SCWC-12-0000521

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

IN THE INTEREST OF T.M.	FC-S No. 10-002K APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER TERMINATING PARENTAL RIGHTS ISSUED ON MAY 3, 2012 Family Court of the Third Circuit Hon. Aley K. Auna, Jr.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF CASE/IDENTITY AND INTEREST OF *AMICI* 1

STATEMENT OF POINTS OF ERROR 1

STANDARD OF REVIEW 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. The Vast Majority of States Have Adopted A Bright-Line Rule Requiring Counsel for All Abuse/Neglect Proceedings. 2

II. A Bright-Line Rule Requiring Counsel In All Cases Avoids The Case-By-Case Problems of Trial Courts Either Lacking Sufficient Information To Determine Whether to Appoint Counsel Or Utilizing Inconsistent Standards for Appointment of Counsel. 4

III. A Bright-Line Rule Eliminates The Problem of Appellate Courts Being Unable To Effectively Review A Trial Court's Discretionary Decision to Deny Counsel. 6

IV. A Bright-Line Rule For Appointment Of Counsel Should Include Minor Parents; Appointment of a Guardian *Ad Litem*, Even One Who Is An Attorney, Does Not Suffice. 8

V. The Extended Protections of the Hawai'i Due Process Clause Require Appointment of Counsel In Abuse/Neglect Proceedings. 9

CONCLUSION 10

TABLE OF AUTHORITIES

Hawai‘i Constitution

Article I, § 5 .... 1, 4

Hawai‘i Statutes

Hawai‘i Revised Statutes § 587A-17(a) 4

Hawai‘i Cases

In re “A” Children, 119 Hawai‘i 28, 193 P.3d 1228 (App. 2008) 4, 9

In re Doe, 99 Hawai'i 522, 57 P.3d 447 (2002). 10

In re RGB, 123 Hawai‘i 1, 229 P.3d 1066 (2010) 6

In the Interest of T.M., No. CAAP-12-000521, Summary Disposition Order (June 28, 2013)...... 7

State v. Brantley, 99 Hawai‘i 463, 56 P.3d 1252 (2002.. 9

State v. Guidry, 105 Hawai‘i 222, 96 P.3d 242 (2004).. 9

State v. Jenkins, 93 Hawai‘i 87, 997 P.2d 13 (2000). 1

State v. Jumila, 87 Hawai‘i 1, 950 P.2d 1201 (1998) 9, 10

State v. Lee, 83 Hawai‘i 267, 925 P.2d 1091 (1996) 1

Federal Cases

Almond v. Wisconsin, 2008 WL 2726014 (E.D. Wis. 2008) (unpublished) 4

Betts v. Brady, 316 U.S. 455 (1941) 5, 10

Bradshaw v. Zoological Soc. of San Diego, 662 F.2d 1301 (9th Cir. 1981) 7

Caston v. Sears, Roebuck & Co., 556 F.2d 1305 (5th Cir. 1977).. 7

Cota v. Anderson, 2007 WL 3333390 (D. Utah 2007) 4

Gideon v. Wainwright, 372 U.S. 335 (1963) 5

Lassiter v. Durham Co. Dep't of Soc. Servs., 452 U.S. 18 (1981) 3, 4, 6, 9, 10

Powell v. Alabama, 287 U.S. 45 (1932). 3

Robbins v. Maggio, 750 F.2d 405 (5th Cir. 1985) 7

Other State Statutes/Rules

10A Okl. St. Ann. § 1-4-306(A)(1)(a) 2

AK R CINA Rule 12(b) 2

Ala. Code § 12-15-305(b) 2

Conn. Gen. Stat. § 46b-135(b) 8

Fla. Stat. Ann. § 39.013 8

MCR 3.915(B)(1)(a) 2

S.C. Code Ann. § 63-7-1620(3) 8

Other State Cases

Arizona State Department of Public Welfare v. Barlow, 296 P.2d 298 (Ariz. 1956) 3

Danforth v State Dept, 303 A.2d 794 (Me. 1973) 3

Graves v. Adult & Family Servs. Div., 708 P.2d 1180 (Or. Ct. App. 1985) 6

In re Chad S., 580 P.2d 983 (Okla. 1978) 3

In re Ella B., 285 N.E.2d 288 (N.Y. 1972) 3

In re Evan F., 815 N.Y.S.2d 697 (N.Y. App. Div. 2006) 3

In re Pima County Juvenile Action J-64016, 619 P.2d 1073 (Ariz. App. 1980) 3

In re Welfare of Myricks, 533 P.2d 841 (Wash. 1975) 3

King v. King, 174 P.3d 659 (Wash. 2007) 3

L.A.N. v. L.M.B., 292 P.3d 942 (Colo. 2013). 7

Matter of FKC, 609 P.2d 774 (Okla. 1980) 3

Matter of Lindsey C., 473 S.E.2d 110 (W.Va. 1995).. 3

New Jersey Div. of Youth & Family Servs. v. B.R., 929 A.2d 1034 (N.J. 2007) 3

S.B. v. Dep't of Child. & Fam., 851 So. 2d 689 (Fla. 2003)... 3

State v. Cadman, 476 A.2d 1148 (Me. 1984) 3

State ex rel. Lemaster v. Oakley, 203 S.E.2d 140 (W. Va. 1974).. 3

Other Authorities

American Bar Association, *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (101A) (2011). 9

American Bar Association, *Resolution 112A* (Aug. 2006) 8

Amicus Brief, State Government *Amici Curiae*, *Gideon v. Wainwright,* 1962 WL 75209 (U.S. 1962). 5

Brad Feldman, *An Appeal for Immediate Appealability: Applying the Collateral Order Doctrine to Orders Denying Appointed Counsel in Civil Rights Cases*, 99 Geo. L.J. 1717(Aug. 2011) .. 5

John Pollock, *The Case Against Case-By-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 Drake L.J. 763 (Spring 2013)...................................... 2

Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13 (Winter 2010) 7

Kevin Shaughnessy, *Lassiter v. Department of Social Services: A New Interesting Balancing Test for Indigent Civil Litigants*, 32 Cath. U. L. Rev. 261 (1982) 5

Sarah Katz, *When the Child is a Parent: Effective Advocacy for Teen Parents in the Child Welfare System*, 79 Temp. L. Rev. 535 (Summer 2006) 8

Tara Grigg Garlinghouse, *Fostering Motherhood: Remedying Violations of Minor Parents' Right to Family Integrity*, 15 U. Pa. J. Const. L. 1221 (April 2013) 7

STATEMENT OF CASE/IDENTITY AND INTEREST OF *AMICI*

Amici hereby incorporate by reference the Statement of Case/Proceedings from Petitioner/Mother-Appellant's Application for Writ of *Certiorari*. The identity and interest of *amici* are set forth in *amici*'s Memorandum in Support of Motion for Leave to Appear.

STATEMENT OF POINTS OF ERROR

The Intermediate Court of Appeals committed grave error by failing to hold that the indigent parent in this case, and in fact all indigent parents of all ages, have a right to appointed counsel in abuse/neglect proceedings under article I, § 5 of the Hawaiʻi Constitution.

STANDARD OF REVIEW

This Court has repeatedly held, "[w]e answer questions of constitutional law 'by exercising our own independent judgment based on the facts of the case.' *State v. Trainor*, 83 Hawaiʻi 250, 255, 925 P.2d 818, 823 (1996) (citations and internal quotation marks omitted); *State v. Lee*, 83 Hawaiʻi 267, 273, 925 P.2d 1091, 1097 (1996) (citation, internal quotation marks, and brackets omitted). Thus, we review questions of constitutional law under the 'right/wrong' standard." *State v. Jenkins*, 93 Hawaiʻi 87, 100, 997 P.2d 13, 26 (2000).

SUMMARY OF ARGUMENT

Amici agree with the Application for Writ of *Certiorari* that the specific factors of Mother's case entitled her to counsel as a matter of due process, and that the trial court therefore abused its discretion in failing to appoint counsel for her (such that this Court should grant *certiorari*). However, *amici* urge this Court to hold that the Hawaiʻi Constitution's Due Process Clause, which has been interpreted to be more protective than its federal counterpart, requires the appointment of counsel for *all* indigent parents in abuse/neglect proceedings. Such a bright-line rule is required for three reasons: (1) there is a near-nationwide consensus on providing counsel for all indigent parents in such proceedings; (2) the case-by-case approach has substantial practical problems at the trial level that result in constitutional deprivations; and (3) the case-by-case approach makes effective appellate review virtually impossible. Additionally, *amici* contend that this bright-line rule must include minor parents: guardians *ad litem* are unable to protect fully the interests of minor parents.

ARGUMENT

I. The Vast Majority of States Have Adopted A Bright-Line Rule Requiring Counsel for All Abuse/Neglect Proceedings.

There is a near-nationwide consensus that all indigent parents must be provided with counsel in abuse/neglect proceedings. However, Hawai‘i remains stuck in the small minority of states in which counsel is appointed on a case-by-case basis.

At present, forty-three states plus the District of Columbia provide a right to counsel for all indigent parents in abuse/neglect proceedings. John Pollock, *The Case Against Case-By-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 Drake L.J. 763, 777-78 (Spring 2013). In thirty-nine of those states and the District of Columbia, that right is unqualified, while the four remaining states guarantee counsel if the child is removed from the home. *Id.* In recognition of the fact that *pro se* litigants are not likely to know their rights or to know when/how to assert such rights, many of these states either require the appointment of counsel without a request by the parent[1] or oblige the court to inform the parent of his/her right to appointed counsel upon request.[2] Such risks of a parent being unaware of his/her rights are even more prominent when the parent is a minor, as in the instant case.

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[1] *See*, *e.g.*, Ala. Code § 12-15-305(b) ("In dependency and termination of parental rights cases, the respondent parent, legal guardian, or legal custodian shall be informed of his or her right to be represented by counsel and, if the juvenile court determines that he or she is indigent, counsel shall be appointed where the respondent parent, legal guardian, or legal custodian is unable for financial reasons to retain his or her own counsel"); AK R CINA Rule 12(b) ("The court shall appoint counsel pursuant to Administrative Rule 12 … for a parent or guardian who is financially unable to employ counsel….").

[2] *See*, *e.g.*, MCR 3.915(B)(1)(a) ("At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that (i) the respondent has the right to a court appointed attorney at any hearing conducted pursuant to these rules, including the preliminary hearing, if the respondent is financially unable to retain an attorney, and, (ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing"); 10A Okl. St. Ann. § 1-4-306(A)(1)(a) ("If a parent or legal guardian of the child requests an attorney and is found to be indigent, counsel may be appointed by the court at the emergency custody hearing and shall be appointed if a petition has been filed alleging that the child is a deprived child….").

In six of the forty-three states that have a right to counsel, courts have declared that the state constitution's due process clause requires the appointment of counsel for all indigent parents in abuse/neglect proceedings.[3]

While the right to counsel has come into being more frequently through a legislative act than through a court's constitutional ruling, this nationwide consensus nonetheless has relevance for consideration of the constitutional right to counsel. For example, in 1932, the U.S. Supreme Court observed that every state at the time required appointment in death penalty cases by either statute or court ruling; the Court held that a federal constitutional right to counsel existed in such cases: "A rule adopted with such unanimous accord reflects, if it does not establish, the inherent right to have counsel appointed … and lends convincing support to the conclusion we have reached as to the fundamental nature of that right." *Powell v. Alabama*, 287 U.S. 45, 73 (1932).

The national consensus around the right to counsel for all indigent parents in abuse/neglect cases similarly supports the conclusion that such a right is constitutionally compelled in Hawai'i. Hawai'i is "one of only a handful of states that does not … guarantee

[3] *S.B. v. Dep't of Child. & Fam.*, 851 So. 2d 689, 692 (Fla. 2003) (finding constitutional right to counsel in abuse/neglect if proceeding could lead to criminal charges); *Danforth v State Dept*, 303 A.2d 794 (Me. 1973) (finding constitutional right to counsel in abuse/neglect proceedings); *State v. Cadman*, 476 A.2d 1148, 1152 n.6 (Me. 1984) (pointing to *Danforth* as example of case where state constitution is more protective than federal counterpart); *New Jersey Div. of Youth & Family Servs. v. B.R.,* 929 A.2d 1034, 1036 (N.J. 2007) (finding state constitutional right when temporary or permanent loss of parental rights are at stake); *In re Ella B.,* 285 N.E.2d 288 (N.Y. 1972) (relying on both state and federal constitutional grounds to find right to counsel); *In re Evan F.*, 815 N.Y.S.2d 697 (N.Y. App. Div. 2006) (relying on *Ella B*); *In re Welfare of Myricks*, 533 P.2d 841 (Wash. 1975) (finding constitutional right to counsel in abuse/neglect); *King v. King*, 174 P.3d 659, 662 n.3 (Wash. 2007) (noting that while federal underpinnings of *Myricks* may have been eroded by *Lassiter*, *Myricks* had been "favorably cited more recently in our case, *In re Dependency of Grove*"); *State ex rel. Lemaster v. Oakley*, 203 S.E.2d 140 (W. Va. 1974) (finding constitutional right to counsel in abuse/neglect); *Matter of Lindsey C.*, 473 S.E.2d 110 (W.Va. 1995) (reaffirming *Lemaster*). Two other states courts found a federal constitutional right to counsel for all abuse/neglect cases that has not been revisited since the U.S. Supreme Court's decision in *Lassiter v Durham Co. Dep't of Soc. Servs.*, 452 U.S. 18, 33-34 (1981) (finding no federal constitutional right to counsel for termination proceedings, but not reaching abuse/neglect cases). Those are *In re Pima County Juvenile Action J-64016*, 619 P.2d 1073, 1075 (Ariz. App. 1980) (finding constitutional right to counsel in abuse/neglect, and relying on *Arizona State Department of Public Welfare v. Barlow*, 296 P.2d 298 (Ariz. 1956)), and *Matter of FKC*, 609 P.2d 774 (Okla. 1980) (finding constitutional right to counsel in abuse/neglect based on In re Chad S., 580 P.2d 983, 984-985 (Okla. 1978)).

indigent parents a right to appointed counsel, at least at the stage of a child-protective proceeding at which parents are threatened with the prolonged and/or indefinite deprivation of custody of their children." *In re "A" Children*, 119 Hawaiʻi 28, 46, 193 P.3d 1228, 1246 (App. 2008). *See* Hawaiʻi Revised Statutes § 587A-17(a) ("The court may appoint an attorney to represent a legal parent who is indigent based on court-established guidelines."). As discussed in the following section, the absence of a bright-line rule in abuse/neglect proceedings is causing constitutional violations in Hawaii's family courts (as in the instant case). As such, *amici* respectfully urge the Court to hold that article I, § 5 requires appointment of counsel in *all* abuse/neglect proceedings.

II. A Bright-Line Rule Requiring Counsel In All Cases Avoids The Case-By-Case Problems of Trial Courts Either Lacking Sufficient Information To Determine Whether to Appoint Counsel Or Utilizing Inconsistent Standards for Appointment of Counsel.

The case-by-case approach to appointing counsel imposes an impossible burden on trial judges, which helps explain why the vast majority of states have rejected it. First, Justice Blackmun's dissent in *Lassiter v. Durham Co. Dep't of Soc. Servs.*, 452 U.S. 18 (1981), explained the impossibility of compelling a trial court to "determine *in advance* what difference legal representation might make," as it requires the judge to "examine the State's documentary and testimonial evidence *well before the hearing* so as to reach an informed decision about the need for counsel in time to allow adequate preparation of the parent's case." 452 U.S. 18, 51 n.19 (1981) (Blackmun, J., dissenting) (emphasis added). Recently, the ICA agreed with this explanation and commented, "[w]e express grave concerns ... about the case-by-case approach adopted in *Lassiter* for determining the right to counsel." *In re "A" Children*, 119 Hawaiʻi at 60, 193 P.3d at 1260.

Moreover, a trial judge's initial determination of the necessity of counsel is not the end of the story: a case's complexity might change as the case develops, meaning trial judges denying counsel have an onerous burden to monitor the proceedings in order to see if the constitutional need for counsel subsequently arises.[4] In urging the U.S. Supreme Court in *Gideon v.*

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[4] Indeed, this ongoing monitoring burden is the current reality for federal courts considering discretionary appointment pursuant to the federal indigent litigant statute, 28 U.S.C. § 1915(e). *See*, *e.g.*, *Cota v. Anderson*, 2007 WL 3333390 at *3 (D. Utah 2007) (unpublished) ("The Court also revisits sua sponte the issue of appointed counsel …. The Court finds that appointment of counsel for Plaintiff is necessary to allow this litigation to proceed."); *Almond v. Wisconsin*, 2008 WL 2726014 at *1 (E.D. Wis. 2008) (unpublished) (denying appointment but

Wainwright, 372 U.S. 335 (1963), to overrule the case-by-case approach established in *Betts v. Brady*, 316 U.S. 455 (1941), for appointment of counsel in criminal cases, the *amicus* brief filed by twenty-two states warned, "[t]he trial judge, who is now required to decide in advance when there will be 'fundamental fairness,' can never be sure when, during the trial, the need for counsel will arise." *Amicus* Brief, State Government *Amici Curiae*, *Gideon v. Wainwright,* 1962 WL 75209 at *3 (U.S. 1962). As one legal commentator added, "there is little in the record upon which the [] court can rely when deciding a motion for appointment of counsel, [so] the order corresponding to that motion should not be thought to have conclusively determined the question for all time." Brad Feldman, *An Appeal for Immediate Appealability: Applying the Collateral Order Doctrine to Orders Denying Appointed Counsel in Civil Rights Cases*, 99 Geo. L.J. 1717, 1727 (Aug. 2011). Even if the trial court comes to realize that counsel is necessary later in the case, an appointment partway through the abuse/neglect case may not be effective to remedy the due process concerns. Appointed counsel may be entering the case well after it is too late to undo prejudicial acts by the parent or other harm caused by counsel's initial absence.

An additional risk is that trial courts in different judicial circuits across Hawai'i, faced with nebulous appointment tests such as "fundamental fairness" or "risk of error," will reach different conclusions for substantially similar cases, meaning a parent's chance for justice may depend on which judge hears the parent's case.[5] As the *Gideon* state government *amici* pointed out, "[T]here can be no semblance of uniformity in the conduct of such proceedings, for the very matter which will shock the conscience of one judge will fail to penetrate the repose of another." State Government *Amici Curiae*, *Gideon v. Wainwright,* 1962 WL 75209 at *18. The *Gideon amici* gave the example of three sets of cases where "each set [] contained within itself substantially similar fact situations, [but] the right to appointed counsel was denied in the first case of each pair, [and] upheld in the second-clearly a consequence of the vague standard of

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noting, "[i]f, as the case proceeds, it appears that the case is more complicated or, for some other reason, Almond lacks the ability to effectively represent himself, I may revisit his request for appointed counsel.").

[5] *See* Kevin Shaughnessy, *Lassiter v. Department of Social Services: A New Interesting Balancing Test for Indigent Civil Litigants*, 32 Cath. U. L. Rev. 261, 283 (1982) (noting that courts using case-by-case approach must "develop pretrial procedures and standards in order to determine properly the need for counsel. There is no guarantee that these standards will produce equitable decisions in every case.").

‘denial of fundamental fairness’ which *Betts* has advanced.” *Id.* at *19-20.

The fact that most states now embrace a bright-line right to counsel is an acknowledgment of the constitutional deficiencies with the case-by-case approach. In his dissent to *In re RGB*, Justice Acoba (joined by Justice Duffy), referred to the case-by-case approach for appointment of counsel in termination of parental rights proceedings as “random” and noted the “overwhelming national trend away from discretionary appointment.” *In re RGB*, 123 Hawai‘i 1, 32, 229 P.3d 1066, 1097 (2010), (Acoba, J., dissenting). Indeed, even in 1981, the U.S. Supreme Court acknowledged in *Lassiter* that “[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel” not just for termination proceedings, “but also in abuse/neglect and neglect proceedings as well.” 452 U.S. at 33-34. The absence of a bright-line rule is the direct cause of constitutional deprivations to parents in Hawai‘i – including in the instant case.

III. A Bright-Line Rule Eliminates The Problem of Appellate Courts Being Unable To Effectively Review A Trial Court’s Discretionary Decision to Deny Counsel.

Justice Blackmun’s dissent in *Lassiter* outlines why the severe limitations of the trial record preclude a meaningful review of a denial of counsel by the appellate court:

> The [majority opinion] assumes that a review of the record will establish whether a defendant, proceeding without counsel, has suffered unfair disadvantage. But in the ordinary case, this simply is not so. The pleadings and transcript of an uncounseled termination proceeding at most will show the obvious blunders and omissions of the defendant parent. Determining the difference legal representation would have made becomes possible only through imagination, investigation, and legal research focused on the particular case. Even if the reviewing court can embark on such an enterprise in each case, it might be hard pressed to discern the significance of failures to challenge the State’s evidence or to develop a satisfactory defense …. Because a parent acting pro se is even more likely to be unaware of controlling legal standards and practices, and unskilled in garnering relevant facts, it is difficult, if not impossible, to conclude that the typical case has been adequately presented.

Lassiter, 452 U.S. at 50-51 (Blackmun, J., dissenting). *See also Graves v. Adult & Family Servs. Div.*, 708 P.2d 1180, 1185–86 (Or. Ct. App. 1985) (“[E]x post facto determinations are necessarily difficult, and it is well nigh impossible to discern from the record what difference adequate representation would have made in a given case.”).

Indeed, in the instant case, the ICA relied on its “independent review of the record” to find “no indication that the lack of earlier-appointed counsel prejudiced Mother’s substantial

rights," in particular because the proceedings were "not adversarial." *In the Interest of T.M.*, No. CAAP-12-000521, Summary Disposition Order (June 28, 2013). However, the ICA reviewed a record developed without the presence of counsel for Mother to rigorously contest any aspect of the proceedings in an adversarial fashion. Moreover, even if the State's goal is reunification, there are many points on which the State and parent might be adversarial, such as whether the initial removal was appropriate, *see* Tara Grigg Garlinghouse, *Fostering Motherhood: Remedying Violations of Minor Parents' Right to Family Integrity*, 15 U. Pa. J. Const. L. 1221, 1247 (April 2013), or the point at which the child should be returned to the home. *See* Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 35-36 (Winter 2010). Without counsel, the trial record is unlikely to contain the evidence of serious contests on any of these points. This understanding of the nature of abuse/neglect proceedings led the Colorado Supreme Court to comment, "[U]nlike the GAL whose sole obligation is to advocate on behalf of the child's best interests during a dependency and neglect proceeding, the department of human services participates as an adversarial party in defending its dependency and neglect petition." *L.A.N. v. L.M.B.*, 292 P.3d 942, 949 (Colo. 2013).

There is also a risk that appellate review may never occur because parents denied appointed counsel may concede abuse/neglect out of a belief that they are incapable of litigating the matter without legal assistance. Federal courts have recognized this risk for civil rights cases. *See*, *e.g.*, *Robbins v. Maggio*, 750 F.2d 405, 412-13 (5th Cir. 1985) (where litigant is denied counsel, "there remains a great risk that a civil rights plaintiff may abandon a claim or accept an unreasonable settlement in light of his own perceived inability to proceed with the merits of his case"); *Caston v. Sears, Roebuck & Co.*, 556 F.2d 1305, 1308 (5th Cir. 1977) ("a layman unschooled in the law in an area as complicated as the civil rights field … likely has little hope of successfully prosecuting his case to a final resolution on the merits"). The Ninth Circuit has added it is an "untenable assumption" that even if litigants do represent themselves, "they will have the determination and capability to perfect and conduct appeals properly and fully after they lose." *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1310 (9th Cir. 1981).

IV. A Bright-Line Rule For Appointment Of Counsel Should Include Minor Parents; Appointment of a Guardian *Ad Litem*, Even One Who Is An Attorney, Does Not Suffice.

The trial court appointed counsel for Mother's parents, but it is uncontested that Mother was not provided counsel.[6] Thus Mother was treated differently solely because she was a minor. States providing a statutory right to counsel for all abuse/neglect proceedings do not distinguish between adults and minors, but rather provide counsel to "parents."[7]

Even if the appointed GAL had tried to act as Mother's attorney, such attempt at dual-capacity representation would have been ineffective and perhaps unethical. As experts on parenting youth have warned:

> When the teenager is alleged to have maltreated her child, it is important that her guardian ad litem or child advocate not undertake to represent her as a parent. A "common example" of conflict of interest is when a guardian ad litem attempts to represent a dependent youth as a dependent minor and as a parent. Common sense suggests that this is a classic conflict of interest – the guardian ad litem already may have intimate knowledge of the teenager's mistakes or foibles which could be used against her in determining whether her child is to be adjudicated dependent.

Sarah Katz, *When the Child is a Parent: Effective Advocacy for Teen Parents in the Child Welfare System*, 79 Temp. L. Rev. 535, 552 (Summer 2006). *See also* Eve Stotland and Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. Fla. J.L. & Pub. Pol'y 1, 36 (April 2006). This is the precise situation in the instant case: the GAL could not advocate for the best interests of Mother as a child (as required of a GAL) while also advocating

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[6] The trial court stated that Mother was "a mother, a parent, and so she's entitled to an attorney," and said it would try to find a person who could act as both GAL and attorney. Application at 3. While the appointed GAL may have been an attorney, the State's Response to the Application for Writ of *Certiorari* notes that the GAL stated, "I am only [Mother's] GAL …. She has never been assigned anybody as her attorney in her case involving her child, [TM]." Response at 3.

[7] *See*, *e.g.*, Conn. Gen. Stat. § 46b-135(b) (right to counsel for "parent or parents or guardian of the child or youth"); Fla. Stat. Ann. § 39.013 ("Parents must be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Parents who are unable to afford counsel must be appointed counsel"); S.C. Code Ann. § 63-7-1620(3) ("Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court."). Additionally, the ABA's Resolution supporting a right to counsel in custody cases does not distinguish between adult and minor parents. *See* American Bar Association, *Resolution 112A* (Aug. 2006).

for her interests as a mother (as required of counsel). In fact, the GAL refused to be appointed as counsel for Mother in the termination proceeding due to GAL's belief that "it is a conflict."[8]

V. The Extended Protections of the Hawai‘i Due Process Clause Require Appointment of Counsel In Abuse/Neglect Proceedings.

The U.S. Supreme Court ruling in *Lassiter* (federal constitution does not require appointment of counsel in parental rights termination cases) has been utilized in the abuse/neglect context. *See*, *e.g.*, *In re "A" Children*, 119 Hawai'i 28, 46, 193 P.3d 1228, 1246 (App. 2008) (discussing how prior to *Lassiter*, the overwhelming majority of states provided counsel in "termination-of-parental-rights and prolonged-deprivation-of-custody cases."). But *Lassiter* applies only to the federal constitution and does not control with respect to the Hawai‘i Constitution.

While the Hawai‘i Constitution's due process clause is worded similarly to its federal equivalent, this Court has said, "When the [federal] interpretation of a provision present in both the United States and Hawai‘i Constitution does not adequately preserve the rights and interests sought to be protected, we will not hesitate to recognize the appropriate protections as a matter of state constitutional law." *State v. Jumila*, 87 Hawai‘i 1, 12, 950 P.2d 1201, 1212 (1998), *overruled on other grounds*, *State v. Brantley*, 99 Hawai‘i 463, 56 P.3d 1252 (2002). On some occasions, this Court has extended the protections of the Hawai‘i Due Process clause beyond its federal equivalent in order to protect important rights and interests. *See*, *e.g.*, *State v. Guidry*, 105 Hawai‘i 222, 231, 96 P.3d 242, 251 (2004) ("Although the [U.S.] Supreme Court in *Connecticut Dep't of Pub. Safety* did not require a hearing under the sex offender registration and notification statute at issue in order to satisfy due process under the federal constitution, this court has provided broader due process protection under the Hawai‘i Constitution.").

Moreover, this Court has held that abuse/neglect proceedings implicate significant interests protected specially by the Hawai‘i Constitution:

[8] Application for Writ at 4. Even when the minor is only the *subject* of the abuse/neglect proceeding, as opposed to the respondent, the American Bar Association has called for the appointment of a client-directed lawyer. American Bar Association, *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* at 3 (101A) (2011). As the Model Act notes, "A best interest advocate does not replace the appointment of a lawyer for the child. A best interest advocate serves to provide guidance to the court with respect to the child's best interest and does not establish a lawyer-client relationship with the child." *Id*. These statements are equally true when the minor is the respondent in an abuse/neglect proceeding.

> [I]ndependent of the federal constitution, [] parents have a substantive liberty interest in the care, custody, and control of their children protected by the due process clause of article 1, section 5 of the Hawai‘i Constitution. Parental rights guaranteed under the Hawai‘i Constitution would mean little if parents were deprived of the custody of their children without a fair hearing.

In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002).

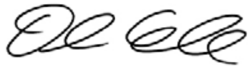
Lassiter is contrary to the growing tide of state recognition of a right to counsel in abuse/neglect cases. For all the reasons set out earlier, *Lassiter*'s case-by-case approach fails to "adequately protect the rights and interests" of parents that are independently guaranteed by the Hawaii Constitution. *Jumila*, 87 Hawai‘i at 12, 950 P.2d at 1212; *Doe*, 99 Hawai'i at 533, 57 P.3d at 458. Therefore, *amici* respectfully request that the Court grant *certiorari* and hold that the Hawai‘i Constitution's Due Process Clause provides a right to counsel for all indigent parents in abuse/neglect cases.

CONCLUSION

As Justice Blackmun observed, the belief that a case-by-case process can somehow work for civil cases "is belied by the Court's experience in the aftermath of *Betts v. Brady*." *Lassiter*, 452 U.S. at 51 (Blackmun, J., dissenting). It is for good reason that more than four-fifths of the states have adopted a bright-line right to counsel for all indigent parents in abuse/neglect proceedings regardless of age. Implementing a case-by-case approach creates an impossible job for trial courts and an unacceptably high likelihood of error when viewed in light of the fundamental rights at stake, and the appointment of GALs does not protect the fundamental rights of minor parents. *Amici* thus urge this Court to join the nationwide consensus and recognize a constitutional right to counsel for all indigent parents in such cases.

DATED: Honolulu, Hawai‘i, October 11, 2013.

Respectfully submitted,



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SCWC-12-0000521

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

IN THE INTEREST OF T.M.	FC-S No. 10-002K **CERTIFICATE OF SERVICE RE: BRIEF OF *AMICI CURIAE*** APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER TERMINATING PARENTAL RIGHTS ISSUED ON MAY 3, 2012 Family Court of the Third Circuit Hon. Aley K. Auna, Jr.

CERTIFICATE OF SERVICE

I hereby certify that two copies each of the Brief of *Amici Curiae* Legal Aid Society of Hawaiʻi, Hawaiʻi Appleseed Center for Law & Economic Justice, and ACLU of Hawaiʻi Foundation and Certificate of Service will be served upon the following persons by depositing in the U.S. Mail, postage pre-paid, on this date:

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