

NOT FOR PUBLICATION

NO. 26406

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

In the Interest of JANE DOE,  
Born on October 27, 1997, Minor

APPEAL FROM FAMILY COURT OF THE FIFTH CIRCUIT  
(FC-S NO. 96-0361)

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

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

The Appellant in this case is the mother (Mother) of Jane Doe, born on October 27, 1997.

On October 10, 2003, (1) an "Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody and Establishing a Permanent Plan"; and (2) "Letters of Permanent Custody" were entered in the Family Court of the Fifth Circuit.<sup>1/</sup>

On November 21, 2003, the court entered an "Order Denying Motion to Reconsider Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody and Establishing a Permanent Plan" (November 21, 2003 Order) which denied Mother's October 20, 2003 "Motion to Reconsider Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody and Establishing a Permanent Plan Filed October 10, 2003 and Motion

<sup>1/</sup> The Honorable Calvin K. Murashige presided.

E. M. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

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for Findings of Fact and Conclusions of Law" (October 20, 2003 Motion for Reconsideration).

On January 20, 2004, the court entered "Findings of Fact and Conclusions of Law".

On February 12, 2004, the court entered an "Order Denying Motion to Reconsider Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody and Establishing a Permanent Plan" (February 12, 2004 Order) which denied Mother's October 20, 2003 Motion for Reconsideration.

On February 19, 2004, Mother filed a notice of appeal. This appeal was assigned to this court on June 23, 2005.

In her Statement of Jurisdiction, Appellant states, in relevant part:

On August 30, 2001, the parental rights of the minor's father were terminated but the permanent plan hearing regarding Appellant was continued. There were then a number of permanent plan hearings over an extended period of time culminating in the order filed October 10, 2003, terminating Appellant's parental rights, awarding permanent custody of the minor to DHS and establishing a permanent plan. Letters of Permanent Custody were also filed by DHS.

On October 20, 2003, counsel for Appellant filed a Motion to Reconsider Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody and Establishing a Permanent Plan Filed October 10, 2003 and Motion for Findings of Fact and Conclusions of Law. **The motion for reconsideration was denied and orders to that effect entered on November 21, 2003 and again on February 12, 2004.** The requested Findings of Fact and Conclusions of Law were not filed until January 20, 2004.

(Emphasis added; record references omitted.)

As indicated above, the February 12, 2004 Order was

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essentially a repeat of the earlier November 21, 2003 Order.<sup>2/</sup> The record does not reveal why this was done. Nevertheless, the earlier November 21, 2003 Order finally decided the case and the thirty (30) days time limit set by HRAP Rule 4(a)(3) (2005) commenced running on that date. The February 12, 2004 Order was filed after, and did not extend, the time limit for the filing of the appeal because, as stated in HRAP Rule 26(b) (2005), "[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules." Consequently, the notice of appeal filed on February 19, 2004 was not filed within the thirty (30) days time limit that commenced on November 21, 2003.

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<sup>2/</sup> The November 21, 2003 order stated, in relevant part:

Having considered the documents on file and the arguments made, the Court finds that:

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\_\_\_\_\_  
\_\_\_\_\_

THEREFORE, IT IS HEREBY ORDERED THAT:

The Motion To Reconsider "Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody And Establishing A Permanent Plan", dated Oct. 10, 2003, is hereby DENIED.

The February 12, 2004 order stated, in relevant part:

Having considered the documents on file and the arguments made,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS HEREBY ORDERED THAT:

The Motion To Reconsider "Order Terminating Parental Rights of [Mother] and Awarding Permanent Custody And Establishing A Permanent Plan", dated Oct. 10, 2003, is hereby DENIED.

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The notice of appeal having been untimely filed, this appeal is dismissed for lack of appellate jurisdiction. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986).

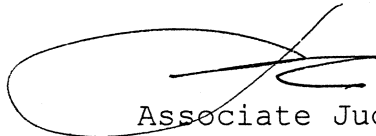
DATED: Honolulu, Hawai'i, November 23, 2005.

On the briefs:

Joseph Dubiel,  
for Appellant-Mother.

  
Chief Judge

Russell K. Goo,  
Jay K. Goss, and  
Mary Anne Magnier,  
Deputy Attorneys General,  
for Appellee DHS.

  
Associate Judge

  
Associate Judge