

NO. 22373

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Interest of JOHN DOE,
born on February 27, 1983,
a child under the age of eighteen years
(FC-S NO. 95-0001K)

and

In the Interest of JANE DOE,
born on April 6, 1986,
a child under the age of eighteen years
(FC-S NO. 95-0002K)

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Petitioner-Appellant (Mother) is the mother of John Doe (John) born on February 27, 1983, and Jane Doe (Jane) born on April 6, 1986. The children have been in various foster homes since December 25, 1994, when Mother was involuntarily admitted to Kona Hospital for psychiatric evaluation. In this case, Mother is the only person in "the children's family." Mother appeals the family court's September 23, 1998 Order Awarding Permanent Custody and Establishing a Permanent Plan that decided, in relevant part, as follows:

IT IS THE FINDING OF THE COURT by clear and convincing evidence, taking into consideration the guidelines for determining a safe home, that:

1. The children's family [Mother] is not presently . . . able to provide the children with a safe family home, even with the assistance of a service plan;

2. It is not reasonably foreseeable that the children's family [Mother] will become . . . able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time. . . .

. . . .

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

. . . .

2. That the parental and custodial duties and rights of the children's natural and legal mother, [Mother], are hereby divested pursuant to §587-2 and §587-3, H.R.S.;

3. That the Director of DHS is hereby appointed permanent custodian of [John], born on February 27, 1983, and [Jane], born on April 6, 1986, with authority to delegate its responsibilities and duties to a professional member of its staff;

4. That, until the children reach the age of eighteen (18) or are adopted, the permanent custodian is awarded each of the parental and custodial duties and rights as are set forth in HRS §587-2, "Permanent Custody;"

. . . .

7. That each term set forth in the Permanent Plan filed May 12, 1998, is hereby ordered by the Court, and incorporated herein by reference and made a part of the record in this case;

8. That the children's family members shall retain, to the extent that such family members possessed such responsibility prior to the transfer of permanent custody, the continuing responsibility for the support of the children,

. . . .

10. That [Mother] may be permitted visitation with the children at the discretion of the permanent custodian, provided that the exercise of such discretion may be rev[is]ed by the Court and the Court may order that a family member be permitted such visitation as is in the best interest of the children;

. . . .

12. That [Mother] shall remain as a limited party in the above-entitled matter for visitation-related issues and shall be noticed for and may appear at further hearings[.]

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

we decide that the family court's September 14, 1999 Revised Findings of Fact and Conclusions of Law are supported by the record and support the family court's decision. In relevant part, they state as follows:

FINDINGS OF FACT

. . . .

4. The children were placed in protective custody by CPS [Child Protective Services] in Kona on December 25, 1994 because [Mother] was involuntarily admitted to Kona Hospital for psychiatric observation. . . . Mother was homeless at that time.
5. Dr. Gwendolyn Ross, psychiatrist, diagnosed [Mother] as having a fixed delusional system. She was also paranoid and had a persecution complex.

. . . .

15. With respect to the harm that was caused by [Mother's] dysfunctional care:
 - a) The children missed out on usual child development. They had/have gaps in their fund of knowledge, and were unfamiliar with social conventions and norms.
 - b) The children had/have no inner sense of stability or security.
 - c) The children had/have an elevated level of fear relating to physical safety and needs.
 - d) The children were exposed to victimization, which affected the formation of their personal and sexual identity.
 - e) The children had/have low self-esteem and feelings of shame.

. . . .

17. At the permanent plan hearing(s) [Mother] was still in the process of addressing her own mental health needs and could not provide the type of parenting that the children needed.

. . . .

20. The court is cognizant of the fact that [M]other's parenting duties and responsibilities would have to be performed concurrently with her own recovery. . . .

. . . .

23. After her release from the Hawaii State Hospital, the [Mother] began treatment with Dr. Shelley Ham, a psychiatrist. Treatment with Dr. Ham started on July 3, 1997. It was only at that time that she made significant improvement due to the consistent use of anti-psychotic medication[.]

. . . .

25. Although [Mother] participated in numerous rehabilitative services since the first court-ordered service plan in 1995, she was still not able to provide the children with a safe family home, even with the assistance of a service plan, at the conclusion of the permanent plan hearing.

. . . .

31. [Mother] cannot provide the children with a safe family home, even with the assistance of a service plan. The court has fully reviewed the reports submitted pursuant to HRS section 587-40, and finds the expert opinion of the DHS social worker to be rationally based on the available information.

. . . .

CONCLUSIONS OF LAW

. . . .

D. All the criteria set forth in HRS section 587-73 were established by clear and convincing evidence. The order awarding permanent custody to the DHS was appropriate and in the best interests of the children.

. . . .

F. The parental and custodial rights of the children's natural fathers, . . . , were terminated at a court hearing on December 4, 1996.

G. As of the last court date of the permanent plan hearing, [Mother] was not able to provide the children with a safe family home, even with the assistance of a service plan.

H. It was not reasonably foreseeable that [Mother] would become . . . able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time.

I. There was clear and convincing evidence that [Mother] should be divested of her parental rights with respect to [John] and [Jane].

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L. The Family Court had a statutory obligation to order a permanent plan because the children had been in foster custody by the court for over three years by court order,¹ and [Mother was] still not . . . able to provide the children with a safe family home, even with the assistance of a service plan.

(Footnote added.)

ACCORDINGLY, IT IS HEREBY ORDERED that the Order Awarding Permanent Custody and Establishing a Permanent Plan from which the appeal is taken, filed on September 23, 1998, is affirmed.

DATED: Honolulu, Hawai'i, February 1, 2001.

On the briefs:

Alfred P. Lerma, Jr.,
for Mother-Appellant. Chief Judge

Jay K. Goss and
Mary Anne Magnier,
Deputy Attorneys General, Associate Judge
for Department of Human
Services-Appellee.

Associate Judge

¹ In 1999, Act 153, Haw. Sess. L. 481, § 5 at 495, amended Hawai'i Revised Statutes § 587-73(a)(2) (1993), in relevant part, as follows:

It is not reasonably foreseeable that the child's legal mother, . . . will become . . . able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed two [three] years from the date upon which the child was first placed under foster custody by the court[.]