

NOT FOR PUBLICATION

NO. 26702

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Interest of DOE CHILDREN:
Jane Doe, Born on August 15, 2001;
Jane Doe, Born on August 15, 2001, Minors

K. HAMAKAHI
CLERK, INTERMEDIATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 01-07706)

SUMMARY DISPOSITION ORDER

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

This order decides the appeal by the father (Father) of two Jane Doe female children, born on August 15, 2001 (Doe Daughters), from the family court's^{1/} (1) June 9, 2004 Order Awarding Permanent Custody and (2) July 8, 2004 Orders Concerning Child Protective Act which denied Father's June 22, 2004 Motion for Reconsideration of Order Awarding Permanent Custody.

On August 15, 2001, the mother (Mother) prematurely gave birth to the Doe Daughters. On August 31, 2001, the Doe Daughters were released from the hospital and taken into police protective custody.

On September 6, 2001, the State of Hawaii Department of Human Services (DHS) filed a petition for temporary foster custody of the Doe Daughters on the ground that the Doe Daughters were subject to threatened harm due to Mother's low mental

^{1/} The Honorable Nancy Ryan presided.

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functioning, suicidal ideations, questionable parenting skills, substance abuse history, the loss of her parental rights to her two older children, her unwillingness to cooperate, and Father's possible mental health issues and his unwillingness to cooperate. On December 21, 2001, after a hearing, Judge Lillian Ramirez-Uy entered an order granting the petition.

Mother was not present at any hearings on and after February 26, 2003 because she was incarcerated in a federal detention center.^{2/} At those hearings, Mother was represented by her counsel.

On February 28, 2003, the DHS filed its Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan.

Counsel for Father appeared, but Father failed to appear, at the May 25, 2004 pre-trial hearing.

At the commencement of the trial on June 9, 2004, counsel for Father stated:

MR. DUBIEL: Just one thing. Father would ask for a continuance. . . . [H]e feels he has a safe home for the children, he is willing to do the services and would ask for a few more months to show this. He has a job and he's been busy with that job trying to make a living. He feels he doesn't have a drug problem, he's all substance-free and would ask for more time.

The court denied the motion.

In the June 9, 2004 Order Awarding Permanent Custody, the court noted that Mother was then incarcerated in a federal

^{2/} Evidence was presented that Mother and her friends attempted to rob a bank.

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detention center, terminated Mother's and Father's parental rights, appointed the State of Hawai'i Director of Human Services as the permanent custodian of the Doe Daughters, and ordered the February 20, 2003 Permanent Plan into effect. The goal of that Permanent Plan was the adoption of the Doe Daughters by appropriate caretakers.

On June 22, 2004, Father filed a Motion for Reconsideration of Order Awarding Permanent Custody. On July 8, 2004, the court entered an order denying Father's motion for reconsideration.

Father filed a notice of appeal on July 19, 2004. Findings of Fact and Conclusions of Law (FsOF and CsOL) were entered on August 24, 2004. This appeal was assigned to this court on March 11, 2005.

In this appeal, Father argues that the State should have provided him with more financial support. We conclude that this argument is not relevant because neither Father's lack of financial resources nor lack of anything he could have acquired with additional financial resources was a reason the court terminated his parental rights.

In his opening brief, Father argues that "[a] few more months was a reasonable request. It would not have caused any harm to anyone and would have shown if father could or could not provide a safe home." Thus, the sole issue in this appeal is

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whether Father was given enough time and assistance to cause him to be able to provide a safe home for his Doe Daughters.

Lynne Watanabe, the DHS social worker assigned to the case, testified that

cognitively Father is not able to understand fully the needs of the [Doe Daughters]. He's not going to be able to respond to their needs. And as the psych eval[uation] shows, he's going to need consistent, repetitive training. There's . . . a need for constant monitoring from some external forces and Child Welfare Services cannot be involved with the [Doe Daughters] until they're 21^{3/}.

The FsOF state, in relevant part:

94. Despite Mother's irresponsible and inappropriate behavior, Father continued to allow Mother into the family home and contact with the [Doe Daughters].

95. Even after Mother's incarceration in federal detention, Father chose to maintain a relationship with her.

96. Father admitted to having difficulty in financially maintaining the household expenses on his own; however, he continued to accept collect calls from Mother resulting in hundreds of dollars in phone bills. Such poor choices jeopardizes Father's ability to maintain a household.

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100. Father has memory difficulties. In the past he would sometimes leave on the stove burner.

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107. The [Doe Daughters] need special care . . . and have been in foster care since being released from the hospital approximately two weeks after their birth.

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112. While [one of the Doe Daughters] is the more needy of the two children, both are delayed in speech, gross and fine motor skills, problem solving and emotional development.

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^{3/} In light of Hawai'i Revised Statutes (HRS) § 571-2 (1993) which specifies that "'Adult' means a person eighteen years of age or older[,]" and HRS § 587-2 (1993) which specifies that "'Child' means a person who is born alive and is less than eighteen years of age[,]" query the concern for involvement "with the [Doe Daughters] until they're 21."

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114. The care of the [Doe Daughters] will become more complex and demanding as they grow and they will need a caregiver who will be able to attend and adapt to their needs consistently.

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117. The goal of the permanent plan for adoption to appropriate caretakers is in the [Doe Daughters'] best interests due to their needs for a permanent, safe and secure home with responsible and competent caretakers and family who will consistently meet their needs.

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120. The DHS recognized [Father's and Mother's] low functioning and mental health issues and provided parents with additional time to participate in services from the outset of the case.

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130. The DHS provided Father with one unsupervised overnight visit per week and then unsupervised weekend visits with the [Doe Daughters] to provide him with the opportunity to work on meeting their day-to-day needs.

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 June 9, 2004 Order Awarding Permanent Custody and the July 8, 2004 Orders Concerning Child Protective Act are affirmed.

DATED: Honolulu, Hawai'i, November 10, 2005.

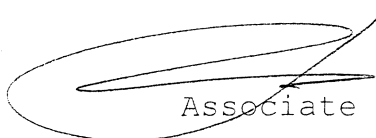
On the briefs:

Joseph Dubiel,
for appellant.

Jay K. Goss, and
Mary Anne Magnier,
Deputy Attorneys General,
for appellee.


Chief Judge


Associate Judge


Associate Judge