

NOT FOR PUBLICATION

NO. 26021

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

IN THE INTEREST OF JOHN DOE, Born on September 9, 1997, Minor.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 99-05853)

SUMMARY DISPOSITION ORDER

(By Burns, C.J., Nakamura, and Fujise, JJ.)

Father-Appellant ("Appellant") appeals from the Family Court of the First Circuit's¹ July 18, 2003 Amended Orders Concerning Child Protective Act sustaining the Department of Human Services-Appellee's ("DHS") petition for temporary foster custody of his son John Doe ("Child").² This appeal was assigned to this court on April 13, 2004.

While Appellant lists several points of error in his opening brief, the crux of his position on appeal is that there was insufficient evidence to allow the family court to find that

¹ The Honorable Linda K. C. Luke presided.

² Appellant claims to additionally appeal the court's May 30, 2003 minute order and the July 16, 2003 Orders Concerning Child Protective Act denying his motion for reconsideration, however said orders are not separately appealable pursuant to Hawaii Revised Statutes (HRS) 641-1 (1993).

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he had sexually harmed Child and, therefore, insufficient evidence to sustain the DHS petition and award temporary foster custody of Child.³

The Child Protective Act authorizes the family court to award temporary foster custody of a child whose physical or psychological health or welfare has been harmed or is subject to imminent harm while in the custody of the child's family. Hawaii Revised Statutes (HRS) § 587-1-71 (1993). Here, the family court found that Father sexually, physically, and psychologically harmed Child. Consequently, its order sustaining the DHS petition for temporary foster custody was sound.

Contrary to Appellant's contention, we hold that the family court's findings are not clearly erroneous for lack of sufficient evidentiary support. While Appellant presented witnesses and advanced arguments opposing a determination that he

³ Appellant fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2000) by failing to: 1) specify the alleged errors committed by the trial court, including the findings or conclusions alleged to be erroneous; 2) specify where in the record the alleged errors occurred; and 3) specify where in the record the alleged errors were objected to or otherwise brought to the attention of the court appealed from. Despite the deficiencies of Appellant's Statement of Points on Appeal, we have chosen to neither disregard Appellant's points nor to bind Appellant by the trial court's findings of fact (FOF) and conclusions of law (COL) because Appellant has, nonetheless, challenged FOFs 17, 19, 27, 38, 39 and 40 in his Argument. However, counsel is cautioned to adhere to the foregoing rules and warned that sanctions will be imposed for future violations of court rules. HRAP Rule 51. (2001).

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harmed Child, a finding of fact is not clearly erroneous if the record includes substantial evidence to support that finding. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001).

Substantial evidence is "credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." State v. Wallace, 80 Hawai'i 382, 910 P.2d 695 (1996) (emphasis removed). Here, after careful review of the record and the briefs, we conclude that substantial evidence existed to support the court's findings that Appellant harmed Child and to support its consequent decision to award temporary foster custody.

Finally, Appellant's attack on the court's findings as erroneous because the evidence of harm lacks weight and credibility is without merit. This contention fails 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 found Appellee's evidence to be credible and made a custody decision based on its determination of the credibility and weight of the evidence. We will not disturb that determination.

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Therefore,

IT IS HEREBY ORDERED that the July 18, 2003 Amended Orders Concerning Child Protective Act awarding temporary foster custody are affirmed.

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

On the briefs:

Herbert Y. Hamada,
for father-appellant

Chief Judge

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

Associate Judge

Associate Judge