

NOT FOR PUBLICATION

NO. 25863

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE INTEREST OF JANE DOE, Born on August 9, 1997

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 00-06783)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Nakamura, and Fujise, JJ.)

Father-Appellant ("Appellant"), appeals from the Family Court of the First Circuit's March 19, 2003 order¹ revoking his custody of daughter Jane Doe ("Doe") and awarding foster custody of Doe to Department of Human Services-Appellee ("DHS").² Appellant challenges none of the family court's findings of fact or conclusions of law and, consequently, he is bound by such findings and any conclusions of law that follow therefrom. Puckett v. Puckett, 94 Hawai'i 471, 484, 16 P.3d 876, 889 (App. 2000) (citing Taylor-Rice v. State, 91 Hawai'i 60, 65, 979 P.2d

¹ The Honorable Marilyn Carlsmith presiding.

² This appeal was assigned to this court on December 26, 2003.

1086, 1091 (1999)).³ We resolve Appellant's points of error as follows:

1. The court did not err in denying Appellant's motion for a continuance of the March 3, 2003 hearing. Appellant asserts that he had inadequate time to prepare for said hearing, without explaining how this harmed him. We reject this assertion. Appellant allegedly received two hours and forty-five minutes less than the required forty-eight hour notice prior to hearing.⁴ It is not only doubtful that such a slight notice shortage *could* be prejudicial, it is certain that it was *not* prejudicial to Appellant. The motion being heard was Mother's *fourth* motion requesting the court to enforce its visitation order in response to Appellant's refusal to allow visitations between Mother and Doe. Appellant had been warned that "serious consequences" would follow continued failure to arrange for Doe's visitation with Mother. As such, Appellant was quite aware of the issues, the defenses, and what to expect at the hearing. He was not harmed by having less than forty-eight hours to prepare. Thus, any error that may have been committed was harmless error,

³ Father-Appellant ("Appellant"), also fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2004) by not specifying where in the record the alleged error occurred or where the alleged error was objected to or otherwise brought to the attention of the court appealed from. Counsel is warned that sanctions will be imposed for future violations of court rules. HRAP Rule 51 (2001)

⁴ We take notice that, as a practical matter, Appellant also had the benefit of the weekend in addition to the 45.25 hours counted under the rules.

and where a lower court has committed harmless error, the appellate court will not reverse the order. Hawaii Revised Statutes (HRS) § 641-2 (1993).

2. The court did not err in removing Doe from Appellant's custody for placement in foster custody with the DHS. Appellant had been warned by the court that "serious consequences" would follow if Appellant did not immediately facilitate Mother's visitation. When Appellant failed to do so, Mother's fourth motion for immediate review included a prayer that Appellant's custody be reconsidered. The court found that Appellant's obstruction of Doe's visitation with Mother was against Doe's best interests. The court also found that Appellant posed a risk of emotional harm to Doe and that, together, these factors rendered Appellant unable to provide a safe family home for Doe. Consequently, HRS § 587-71 (Supp. 2003) authorized the family court to revoke Appellant's custody and award foster custody to the DHS. Therefore, the allegation in Appellant's second point of error that the court's award was for the purpose of punishing him is without merit.

Furthermore, and contrary to the contention in Appellant's third and fourth points of error, substantial evidence existed at the time of the court's award to support the foregoing findings. Appellant's argument that substantial evidence did not exist because the court relied upon evidence

lacking credibility is not persuasive because the appellate court neither reassesses the credibility of witnesses nor the weight of the evidence -- this task is solely within the trial court's domain. In re Doe, 95 Hawai'i 183, 196-97, 20 P.3d 616, 629-30 (2001). The family court made a custody decision based on its determination of the credibility and weight of the evidence and we will not review that determination.

Therefore,

IT IS HEREBY ORDERED that the March 19, 2003 foster custody order and the April 17, 2003 order denying Appellant's motion for reconsideration are affirmed.

DATED: Honolulu, Hawai'i, October 21, 2004.

On the briefs:

Herbert Y. Hamada,
for Father-Appellant

Acting Chief Judge

Angela Correa-Pei,
Jay K. Goss, and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-Appellee

Associate Judge

Associate Judge