

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THE FAMILY COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that an argument could be
2 made that delays experienced by parents and children while
3 awaiting the disposition of appeals from family court decisions
4 violate the due process clauses of both the state and federal
5 constitutions. Indeed, delays conflict with the mission of the
6 family court, which, as stated on the family court's website, is
7 "to provide a fair, speedy, economical, and accessible forum for
8 the resolution of matters involving families and children."

9 The legislature further finds that in recent years, parents
10 and children have had to wait up to five years for their cases
11 to be resolved. For example, the delays have lasted as long as:

12 (1) Four years and eleven months between the filing of the
13 family court order and the decision by the supreme
14 court in *Brutsch v. Brutsch*, 139 Hawaii 373 (2017);

15 (2) Two years and six months in *Tumaneng v. Tumaneng*, 138
16 Hawaii 468 (2016); and

17 (3) Four years in *Cox v. Cox*, 138 Hawaii 476 (2016).



1 Delays can result in unacceptable incongruities if the
2 matter to be decided becomes moot while the appeal is pending,
3 such as when a child reaches the age of majority before the
4 child custody decision is finally made.

5 Therefore, the purpose of this Act is to expedite the
6 appeals from family court orders by making the orders appealable
7 to the supreme court instead of the intermediate court of
8 appeals.

9 SECTION 2. Section 571-54, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§571-54 Appeal.** (a) An interested party, aggrieved by
12 any order or decree of the court, may appeal to the
13 [~~intermediate appellate~~] supreme court for review of questions
14 of law and fact upon the same terms and conditions as in other
15 cases in the circuit court, and review shall be governed by
16 chapter 602, except as hereinafter provided. Where the decree
17 or order affects the custody of a child or minor, the appeal
18 shall be heard at the earliest practicable time. In cases under
19 section 571-11, the record on appeal shall be given a fictitious
20 title, to safeguard against publication of the names of the
21 children or minors involved.



1 (b) The stay of enforcement of an order or decree, or the
2 pendency of an appeal, shall not suspend the order or decree of
3 the court regarding a child or minor, or discharge the child or
4 minor from the custody of the court or of the person,
5 institution, or agency to whose care the child or minor has been
6 committed, unless otherwise ordered by the family court or by
7 the [~~appellate~~] supreme court after an appeal is taken. Pending
8 final disposition of the case, the family court or the
9 [~~appellate~~] supreme court, after the appeal is taken, may make
10 such order for temporary custody as is appropriate in the
11 circumstances. If the [~~appellate~~] supreme court does not
12 dismiss the proceedings and discharge the child or minor, it
13 shall affirm or modify the order of the family court and remand
14 the child or minor to the jurisdiction of the family court for
15 disposition not inconsistent with the [~~appellate~~] supreme
16 court's finding on the appeal.

17 (c) An order or decree entered in a proceeding based upon
18 section 571-11(1), (2), or (6) shall be subject to appeal only
19 as follows:

20 Within twenty days from the date of the entry of any such
21 order or decree, any party directly affected thereby may file a



1 motion for a reconsideration of the facts involved. The motion
2 and any supporting affidavit shall set forth the grounds on
3 which a reconsideration is requested and shall be sworn to by
4 the movant or the movant's representative. The judge shall hold
5 a hearing on the motion, affording to all parties concerned the
6 full right of representation by counsel and presentation of
7 relevant evidence. The findings of the judge upon the hearing
8 of the motion and the judge's determination and disposition of
9 the case thereafter, and any decision, judgment, order, or
10 decree affecting the child and entered as a result of the
11 hearing on the motion, shall be set forth in writing and signed
12 by the judge. Any party aggrieved by [~~any such~~] the findings,
13 judgment, order, or decree shall have the right to appeal
14 therefrom to the [~~intermediate appellate~~] supreme court, upon
15 the same terms and conditions as in other cases in the circuit
16 court, and review shall be governed by chapter 602; provided
17 that no [~~such~~] motion for reconsideration shall operate as a
18 stay of [~~any such~~] the findings, judgment, order, or decree
19 unless the judge of the family court so orders; and provided
20 further that no informality or technical irregularity in the
21 proceedings prior to the hearing on the motion for



1 reconsideration shall constitute grounds for the reversal of
2 [~~any such~~] the findings, judgment, order, or decree by the
3 [~~appellate~~] supreme court."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval
7 and shall apply to appeals taken on or after the effective date
8 of this Act.

9

INTRODUCED BY:

~~SC~~ *[Signature]*



S.B. NO. 3041

Report Title:

Family Court; Supreme Court

Description:

Makes decisions of the family court appealable to the supreme court instead of the intermediate court of appeals.

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