

NOT FOR PUBLICATION

NO. 26381

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

IN THE INTEREST OF DOE CHILDREN:
JANE, Born on September 4, 1987,
JOHN, Born on January 26, 1995, and
JOHN, Born on July 22, 1996,
Minors

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 01-07826)

SUMMARY DISPOSITION ORDER

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

The appellant is the mother (Mother) of the three minor children involved in this case. Mother appeals from the October 7, 2003 Order Awarding Permanent Custody, entered in the Family Court of the First Circuit by Judge Matthew J. Viola, that divested her "parental and custodial duties and rights . . . pursuant to [Hawaii Revised Statutes §§] 587-2 and 587-73[.]"

Mother's first child, who is not a subject of this case, was placed into the care of his paternal grandparents when he was two years old.

Mother's second child, Jane Doe, was born on September 4, 1987. Mother's third child, John Doe 1, was born on January 26, 1995. Mother's fourth child, John Doe 2, was born on July 22, 1996. These three children will be referred to, collectively, as "the Children".

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On October 4, 2001, Mother signed a voluntary foster custody agreement for the placement of the Children in the foster care of the appellee, State of Hawai'i Department of Human Services (DHS).

On December 4, 2001, the family court awarded foster custody of the Children to DHS. On October 11, 2002, DHS moved for permanent custody. On October 7, 2003, the family court entered its Order Awarding Permanent Custody to DHS. On October 27, 2003, Mother filed a Motion for Reconsideration of Oral Order Granting Permanent Custody. On January 12, 2004, the family court entered its order denying Mother's motion for reconsideration. On February 6, 2004, Mother filed a notice of appeal. On March 30, 2004, the family court entered its Findings of Fact and Conclusions of Law (FsOF and CsOL). On September 20, 2004, this appeal was assigned to this court.

Two relevant FsOF state as follows:

87. Mother participated in a psychological evaluation on April 29, 2002, and was diagnosed as suffering from a mood disorder, not otherwise specified, rule out major depressive disorder, borderline intellectual functioning, dependent personality disorder and frequent use of denial and minimization.

111. Mother's own personality characteristics and emotional problems, which negatively affect her ability and willingness to provide her children with a safe family home, are pervasive, inflexible and enduring. She has been resistant to treatment and therapy, and in the past she has denied the need for mental health treatment. She is a person who is not aware of her personal shortcomings and tends toward a denial of her feelings. Thus, any meaningful benefit in terms of improving her ability to provide her children with a safe family home that she might get from continuing services, including individual therapy for her dependent personality disorder, will not occur within a reasonable period of time.

Noting that the law requires clear and convincing evidence, Mother challenges the following two FsOF:

204. The DHS made reasonable and active efforts to reunify the children with Mother and Father by offering service plans specifically designed to meet their needs and to facilitate the return of their children to a safe family home. . . .
205. The DHS made reasonable and active efforts to engage Mother and Father in the recommended services and gave them ample time to follow through with these services.

It is clear that Mother had many deficiencies in her ability to provide her children with a safe family home. The various service plans, including the most recent one on April 6, 2003, addressed all but one of these deficiencies and specified the actions Mother was required to take to eliminate all but one of them. The one exception is that none of the service plans specified what action Mother was required to take to eliminate her dependent personality disorder noted in FOF no. 87.

Notwithstanding this deficiency, the family court, in FOF no. 111, decided that "any meaningful benefit in terms of improving her ability to provide her children with a safe family home that she might get from continuing services, including individual therapy for her dependent personality disorder, will not occur within a reasonable period of time."

Mother cites the following precedent:

We note, however, that DHS is under an obligation to provide a reasonable opportunity to parents through a service plan to reunify the family. See HRS §§ 587-1 and 587-26. The "purpose; construction" section of chapter 587, HRS § 587-1, establishes the legislative intent to provide "every reasonable opportunity" for a parent to be reunited with his or her child. Moreover, HRS § 587-26, which mandates that DHS create a service plan outlining

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"the steps that will be necessary to facilitate the return of the child to a safe family home," further indicates that DHS has an obligation to make reasonable efforts to reunite parent and child.

Here, DHS was aware that Mother suffered from a severe mental problem at the time the service plan was ordered. Despite this, the only aid DHS seemingly offered to Mother was to provide her with phone numbers of the counselors whom she was expected to contact. DHS apparently did not follow up with respect to this requirement. Merely proffering a list of phone numbers may fall short of the policy that DHS make every reasonable opportunity to reunite the family. However, under the circumstances, we cannot conclude that substantial prejudice resulted to Mother. See Hawai'i Family Court Rules Rule 61 (2000).

As DHS contends, and Mother does not contest, Mother specifically stated that she did not participate in DHS-offered services because she did not believe she needed parenting education or drug testing. Nor did she participate in services offered to her earlier while she was at Kapiolani Hospital. It is apparent that Mother was unwilling to participate in DHS services[.]

In re Doe, 100 Hawai'i 335, 343-44, 60 P.3d 285, 293-94 (2002)

(footnote and brackets omitted).

Mother does not challenge the following FOF:

112. Mother is not presently willing and able to provide the children with a safe family home, even with the assistance of a service plan.

Mother challenges the following FOF:

113. It is not reasonably foreseeable that Mother will become willing and able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time.

Mother's point on appeal is that "[t]he record is insufficient to prove by clear and convincing evidence that the [DHS] met its obligation to make reasonable efforts to reunite [Mother] with her children because [Mother] was not provided with individual therapy to address her personality disorder."

The record indicates that Mother has a basis for complaining that: (1) no service plan informed her (a) that if

she did not eliminate her personality disorder, she would not be able to provide the Children with a safe family home, and (b) of the action she must/should take to eliminate her personality disorder; and (2) the DHS did not provide her with the services necessary for her to eliminate her personality disorder.

Assuming, however, that Mother's personality disorder cannot be considered in support of FOF no. 113, Mother's many other deficiencies in her ability to provide the Children with a safe family home provided more than adequate support for FOF no. 113. In other words, the error is harmless.

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,

IT IS HEREBY ORDERED that the October 7, 2003 Order Awarding Permanent Custody is affirmed.

DATED: Honolulu, Hawai'i, March 8, 2005.

On the briefs:

Herbert Y. Hamada
for Mother-Appellant

Chief Judge

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

Associate Judge

Associate Judge