NO. 25498

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF JANE DOE, BORN ON JUNE 3, 1995, MINOR

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 95-04143)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe and Lim, JJ.)

Mother appeals the September 24, 2002 order of the family court of the first circuit[1] that awarded permanent custody of her daughter, born on June 3, 1995 (the Child), to the Department of Human Services (DHS), and established a permanent plan for the Child. Mother also appeals the October 30, 2002 order of the family court that denied her October 10, 2002 motion for reconsideration.

Mother lists thirty-six points of error on appeal. After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error to which Mother devotes cognizable argument,

[1] The Honorable Marilyn Carlsmith, judge presiding.

Hawai‘i Rules of Appellate Procedure Rule 28(b)(7) ("Points not argued may be deemed waived."); Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 158, 434 P.2d 516, 518 (1967), as follows:

A. Mother contends the family court abused its discretion in awarding permanent custody and establishing a permanent plan, and in denying reconsideration thereof, because:

> 1. The evidence was not clear and convincing that Mother was not able to protect [the Child] from Father.
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> . . . .
>
> 2. Mother had no reason to believe that Father being in the home constituted threatened harm to [the Child].
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> . . . .
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> 3. There was no evidence of the bruises and scratches on [the Child] reported to DHS on April 12, 2002 by school officials.
>
> . . . .
>
> 4. Mother provided Jane with medical care.

Opening Brief at 18-21. We disagree. There was substantial evidence before the family court to support the findings of fact and conclusions of law corresponding to each of the foregoing points of error. Hence, the family court did not clearly err in those respects. In re Doe, 95 Hawai‘i 183, 190, 20 P.3d 616, 623 (2001).

B. Mother asserts that the family court abused its discretion in awarding permanent custody and establishing a permanent plan, and in denying reconsideration thereof, because "[a]ggravated circumstances did not exist with respect to Mother." Opening Brief at 21. See Hawaii Revised Statutes (HRS) § 587-2 (Supp. 2003) (definition of "aggravated circumstances").

Consequently, Mother argues, she "should have been given a service plan and a reasonable amount of time to show that she could provide a safe home for [the Child]." Opening Brief at 23. See HRS §§ 587-71(e), -71(f), -71(h), -71(i), -71(j) & -71(m) (Supp. 2003). This point lacks merit. Aggravated circumstances with respect to Mother *vel non*, it was within the family court's discretion to set a show cause hearing or a permanent plan hearing at any time it deemed appropriate. HRS § 587-71(p) (Supp. 2003) ("Nothing in this section shall prevent the court from setting a show cause hearing or a permanent plan hearing at any time the court determines such a hearing to be appropriate."). And clearly, given the circumstances of this case, yet another service plan for Mother would have been completely redundant. The family court's setting of the show cause hearing and the permanent plan hearing when it did was certainly appropriate, indeed, exigent. Any error in the family court's finding of aggravated circumstances[2] with respect to Mother was, therefore, harmless. See Hawai'i Family Court Rules Rule 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.").

C. Mother next argues that the family court abused its discretion in awarding permanent custody and establishing a

[2] The Honorable John C. Bryant, Jr. made the finding of aggravating circumstances at a hearing held on April 30, 2002.

permanent plan, and in denying reconsideration thereof, because "[the Child's] every day functioning deteriorated severely since she was placed in foster custody because she is not receiving the quality of care she received from her Mother." Opening Brief at 24. However, the family court obviously did not agree with this factual assertion, because it found that "[t]he evidence does not indicate that Child has regressed while in foster custody[.]" We "will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." In re Doe, 95 Hawai'i at 190, 20 P.3d at 623 (citations and internal quotation marks omitted). Besides, we question whether this issue was materially germane to the pertinent issues at the permanent plan hearing in this particular case. See HRS § 587-73(a) (Supp. 2003) (referring, generally, to "a safe family home").

D. Finally, Mother avers that the permanent plan established by the family court was not in the best interests of the Child because an optimal permanent placement for the Child had not yet been found. This point is devoid of merit. See HRS § 587-73(b) (Supp. 2003) (an "appropriate permanent plan" may provide that the child will remain in permanent custody pending, *inter alia*, adoption).

Therefore,

IT IS HEREBY ORDERED that the family court's September 24, 2002 order of permanent custody and a permanent plan, and its

October 30, 2002 order denying Mother's October 10, 2002 motion for reconsideration, are affirmed.

DATED: Honolulu, Hawai'i, September 23, 2004.

On the briefs:

Jeffry R. Buchli,
for mother-appellant.

Jay K. Goss and
Mary Anne Magnier,
Deputy Attorneys General,
State of Hawai'i,
for appellee.

Chief Judge

Associate Judge

Associate Judge