No. SCPW-24-0000464

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

PUBLIC FIRST LAW CENTER,

Petitioner,

vs.

THE HONORABLE MATTHEW J. VIOLA, Senior Judge of the Family Court of the First Circuit, State of Hawai`i, Respondent Judge,

and

THE DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI`I; et al., Respondents.

ORIGINAL PROCEEDINGS
1FFM-24-0000018
1FFM-24-0000019

PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I

The Honorable Matthew J. Viola, Family Court of the First Circuit, State of Hawai`i

SUPPLEMENTAL MEMORANDUM

APPENDIX "1"

CERTIFICATE OF SERVICE

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Pursuant to this Court's order entered July 16, 2024, Petitioner Public First Law Center (Public First) submits this supplemental memorandum concerning the intersection of the "legitimate purpose" standard for disclosure of child protective act (CPA) case records, Haw. Rev. Stat. (HRS) § 587A-40, and the "good cause" standard for disclosure of adoption case records, HRS § 578-15(b)(1), when a CPA case leads to adoption. Consistent with canons of statutory construction, CPA court records filed in an adoption case should be reviewed under the more stringent "legitimate purpose" standard, but adoption-specific records should be reviewed under the "good cause" standard.[1] Disclosure of *adoption-specific records* should not differ across otherwise identical cases simply because one adopted child was the subject of a CPA case and the other was not.

I. Factual Background

Public First filed two related motions to unseal family court records regarding Isabella P. Kalua f.k.a. Ariel Sellers (Isabella). One motion concerned a CPA case; the other motion concerned Isabella's adoption case. Each motion addressed the different statutory standards for each type of case.

As it concerned the adoption motion, Isaac Kalua and the Department of Human Services (DHS) argued that Public First did not have standing to seek disclosure, claiming that the good cause standard only authorized "proper persons" with a relationship to the child to seek disclosure. 1FFM-24-18 Dkt. 21 at 3-5; 1FFM-24-18 Dkt. 53 at 4-8. Public First responded that the statute, in relevant part, addressed access by "any person" and provided separate disclosure provisions—apart from "good cause"—for individuals with a relationship to the child. 1FFM-24-18 Dkt. 29 at 4-6; 1FFM-24-18

[1] Public First referenced several adoption-specific records in its petition. Dkt. 1 at 20-21. Because Public First does not have access to the underlying court file in this matter, "records" is used broadly to reference information related to a specific source or purpose. For example, we acknowledge that information about the CPA case may be discussed in a petition for adoption (an adoption-specific record) and may need to be redacted from that document if the legitimate purpose standard is not met. Regardless, for reasons stated in the petition, both the legitimate purpose and good cause standards are met in this case.

Dkt. 55 at 2-9. The family court held that Public First had standing. 1FFM-24-18 Dkt. 65 at 9 ¶ 34 ("Movant is a person/entity who, pursuant to HRS § 578-15(b)(1), may inspect the adoption records, if good cause is shown.").

But in deciding whether to provide access to Isabella's adoption records, the family court applied the "legitimate purpose" standard to *all* records in the adoption case. 1FFM-24-18 Dkt. 65 at 9 ¶¶ 36-40. The court reasoned that the "adoption case arose out of, was based on, and is inextricably intertwined with the CPA case"; the "adoption file contains several documents that were filed in the CPA case"; and the CPA and adoption cases were heard together at a February 2021 hearing. *Id*. ¶ 36-38. The court thus concluded, "in determining whether there is 'good cause' to allow Movant access to inspect the adoption records, the court will apply the provisions, standards and framework applicable under HRS § 587A-40." *Id*. ¶ 40. In arriving at this conclusion, the court relied on *In re KK*, Nos. CAAP-22-162 & CAAP-22-675, 2023 Haw. App. LEXIS 151 (2023) (mem.).

II. The Legislature Intended to Provide Judicial Discretion to Disclose Adoption Records When It Enacted the Good Cause Standard.

As a standard, "good cause" depends on context. *Chen v. Mah*, 146 Hawai`i 157, 178, 457 P.3d 796, 817 (2020). "The original adoption records law was amended through the years, but the basic requirement that records must be permanently sealed has remained. . . . The seal could not be broken and records could not be inspected by any person, including the parties, except upon order of the family court." Bobby W. Y. Lum, *Privacy v. Secrecy: The Open Adoption Records Movement and Its Impact on Hawai`i*, 15 Haw. Law Rev. 483, 489-90 (1993). General secrecy for adoptions has long existed to reinforce that society treats the child as the natural child of the adoptive parents for all purposes. Secrecy was to avoid the "stigma of illegitimacy" and "to protect the adoptee and adoptive parents from disruption, harassment, or blackmail by the birthparents or others and to allow the birthparents to make new lives for themselves." *Id*. at 487; *accord* S. Stand. Comm. Rep. No. 90, in 1945 Senate Journal at 276 (secrecy afforded "so that, after adoption, all public records will indicate that the child is the natural child of the adopting parents"). To provide all parties to the adoption a clean start, secrecy

conceals the fact that a person is adopted, the identity of the birthparents, and the circumstances leading to the adoption—facts that are well-known and publicly acknowledged by the parties in Isabella's case.

The Legislature adopted the "good cause" standard in 1990. Before then, the adoption statute provided that records could be disclosed by court order. *See* Dkt. 56 at 6 (1990 Haw. Sess. Laws Act 338 at 1038). The Legislature intended the 1990 amendments to make it less difficult for parties to the adoption to obtain certain records.[2] *Id.* at 14 (S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal at 1241) and 17-18 (Conf. Comm. Rep. No. 97, in 1990 Senate Journal at 805-06). The Legislature did *not* intend to limit a court's existing authority to disclose records:

> (2) Language has been added to clarify that the opening of adoption records can occur upon order of the family court upon a showing of good cause. *Your Committee believes this amendment is necessary to ensure that this procedure, which is currently available, will still be available in addition to the other procedures established by the bill as amended*.

Id. at 14 (emphasis added). And the Legislature recognized the need for flexibility to address broader access to adoption records:

> Your Committee recognizes that *there are compelling arguments for fully opening up adoption records*; and that this bill as amended by your Committee, while it is a major step, may be just the first step to more liberal access to adoption records in the future.

Id. at 15 (emphasis added). Nothing in the legislative history supports the excessively restrictive interpretations of judicial discretion and "good cause" that DHS and others presented to the family court.

III. "Legitimate Purpose" Properly Applies to CPA Records Filed in an Adoption Proceeding, But Not Adoption-Specific Records.

The legitimate purpose standard does not apply to all adoption records. The family court found that "several"—but not all—records filed in the adoption case derived from Isabella's CPA case. 1FFM-24-18 Dkt. 65 at 9 ¶ 37. The family court thus

[2] The Legislature made it easier for the parties to the adoption to inspect certain records on request—without requiring a court order. Dkt. 56 at 6-8.

reasoned that the existence of *some* CPA records required the application of the CPA "legitimate purpose" standard to *all* adoption records. *Id.* ¶ 40. The family court erred in the broad scope of that ruling.

It makes sense that CPA records do not lose the protection of a more stringent disclosure standard simply because those records are used in an adoption proceeding. To that extent, the family court's decision is consistent with *In re KK*.

In *KK*, the ICA reviewed a family court decision granting a guardianship under HRS chapter 560 after three years of CPA proceedings. 2023 Haw. App. LEXIS 151 at *3-5. The ICA held that the family court erred when it appointed a legal guardian without complying with specific guardianship requirements under the CPA, requiring implementation of a permanent plan. *Id.* at *11-13. In reaching this conclusion, the ICA relied on this Court's decision in *In re R Children*. *Id.* at *9-11.

R Children involved termination of parental rights after a year of CPA proceedings. 145 Hawai`i 477, 479-80, 454 P.3d 418, 420-21 (2019). This Court held that the family court could not terminate parental rights in accordance with a more general family court provision when termination of rights under the CPA first required implementation of a permanent plan. *Id.* at 485, 454 P.3d at 426. *R Children* reasoned that ignoring the more specific CPA provision would render the permanent plan requirement a nullity, while applying that provision would be consistent with legislative intent. *Id.* at 485-86, 454 P.3d at 426-27.

The reasoning of *KK* and *R Children* is clear. When two statutes address the same legal issue, courts must apply the more stringent analysis when consistent with legislative intent.

Neither *KK* nor *R Children*, however, support the family court's decision to apply the CPA disclosure standard to all records in Isabella's adoption case. The disclosure standards address *different* legal issues: legitimate purpose concerns disclosure of CPA records; good cause concerns disclosure of adoption records. To the extent there is overlap (*i.e.*, CPA records filed in an adoption case), the reasoning in *R Children* would require the more stringent standard for the CPA records, but not all adoption records.

Unlike in *R Children*, applying the good cause standard to adoption-specific records would not render the legitimate purpose provision a nullity. Also, there is no legislative history or indicia of intent—as existed in *R Children*—to support an interpretation that the legitimate purpose standard would broadly govern disclosure of all court records in an adoption proceeding. Legitimate purpose may be the default standard for CPA court records in many instances, but applying the legitimate purpose standard to non-CPA records would render meaningless the good cause standard for adoption records (or different standards that may apply in other contexts).[3] The mere existence of *some* CPA records in a case does not mean that the entire case falls within the jurisdiction of CPA confidentiality.

"Legitimate purpose" and "good cause" are not interchangeable standards. When the Legislature uses different terminology in different statutory provisions, courts "must presume this was intentional, and that the legislature means two different things." *Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 67- 68, 376 P.3d 1, 15-16 (2016), *superseded by statute on other grounds*, 2020 Haw. Sess. Laws Act 47. Moreover, because not all adoption cases arise out of CPA cases or contain CPA records, the family court's interpretation establishes an inconsistent standard for access to adoption records. Whether for the public or parties to the adoption (*e.g.*, seeking records not covered by the "on request" provisions), expectations regarding disclosure

[3] Even under the reasoning in *R Children*, however, the legitimate purpose standard would not apply universally to CPA records in every context. If the Legislature enacted a more specific statute providing that CPA records must be disclosed publicly or to particular individuals in a specified context, the legitimate purpose standard would not apply. Also, the reasoning in *R Children* only applies in construing potentially conflicting state statutes, conflicts with constitutional or federal standards would raise different questions. For example, Public First encountered this issue when it moved to unseal an administrative appeal filed in circuit court—not family court. DHS and one of the parties argued that the confidentiality provisions in HRS chapter 587A governed irrespective of constitutional presumptions and standards for public access. No. 1CCV-20-762 Dkt. 89 at 1-2 & Dkt. 103 at 2-4. Consistent with the record presented in that case, the circuit court kept confidential the CPA-derived portions of the case, but unsealed other portions. *Id.* Dkt. 112 at 3.

of adoption-specific records should not vary based solely on the existence of a separate CPA proceeding.

In the end, adoption secrecy here no longer serves its purpose. The identities of the child, birthparents, and adoptive parents are widely known; the adopted child is dead; and her adoptive parents are charged with her murder. 1FFM-24-18 Dkt. 1 at 5-8, 15-92. These facts constitute good cause for providing access to otherwise confidential adoption records.[4] Nevertheless, in keeping with the discretion afforded by "good cause," the facts of this case should not be construed as the only facts capable of satisfying that standard.

CONCLUSION

Based on the foregoing, CPA court records filed in an adoption case should be reviewed under the more stringent "legitimate purpose" standard, but adoption-specific records should be reviewed under the "good cause" standard.

Dated: Honolulu, Hawai`i, July 25, 2024

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[4] As Public First presented in its petition, the facts here also satisfy the legitimate purpose standard.

Appendix “1”

In the Int. of KK

Intermediate Court of Appeals of Hawai'i

May 18, 2023, Decided; May 18, 2023, Filed

NOS. CAAP-22-0000162 & CAAP-22-0000675

Reporter
2023 Haw. App. LEXIS 151 *; 153 Haw. 231; 529 P.3d 709; 2023 WL 3533553

IN THE INTEREST OF KK;IN THE MATTER OF THE GUARDIANSHIP OF KK

Notice: PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Prior History: [*1] APPEALS FROM THE FAMILY COURT OF THE FIRST CIRCUIT. FC-S NO. 19-00039, CASE NO. 1GD211006285.

Case Summary

Overview
HOLDINGS: [1]-In a proceeding for the placement of a child in a legal guardianship without terminating parental rights, the trial court erred in relying on the provisions of Haw. Rev. Stat. § 560:5-204(b) to appoint the uncle as guardian because no permanent plan was prepared, considered or ordered pursuant to Haw. Rev. Stat. § 587A-31(d); [2]-Because the procedural error infected the family court's intertwined analysis of the motion for family supervision and the guardianship petition, the Child Protective Act orders and the guardianship order had to be vacated.

Outcome
Orders vacated, and case remanded.

Counsel: On the briefs: Randal I. Shintani, for Mother-Appellee.

Kurt J. Shimamoto, Julio C. Herrera, Patrick A. Pascual, and Regina Anne M. Shimada, Deputies Attorney General, for Petitioner-Appellee.

Emily M. Hills, and Mary Pascual (Legal Aid Society of Hawaii) for Guardian Ad Litem.

Judges: By: Leonard, Presiding Judge, and Wadsworth and Chan, JJ.

Opinion

MEMORANDUM OPINION

In these consolidated appeals, Appellant Mother (**Mother**) appeals from the following orders entered in the Family Court of the First Circuit (**family court**): (1) the March 10, 2022 Orders Concerning Child Protective Act (**CPA Orders**), entered in FC-S No. 19-00039 (**CPA Case**); and (2) the March 18, 2022 Order Appointing a Guardian of a Minor (**Guardianship Order**), entered in FC-G No. 21-1-6285 **(Guardianship Case**).[1] The CPA Orders revoked Appellee Department of Human Services' (**DHS**) foster custody of Mother's child, KK; denied Mother's February 1, 2022 Motion for Family Supervision; and terminated the family court's jurisdiction. The Guardianship Order appointed KK's resource caregiver, who is also KK's maternal uncle (**Uncle**), as KK's guardian.

On appeal, Mother contends that the family court erred: (1) in denying Mother's Motion for Family Supervision; (2) in interpreting Hawaii Revised Statutes (**HRS**) §§ 587A-31 and 587A-32 (quoted infra), by failing to apply the "clear and convincing evidence" standard; (3) in granting the Guardianship Petition; and (4) in failing to make specific findings under HRS §§ 587A-31 and 587A-32 of "compelling reasons" why legal guardianship was in KK's best interest. Mother also appears to challenge multiple findings of fact (**FOFs**) and conclusions of law (**COLs**) in the family court's April 26, 2022 Findings of Fact and Conclusions of Law, entered in the CPA Case and the Guardianship Case.

For the reasons discussed below, we vacate the CPA Orders and the Guardianship Order, and remand to the family court for further proceedings.

I. Background

[1] The Honorable Jessi L.K. Hall presided over the consolidated trial on the November 16, 2021 Petition for Appointment of Guardian of a Minor (**Guardianship [*2] Petition**), filed in the Guardianship Case, and Mother's Motion for Family Supervision, filed in the CPA Case, and entered the Guardianship Order and the CPA Orders.

Starting in November 2018, DHS received multiple calls of concern regarding KK and her three brothers (**Children**) due to domestic violence between Mother and Father[2] (**Parents**) and substance abuse by both Parents. On February 12, 2019, DHS confirmed the threat of abuse and neglect of the Children, who were placed in protective custody under HRS § 587A-8. On February 15, 2019, DHS filed a Petition for Temporary Foster Custody (**Petition [*3]**), initiating the CPA Case.

At the initial hearing for the CPA case, Parents knowingly and voluntarily stipulated to the jurisdiction of the family court, adjudication of the Petition, the award of foster custody of the Children to DHS, and a service plan, which included domestic violence education, a psychological evaluation, a substance abuse assessment, random urinalysis, and parenting education.

Between August 2019 and January 2022, the family court held periodic review and permanency hearings pursuant to HRS §§ 587A-30 and -31 (quoted infra), to review Parents' progress in services and their ability to provide a safe family home, to review the safety and well-being of the Children, and to assess case direction. Mother made enough progress with her services that KK's three brothers were returned to Mother's care under family supervision, on March 13, 2020, November 5, 2020, and December 21, 2020, respectively.[3] Thereafter, family supervision was automatically revoked as to the oldest brother when he turned 18, and following DHS's assessment that Mother was able to provide a safe family home for the two younger brothers, the family court revoked family supervision and terminated its jurisdiction as **[*4]** to them.

However, KK remained in foster care from her initial removal in February 2019,[4] and has remained in the care of Uncle for several years. KK has stated that she wishes to stay in Uncle's home and does not want to live with Mother, because Mother does not acknowledge her feelings and is unable to meet her emotional needs.

It appears that from the first review/permanency hearing in August 2019, DHS identified a "[c]oncurrent permanency plan" of "reunification" and "legal guardianship" for KK. Similarly, from at least August 2020, the family court's post-hearing orders stated that "[t]he proper concurrent permanency plan" was "reunification" and "legal guardianship" for KK.

On November 16, 2021, DHS filed the Guardianship Petition to have Uncle appointed as KK's legal guardian, initiating FC-G No. 21-1-6285. Mother opposed the Guardianship Petition and requested a trial.

On February 1, 2022, in the CPA case, Mother filed the Motion for Family Supervision to have KK returned to her care.[5] DHS and KK's court-appointed guardian ad litem (**GAL**) opposed Mother's motion.

On March 9 and 10, 2022, the family court held a consolidated trial on the Motion for Family Supervision and the Guardianship **[*5]** Petition. Following trial, the family court determined that Mother was not presently willing and able to provide KK with a safe family home, even with the assistance of a service plan, and thus denied the Motion for Family Supervision. The court further determined that Mother was not able to exercise her parental rights as to KK, and the appointment of Uncle as KK's legal guardian was in her best interest. The court thus appointed Uncle as KK's legal guardian pursuant to HRS § 560:5-204(b).[6]

II. Standards of Review

> Generally, the family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion. Thus,

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[2] Father does not appeal from the CPA Orders or the Guardianship Order.

[3] Parents were involved in a domestic violence incident on October 7, 2020, and have not lived together since that time.

[4] In each periodic review/permanency hearing, the family court continued foster custody of KK, as reflected in the court's Orders Concerning Child Protective Act, entered on August 8, 2019, August 4, 2020, October 29, 2020, January 28, 2021, April 16, 2021, July 9, 2021, October 11, 2021, and January 11, 2022, and in the court minutes dated January 22, 2020.

[5] HRS § 587A-4 (2018) defines "family supervision" as "the legal status in which a child's legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home." Under HRS § 587A-30(b)(1)(B) (2018), a child may be placed in family supervision "if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan[.]" HRS § 587A-7(a) (2018) sets forth the factors the family court must consider when deciding whether a child's parents are willing and able to provide the child with a safe family home, with the assistance of a service plan.

[6] HRS § 560:5-204(b) (2018) states:

> (b) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:
>
> (1) The parents consent;
>
> (2) All parental rights have been terminated; or
>
> (3) The parents are unwilling or unable to exercise their parental rights.

> we will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

In re R Children, 145 Hawai'i 477, 482, 454 P.3d 418, 423 (2019) (brackets omitted) (quoting **[*6]** Fisher v. Fisher, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006)).

"The family court's conclusions of law, on appeal, are reviewed de novo under the right/wrong standard." Id. (citing In re Jane Doe, 101 Hawai'i 220, 227, 65 P.3d 167, 174 (2003)). "Statutory interpretation is a question of law reviewable de novo." Id. (quoting State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009)).

III. Discussion

Mother contends that because the CPA case originated and proceeded for more than three years under the CPA, the family court was required to decide the Motion for Family Supervision and the Guardianship Petition in accordance with the procedures and standards set forth in HRS §§ 587A-31[7] and 587A-32,[8] and the court erred in failing to do so. Specifically, in her second and third points of error, Mother argues that the family court was required, but failed, to "determine by 'clear and convincing' evidence that Mother[] is not able to provide [KK] with a safe family home, even with the assistance of a service plan, and there are compelling reason(s) why legal guardianship is in [KK]'s best interest."[9] In her fourth point of error, Mother argues that the family court was required, but failed, to make specific findings under HRS §§ 587A-31 and 587A-32 of "compelling reason(s) why legal guardianship was in [KK]'s best interest[.]"

DHS, on the other hand, contends that HRS §§ 587A-2 and 587A-32 do not apply to "this case," and the family court complied with HRS § 587A-31. Specifically, DHS argues **[*8]** that HRS § 587A-2, which references the clear and convincing evidence standard (see supra note 9), does not apply because a guardianship is not permanent, and under HRS § 560:5-204, the termination of parental rights is not required to appoint a guardian for a minor. Next, DHS argues that the family court complied with HRS § 587A-31, as follows:

> In a permanency hearing under HRS § 587A-31(d), the family court must order only one of the following options "(1) The child's reunification with a parent or parents; (2) The child's continued placement in foster care where: (A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and (B) The safety and health of the child can be adequately safeguarded[,]" or order a permanent plan as described in HRS § 587A-32 with a permanency goal of adoption, legal guardianship, or permanent custody.

Here, DHS asserts, the family court complied with HRS § 587A-31(d) at each of the periodic review/permanency hearings "by continuing foster custody over KK while concurrently working with Mother to reunify with KK[,]" and thus "did not have the option to order a permanent plan [under HRS § 587A-

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[7] HRS § 587A-31 (2018) provides, in relevant part:

> (d) At each permanency hearing, the court shall order:
>
> (1) The child's reunification with **[*7]** a parent or parents;
>
> (2) The child's continued placement in foster care, where:
>
> > (A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and
> >
> > (B) The safety and health of the child can be adequately safeguarded; or
>
> (3) A permanent plan with a goal of:
>
> > . . . .
> >
> > (B) Placing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child[.]

[8] HRS § 587A-32 (2018) provides, in relevant part:

> (a) The permanent plan shall:
>
> (1) State whether the permanency goal for the child will be achieved through adoption, legal guardianship, or permanent custody;
>
> (2) Establish a reasonable period of time by which the adoption or legal guardianship shall be finalized;
>
> (3) Document:
>
> > (A) A compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal; or
> >
> > (B) A compelling reason why permanent custody is in the child's best interests if adoption or legal guardianship is not the goal[.]

[9] Mother also cites HRS § 587A-2 (2018) in support of her argument. That section states, in relevant part, "Where the court has determined, by clear and convincing evidence, that the child cannot be returned to a safe family home, the child shall be permanently placed in a timely manner."

31(d)(3)] that complied with the requirements of HRS § 587A-32." According to DHS, although the court entered orders following **[*9]** each review/permanency hearing that the "proper concurrent permanency plan" was reunification and legal guardianship, the court did not order a "permanent plan" under HRS § 587A-31(d)(3), and thus HRS § 587A-32 did not apply.

While this matter did not involve a termination-of-parental-rights hearing, the supreme court's decision in R Children, 145 Hawai'i 477, 454 P.3d 418, which addressed the CPA's permanent plan requirement, is instructive. There, the court addressed the interplay between two statutory provisions that provide for the termination of parental rights — HRS § 587A-33, a CPA provision, and HRS § 571-61(b)(1)(E), a family court provision. Id. at 479, 454 P.3d at 420. The court held that a father's parental rights could not be terminated based on the family court provision, when the CPA provision contained a requirement not present in the family court provision, i.e., that the family court "find that the 'proposed permanent plan is in the best interests of the child' before terminating a parent's parental rights." Id. (quoting HRS § 587A-33(a)(3)). The court explained: "Despite the overlap in the CPA and the Family Courts chapter, the Family Court Provision and the CPA Provision are not interchangeable. The Family Court Provision cannot serve as a substitute for the CPA Provision when the CPA Provision contains an additional **[*10]** requirement." Id. at 484, 454 P.3d at 425.

In reaching this conclusion, the court noted that the CPA's permanent plan requirement "furthers the legislative intent to serve the best interests of the child." Id. at 485, 454 P.3d at 426. The court reasoned:

> The CPA also explicitly calls for the implementation of permanent plans. The CPA's statement of purpose references permanent plans four times. HRS § 587A-2. Also, the CPA "makes provisions for the service, treatment, and permanent plans for [] children and their families." HRS § 587A-2 (emphasis added). The legislative history of Act 316, which enacted a previous version of HRS chapter 587, states that the CPA was "to provide for timely permanent planning by incorporating in the Child Protective Act certain provisions of the termination of parental rights statute[.]" H. Stand. Comm. Rep. No. 236-86, in 1986 House Journal, at 1088 (emphasis added). The CPA's purpose and legislative history convey the legislature's intent that the CPA provide for permanent plans that are in the best interests of children.
> . . . .
>
> Moreover, the permanent plan requirement in the CPA Provision adds an additional, specific criterion that we cannot disregard. . . . Using the statutes together but allowing the specific provision to control where the family court **[*11]** does not find the permanent plan to be in the child's best interests comports with the legislature's intent. Therefore, the specific permanent plan requirement of the CPA Provision controls.

Id. at 486, 454 P.3d at 427; see also id. at 487, 454 P.3d at 428 ("The CPA envisioned the implementation of permanent plans to bring safety and stability to the children within its jurisdiction.")

Like R Children, the present matter involves the interplay between seemingly similar statutory provisions addressing children's needs, albeit provisions permitting the placement of a child for legal guardianship without terminating parental rights. Compare HRS §§ 587A-31(d)(3) (providing for a permanent plan with a goal of placing the child for legal guardianship) and -32 (stating the requirements for a permanent plan) with HRS § 560:5-204(b)(1) and (3) (providing for appointment of a guardian for a minor without terminating parental rights). However, the relevant CPA provisions provide for a specific permanent plan with a goal of "[p]lacing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child[,]" HRS § 587A-31(d)(3), as well as the other requirements for a permanent plan, HRS § 587A-32. We conclude **[*12]** that these specific CPA provisions controlled and should have been followed in these cases, where the family court: (1) held proceedings, including multiple permanency hearings, under the CPA for over three years; (2) issued multiple post-hearing orders that included legal guardianship as a permanency goal for KK; and (3) ultimately denied KK's reunification with Mother, ended foster custody over KK, and appointed Uncle as KK's legal guardian without ordering a permanent plan that complied with HRS §§ 587A-31(d)(3) and 587A-32.

DHS is correct that at a permanency hearing, when a family court orders a child's continued placement in foster care under HRS § 587A-31(d)(2), it is not required to order a permanent plan under § 587A-31(d)(3). It does not follow, however, that having repeatedly invoked the CPA's permanency planning provisions,[10] the family court could then disregard the CPA's

[10] At a permanency hearing, the family court may find that legal guardianship is an appropriate "permanency goal" for a child, HRS § 587A-31(c)(5), and a permanent plan may state that the "permanency goal" for a child will be achieved through legal guardianship, id. § 587A-32(a)(1). HRS § 587A-31(d)(3) makes clear that such a permanency goal can be placing the child for legal guardianship without

permanent plan requirement, through a proceeding that substituted the guardianship provisions of HRS § 560:5-204(b) for those of HRS §§ 587A-31(d)(3) and 587A-32. The consolidated trial on the Motion for Family Supervision and the Guardianship Petition also functioned in substance as a permanency hearing, at which the court effectively denied KK's reunification with Mother (by denying the Motion for Family Supervision) **[*13]** and ended foster care over KK. However, no permanent plan was prepared, considered or ordered pursuant to HRS §§ 587A-31(d). The court instead relied on the provisions of HRS § 560:5-204(b) to appoint Uncle as KK's guardian. This substitution, where the applicable CPA provisions contained a requirement not present in the guardianship provisions of HRS § 560:5-204(b), was error. See R Children, 145 Hawai'i at 484, 454 P.3d at 425. Because this error infected the family court's intertwined analysis of the Motion for Family Supervision and the Guardianship Petition, the CPA Orders and the Guardianship Order must be vacated. See id. at 487, 454 P.3d at 428.

Given our decision, we do not reach Mother's remaining points of error, including her summary challenge to the multiple FOFs and COLs listed in her abbreviated opening brief.

IV. Conclusion

For the reasons discussed above, we vacate the following orders entered in the Family Court of the First Circuit: (1) the March 10, 2022 Orders Concerning Child Protective Act, entered in FC-S No. 19-00039; and (2) the March 18, 2022 Order Appointing a Guardian of a Minor, entered in FC-G No. 21-1-6285. We remand these cases to the family court for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, May 18, 2023.

/s/ Katherine G. Leonard

Presiding Judge **[*14]**

/s/ Clyde J. Wadsworth

Associate Judge

/s/ Derrick H.M. Chan

Associate Judge

terminating parental rights. Here, in fact, the family court issued multiple post-permanency hearing orders that included legal guardianship as a permanency goal for KK.

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