

NOT FOR PUBLICATION

NO. 26644

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

In the Interest of DOE CHILDREN:
JANE DOE, Born on June 2, 1993;
JANE DOE, Born on December 15, 1994, Minors

APPEAL FROM FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08634)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Nakamura, JJ.)

Respondent-Appellant (Father) who alleges that he is the natural father of the two female Doe children (Doe Children) involved in this case^{1/} appeals from the family court's^{2/} (1) April 8, 2004 Order Awarding Permanent Custody and (2) May 27, 2004 order denying Father's motion for reconsideration.

Father was born on May 16, 1971. The first Doe child was born on June 2, 1993. The second Doe child was born on December 15, 1994. The biological mother (Mother) of these two Doe Children was never married to Father. Mother died on March 7, 1995.

The following are unchallenged findings of fact entered in this case:

^{1/} Despite being ordered by the court to establish paternity, Respondent Father-Appellant did not do so.

^{2/} Judge Linda K.C. Luke presided.

FILED
2005 NOV 29 AM 10:00
F.M. RUMANO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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81. Father completed a substance abuse assessment on May 14, 2002 for another case, FC-S No. 02-08056, where he is the adjudicated father of that child.

82. Father was not compliant with services in FC-S No. 02-8056.

83. Father's custodial rights were terminated in FC-S No. 02-08056[.]

On October 28, 2002, Father was arrested, charged, and subsequently convicted of Abuse of Family and Household Member, Criminal Property Damage, and Animal Cruelty, and was incarcerated at Oahu Community Correctional Center (OCCC).

On November 15, 2002, the Honolulu Police Department took the Doe Children into protective custody. On November 20, 2002, the State of Hawai'i Department of Human Services (DHS) filed a Petition for Temporary Custody. On November 22, 2002, Judge Lillian Ramirez-Uy granted the petition and ordered the November 15, 2002 service plan into effect.

Father was released from the OCCC on April 26, 2003. On May 8, 2003, Judge Ramirez-Uy ordered the May 6, 2003 service plan into effect. Father did not request visits with the Doe Children until October 2003.

On October 15, 2003, the DHS filed its Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan.

On November 17, 2003, Father completed a drug assessment. The following are unchallenged findings of fact entered in this case:

84. According to the substance abuse assessment report, Father started using alcohol and marijuana at the age of eighteen, consumed a twelve pack of beer on the weekends, and smoke[d]

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marijuana on a daily basis. The report further stated that Father used amphetamines two to three times a week. Father also reported that his use of alcohol and amphetamines increased in greater quantities as he used over longer periods of time.

88. According to the substance abuse assessment report, Father started smoking methamphetamine at the age of twenty-five, and his drug use progressed over the years to using twice a week. Father experiences fatigue, irritability, and anger outbursts as withdrawal symptoms of his methamphetamine use.

On November 18, 2003, Father completed a psychological evaluation. The following is an unchallenged finding of fact entered in this case:

93. In a psychological evaluation, given by William McGrath, Ph.D., and review by Brenda Wong, Ph.D., on November 18, 2003 Father was diagnosed . . . on Axis I with Alcohol Dependence, Amphetamine Dependence, Sustained Full Remission by Self-Report, Cannabis Abuse, Sustained Full Remission by Self-Report Rule out Dysthymic Disorder, and on Axis II with Personality Disorder Not Otherwise Specified, with Antisocial and Paranoid Features, Rule Out Learning Disorder, and Rule Out Substance-Induced Persisting Dementia.

On December 15, 2003, Father completed anger management classes. On January 31, 2004, Father was discharged from Hina Mauka, a urinalysis testing facility, for noncompliance.

At the pretrial hearing on January 12, 2004, Father was (1) ordered to have no direct contact with the DHS based upon his past behavior of yelling and swearing at the social worker and DHS staff members and (2) notified that all of his communications to the DHS were to be made through his counsel.

The trial was held on February 9, 2004, March 25, 2004, and April 8, 2004. At the time of the trial, both Doe Children were in special education classes and both were having weekly meetings with a psychologist "to provide support and reduce their emotional and behavioral problems." Father was living a

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transient lifestyle with unstable housing.

On February 10, 2004, the court entered a minute order requiring Father to complete a neuropsychological evaluation. On February 19, 2004, Father completed a neuro-psychological evaluation. The following is an unchallenged finding of fact entered in this case:

96. Father participated in a neuropsychological evaluation on February 18 and 19, 2004 with Gayle Hostetter, Ph.D. who diagnosed him on Axis I with Alcohol Dependence, in Early Remission, by Self-Report, Amphetamine Dependence, Sustained Full Remission, by History, Cannabis Abuse, Sustained Full Remission, by History, and on Axis II deferred, No Dementia.

On April 8, 2004, the court entered an Order Awarding Permanent Custody which terminated Father's parental rights, appointed the Director of Human Services permanent custodian of the Doe Children, and ordered the October 15, 2003 Permanent Plan into effect. The goal of this plan was the adoption of the Doe Children.

On May 27, 2004, the court denied Father's April 27, 2004 motion for reconsideration. Meanwhile, on May 14, 2004, the court entered its Findings of Fact and Conclusions of Law (FsOF and CsOL).

Father filed a notice of appeal on June 24, 2004. This appeal was assigned to this court on March 11, 2005.

Father challenges FsOF nos. 36, 37, 38, 111, and 112 and CsOL nos. 3 and 4.^{3/} The essence of his appeal is his

^{3/} Findings of Fact nos. 36, 37, 38, 111, and 112 state:

36. For approximately one and a half years, DHS [the State

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challenge of FOF no. 38 which states: "The DHS made reasonable efforts and active efforts to engage Father in the recommended services and gave him ample time to follow through with these services." Father contends that the DHS did not do enough for him and that some of what it did for him it should have done sooner. In sum, Father states the question as follows: "Whether the lower court had clear and convincing evidence that [Father's] inability to provide a safe family home for his two daughters was not due to the failure of DHS to obtain a neuropsychological evaluation and individual psychotherapy for [Father]."

In other words, Father contends that the following

of Hawai'i Department of Human Services] has provided Father reasonable opportunity to success [sic] in remedying the problems which seriously harm the children and continue to place them at risk of harm.

37. The DHS made reasonable and active efforts to reunify the children with Father by offering service plans to address the safety issues in this case.

38. The DHS made reasonable efforts and active efforts to engage Father in the recommended services and gave him ample time to follow through with these services.

. . . .

111. Father is not presently willing and able to provide the children with a safe family home, even with the assistance of a service plan because his problems posing threatened harm to the children continue to exist despite the services which have been offered and provided to him over the last seventeen months.

112. It is not reasonably foreseeable that Father 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 not to exceed two years from the time foster custody was first ordered by the court, based on his history and present circumstances.

Conclusion of Law (COL) no. 3 essentially repeats Finding of Fact (FOF) no. 111, and COL no. 4 repeats FOF no. 112.

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facts cause FOF no. 38 to be wrong: (a) Father was not provided with individual psychotherapy as recommended by the November 18, 2003 psychological evaluation; (b) the neuropsychological evaluation recommended by the November 18, 2003 psychological evaluation was not completed until February 19, 2004; and (c) Father was not provided with the hands-on training recommended by the clinical psychologist who conducted the neuropsychological evaluation in February of 2004. In Father's view, "Had the Department taken timely action to obtain a neuropsychological evaluation for [Father] after November 18, 2003, [Father] may have been able to provide a safe home for his daughters within a reasonable period of time."

Father's appeal is without merit. This case began on November 15, 2002. Father had as much of an obligation as did the DHS to assist in causing the occurrence of a neuropsychological evaluation, individual psychotherapy, and hands-on training. He cannot blame anyone but himself for his neglect. Moreover, there is no evidence that had his neuropsychological evaluation been done two months earlier, or had he been provided with individual psychotherapy after November 18, 2003, or had he been provided with hands-on training after February 19, 2004, that he would have "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 not to exceed two years from the date upon which the

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children were first placed under foster custody by the court."

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 (1) the April 8, 2004 Order Awarding Permanent Custody and (2) the May 27, 2004 order denying Father's motion for reconsideration are affirmed.

DATED: Honolulu, Hawai'i, November 29, 2005.

On the briefs:

Herbert Y. Hamada
for respondent-appellant.

Arlene A. Harada-Brown
and Mary Anne Magnier,
Deputy Attorneys General,
for petitioner-appellee.


Chief Judge


Associate Judge


Associate Judge