judge Luke."

On August 23, 2001, the family court, Judge Luke presiding, held a hearing "to find out why placement is stalling." Again, a deputy AG appeared, stating that he represented the agencies. The deputy AG called Leonard

[4] The Interstate Compact on Placement of Children is codified in HRS chapter 350E (1993).

Batungbacal, Branch Chief for the Leeward Family Guidance Center, to speak on behalf of DOH. Batungbacal stated that DOH believed that Minor's needs could be met within the state and that in-state treatment was in Minor's best interest.

Upon hearing Batungbacal's testimony, the family court set a show cause hearing, requiring DOH to show why it should not be held in contempt of its order with respect to placement at Cornell Abraxas. The court requested that DOH and DOE meet with the other parties "to determine whether there is any good cause to contravene the prior orders of the [c]ourt in which DOH[,] I believe[,] was in support of the placement at Cornell Abraxas." The court further noted, "I need to see documentation or specific evidence that would convince me that the law of the case should be changed. At present[,] DOH appears to be in contravention of the prior orders of the [c]ourt."

3. Order to Show Cause Hearing

The show cause hearing was held on August 27, 2001. Counsel for the prosecution, Minor, and the agencies were present. Counsel for the agencies called Batungbacal, who explained that Queen's was considered for Minor's placement because it was a more secure facility than Kahi Mohala. Batungbacal further noted that DOH's plan to place Minor at Queen's was made without consulting Minor's therapists.

Counsel for the agencies also called Mark Dichner, Ph.D. (Dr. Dichner) and Kevin Scherping, Minor's therapists.

Both therapists testified that it was in Minor's best interest to remain in Hawai‘i in order to maintain the therapeutic and family relationships that he had established. However, both therapists also indicated that Queen's was not an appropriate setting for Minor. Additionally, Dr. Dichner stated that safeguards were necessary to ensure Minor's successful transition back into the community, including an escort to keep him from being with any potential victims, ongoing therapy, and ongoing sex offender treatment during Minor's transition from incarceration to freedom.

Annabel Murray, Minor's guardian ad litem, recommended that Minor maintain his placement at HYCF with his current therapists until they believe he could be placed at Kahi Mohala. Murray indicated that she did not believe Queen's was an appropriate placement. Murray explained, "As you know, we go back and forth between, well, we don't have anything really appropriate, but he shouldn't go to the mainland. So what we decided to do is not talk about the mainland and see how to make Hawai‘i appropriate, if that's possible."

Ono repeated her recommendation that Minor be placed at Cornell Abraxas, stating:

> Queen's is not a sex offender treatment facility. And whether Queen's can maintain [Minor] when [Minor] is upset and raging is questionable.
>
> Queen's has a mixed population of male and female and juveniles as young as the age of thirteen presently.
>
> Cornell Abraxas at New Morgan Academy is a residential sex offender treatment program with a correctional focus that offers maximum security.
>
> Cornell Abraxas deals in many treatment areas with specialized treatment in sex offender and conduct disorder.

> [Minor] requires constant supervision to ensure his safety as well as the safety of others.
>
> Since returning to Hawai'i, [Minor] has been inconsistent in his ability to manage his anger and has resorted to self abuse and intimidating threatening behaviors.
>
> He has also stopped taking his psychotropic medications on his own.
>
> Based on my knowledge of this case and the two and half years that I've been working with [Minor] as his probation officer, it is my opinion that [Minor] needs an intensive, highly secured treatment program that can effectively address his sex offender issues, his sexual victimization, his substance abuse issues, his abandonment and personal trauma issues that contribute to his anger, and his conduct disorder problems. And he will probably require mental health counseling beyond his 19th birthday.
>
> It is sad that [Minor] has been institutionalized in treatment since the age [of] thirteen and a half. But [Minor] was responsible for his prolonged stays in treatment facilities because at times he had refused to participate in his own treatment.
>
> Public safety is my primary concern and the community would be less at risk if [Minor] completed the Cornell Abraxas specialized program.

After hearing the testimony presented, the court ruled:

> 1. Following hearing, Court finds that there is no equivalent facility in Hawai'i to provide [M]inor with the appropriate level of care/treatment. Therefore, the minor is furloughed from the [HYCF] to enter and complete treatment at Cornell Abraxas New Morgan Academy in Pennsylvania, until clinically discharged. This placement is in the best interest of [M]inor. The date of admission into this facility is September 17, 2001. [M]inor shall be escorted by the Office of Public Safety (two sheriffs).
>
> 2. In light of his long-term treatment needs, this placement is deemed not to constitute undue hardship on the child and his family. [DOH] is to provide two family visits per year between [M]inor and his family.
>
> 3. All prior consistent orders shall remain in full force and effect

On August 28, 2001, the court issued a supplemental order providing:

> 1. The [DOH] is responsible for the cost of [M]inor's placement at Cornell Abraxas New Morgan Academy in Pennsylvania.
>
> 2. If [M]inor fails to cooperate or earn a clinical discharge while on furlough, he is to be remanded back to the [HYCF] under Sheriff escort.

4. Motion for Reconsideration

On September 7, 2001, DOE and DOH filed a motion for reconsideration of all prior orders placing Minor at Cornell Abraxas in light of this court's decision in In re Doe, 96 Hawai'i 272, 30 P.3d 878 (2001). In the memorandum attached to the motion, counsel for DOE and DOH contended that the family court lacked jurisdiction to order DOH to pay for Minor's treatment provided under the IDEA and the Felix consent decree. DOE and DOH also contended that the family court clearly erred in finding that there are no equivalent facilities in Hawai'i and that placement at Cornell Abraxas was in Minor's best interest.

On September 18, 2001, a hearing on the motion for reconsideration was consolidated with a disposition hearing on a separate adjudication of Minor as a law violator, entered on September 12, 2001.[5] At the hearing, a deputy AG indicated that she was appearing "on behalf of state agencies." During the course of the proceedings, representatives from all three agencies testified that they had no objections to being made parties to the proceeding. Additionally, the court inquired of the deputy AG whether she was authorized to represent all three agencies, which resulted in the following colloquy:

[5] On August 6, 2001, prosecutors filed a petition, alleging that Minor committed the offense of terroristic threatening in the first degree, in violation of HRS § 707-716(1)(c). At a hearing on September 12, 2001, Minor admitted to the charge, and the family court, the Honorable John C. Bryant presiding, adjudicated him a law violator.

> [DEPUTY AG]: Yes, I am. I've spoken at length with my clients, as well as with a deputy [AG] who was giving advice and counsel to [the Office of Youth Services].
>
> . . . .
>
> THE COURT: So you're representing to the Court that you have no potential professional conflict in questioning Miss Hardy, from DHS, even though you represent two other agencies, [DOH and DOE].
>
> [DEPUTY AG]: The only thing I need to qualify is that I represent the agencies. I don't represent personal opinion of line workers or people who are here in court today giving their personal opinions. I represent the positions of the state agencies, and I believe I understand that they are all in total agreement today on those issues.

The court requested Melvia Hardy, a social worker at HYCF, to update the court on Minor's situation at HYCF since the August 27, 2001 hearing. Hardy indicated that Minor required further assistance to address past sexual abuse perpetrated on him, anger management, and self-abusive behaviors. Hardy stated that, based on Minor's repeated episodes of fighting, isolating himself, and self-mutilation, she had not seen progress in Minor's ability to manage his anger. Additionally, Hardy stated that she believed Minor needed more assistance than could be offered at HYCF. She explained, "HYCF is a correctional facility. We're not a therapeutic setting. . . . He needs more therapeutic services than what we can offer him."

The agencies, through their counsel, repeated their position that the family court lacked jurisdiction to order DOH to pay for Minor's placement at Cornell Abraxas under the IDEA or the Felix consent decree. The deputy AG also presented testimony from Shane Nakamura, a DOH care coordinator, and Batungbacal, both of whom outlined a revised placement plan for Minor. Nakamura testified that, at an August 28, 2001 meeting, the

participants, including Minor's therapists, proposed placing Minor at Kahi Mohala after he completed his sex offender therapy at HYCF. However, Nakamura noted that discussions were still ongoing. Batungbacal testified:

> My understanding of the last treatment meeting is that we were going to support [Minor] remaining [at HYCF] so that he could finish treatment with Dr. Dichner. Upon completion of Dr. Dichner's juvenile sex offender treatment, we would be looking at an alternative residential program.
>
> There has been a dispute, however, as to what the appropriate residential program is. The therapist[s] felt that Queen's may not be able to address his needs as well as they thought Kahi [Mohala] would be.
>
> Our department is open to whatever meets [Minor's] needs best, as far as we believe that it's in his interest for him to remain in the community and reintegrate into the community.

Ono maintained that Cornell Abraxas was a more appropriate setting for Minor, explaining:

> Cornell Abraxas is a facility, 12 acres, situated in Pennsylvania. It is a secured residential treatment facility that offers maximum security.
>
> The facility was provisionally accredited by [the Joint Commission on Accreditation of Healthcare Organizations] in June of 2001 which is national mental health accreditation. On board [are] two psychologists and one and a half psychiatrists and a whole bunch of masters' level social workers.
>
> Of course, [Minor,] in his master treatment plan[,] would be expected to attend school daily; and in addition to education, he would include sex offender treatment, anger management, and substance abuse.
>
> Sex offender treatment[:] he will receive individual treatment once a week, and he is going to be receiving community group treatment every night. And this community group treatment is treatment task and processing, psychoeducation, alcohol and drugs.
>
> On the recreation side of it, I was told that Cornell Abraxas has this state-of-the-art gymnasium. They have their own soccer fi[e]ld. They have a weight room, and the boys have recently started an aerobics program.
>
> The sex offender units, New Morgan Academy, has three sex offender units; and each unit contains 17 beds.

After hearing the arguments of counsel, the family court denied the agencies' motion for reconsideration. The court

issued its findings of fact and conclusions of law on November 30, 2001. The agencies timely appealed.

II. STANDARDS OF REVIEW

Jurisdiction

Whether a court has subject matter jurisdiction over a case is a question reviewed de novo. Doe, 96 Hawai‘i at 283, 30 P.3d at 889.

III. DISCUSSION

The agencies contest the family court's authority to order DOH to pay for Minor's treatment at Cornell Abraxas on two separate grounds: (1) the family court revoked its own jurisdiction in its July 9, 2001 order and (2) the family court lacked jurisdiction to adjudicate any matters arising under the IDEA. Whether the family court acted within its jurisdiction affects the scope of this court's review on appeal. See Beneficial Hawai‘i, Inc. v. Casey, 98 Hawai‘i 159, 164-65, 45 P.3d 359, 364-65 (2002) (citations omitted) (noting that, when an appellate court determines that the trial court acted without jurisdiction, the appellate court retains jurisdiction over the appeal, not on the merits, but to correct the error in jurisdiction). Thus, we first address the agencies' jurisdictional arguments.

1. The Family Court's July 9, 2001 Order

At the outset, we note that the agencies do not contend that the family court lacked jurisdiction to adjudicate Minor as

a law violator. Rather, the agencies contend that, pursuant to HRS § 571-48(9) (1993),[6] the family court divested itself of jurisdiction through its July 9, 2001 order and that, therefore, it lacked jurisdiction to enter (1) the August 27, 2001 order, requiring Minor to be furloughed from HYCF to Cornell Abraxas and (2) the August 28, 2001 order, requiring DOH to pay for the cost of Minor's placement at Cornell Abraxas.

Jurisdiction is "the base requirement for any court considering and resolving an appeal or original action," Wong v. Wong, 79 Hawai'i 26, 29, 897 P.2d 953, 956 (1995) (citing Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 69 n.10, 881 P.2d 1210, 1215 n.10 (1994)), and "refers to the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties." State v. Kwak, 80 Hawai'i 297, 301, 909 P.2d 1112, 1116 (1995) (citation and internal quotation marks omitted). "The family court is a court of limited jurisdiction and, as such, derives its authority from the statues that created it." In re Doe, 96 Hawai'i at 284-85, 30 P.3d at 890-91 (citations omitted). HRS § 571-8.5(6) (Supp. 2001) specifically grants to the family courts the power to "[e]nforce decrees and judgments and punish contempts according to law[.]" However, HRS § 571-8.5 is merely a legislative restatement of the court's inherent powers, In re Doe, 96 Hawai'i 73, 80, 26 P.3d

[6] HRS § 571-48(9) states, "The court may dismiss the petition or otherwise terminate its jurisdiction at any time."

562, 569 (2001) (citation omitted), which include the power to enforce its own decrees. See Bonner v. Bonner, 6 Haw. App. 610, 613, 735 P.2d 508, 510 (1987) (citations omitted). Moreover, "[a]fter final judgment has been entered, the issuing court retains such continuing jurisdiction as is permitted by the judgment itself, or as is given the court by statute or rule." Hubbard v. Hubbard, 690 N.E.2d 1219, 1221 (Ind. App. 1998).

In the present case, the family court's July 9, 2001 order provided that Minor was "discharged from the court's jurisdiction[.]" However, the order also stated that "[M]inor/parent(s)/guardian(s)/Representatives of [DOH] & [DOE] are ordered to return to Court for a review hearing on August 9, 2001 at 8:30 AM to review any proposed furlough to Cornell Abraxas program as soon as possible and travel plans for out-of-state placement." In ordering the parties to return for a review hearing, the family court clearly retained jurisdiction over Minor's proposed treatment. Moreover, the court's July 9, 2001 order required DOH to place Minor at Cornell Abraxas or another "highly secured treatment facility." Therefore, the family court had continuing jurisdiction, under its inherent power as codified in HRS § 571-8.5, to enforce its order that Minor be placed at Cornell Abraxas. Based on the foregoing, we hold that the family court retained jurisdiction over the disposition of Minor's case.

2. Authority to Order Treatment at Cornell Abraxas

Relying on Doe, 96 Hawai‘i 272, 30 P.3d 878, the agencies contend that there is no legal basis for the family court's order that DOH pay for Minor's treatment at Cornell Abraxas. In Doe, Jane and John Doe were subject to the family court's jurisdiction under HRS chapter 587. Id. at 275, 30 P.3d at 881. Jane argued that DOH was obligated to pay for her educational services under the IDEA and that the broad language of HRS § 571-11 authorized the family court to order DOH to pay for her treatment at an out-of-state residential treatment center. Id. at 278-86, 30 P.3d at 884-92. This court noted that the primary powers available to the family court under HRS § 571-11(2) do not involve ordering an agency to pay for educational services. Id. at 285 n.17, 30 P.3d at 891 n.17. However, with respect to John, this court noted that, "[a]s permanent co-custodians of John, DHS and [his foster parents] are required, among other things, to assure that John is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities." Id. at 288, 30 P.3d at 894 (brackets and quotation marks omitted). Accordingly, this court held that "the family court correctly concluded that an independent state[-law] basis exists under which John is entitled to receive payments for the mental health services regardless of whether he is eligible to receive payment pursuant to the IDEA." Id.

In the present case, Minor was adjudicated a law violator under HRS § 571-11(1) and, pursuant to HRS § 571-48(1)(B) (1993),[7] the family court vested legal custody[8] of Minor in HYCF. HRS § 352-8 (1993) provides that, "[n]otwithstanding any law to the contrary, the director [of the Office of Youth Services] shall be the guardian of the person of every youth committed to or received at the [HYCF]." The Office of Youth Services is part of DHS. See HRS § 352-2.1 (1993).[9] Thus, DHS, not DOH, is responsible for protecting, training, and

[7] HRS § 571-48(1)(B) provides that, as to a child adjudicated under HRS § 571-11(1),

> [t]he court may vest legal custody of the child, after prior consultation with the agency or institution, in a Hawai'i youth correctional facility, in a local public agency or institution, or in any private institution or agency authorized by the court to care for children; or place the child in a private home. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other appropriate department[.]

[8] "Legal custody," as used in HRS chapter 571, means

> the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline the minor and to provide the minor with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.

HRS § 571-2 (1993).

[9] HRS § 352-2.1(a) states:

> This chapter creates within the department of human services, and to be placed within the office of youth services under the supervision of the director and such other subordinates as the director shall designate, the Hawaii youth correctional facilities, in order to provide for the incarceration, punishment, and institutional care and services to reintegrate into their communities and families, children committed by the courts of the State.

disciplining Minor and for providing him with educational and medical services. Unlike in Doe, there is no independent legal basis in the case at bar that requires DOH to provide care and services for Minor. Accordingly, we hold that the family court lacked authority to order DOH to pay for Minor's treatment at Cornell Abraxas. Given our disposition of this case, we need not address the family court's findings of fact.

IV. CONCLUSION

Based on the foregoing, we vacate the family court's orders requiring DOH to pay for Minor's placement at Cornell Abraxas and remand the case for further proceedings.

DATED: Honolulu, Hawai'i, April 30, 2003.

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