

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27255

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

IN THE INTEREST OF DOE CHILDREN:
R.T., G.T., and H.T.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 04-09674)

NORMA I. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 AUG -4 AM 10:11

FILED

SUMMARY DISPOSITION ORDER

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

This case involves three children (the Children) born on the following dates: July 27, 1999, May 30, 2000, and April 25, 2003. The Children were taken into police protective custody on October 29, 2003. On December 6, 2004, after a trial, Judge Kenneth E. Enright entered an Order Awarding Permanent Custody to, and Letters of Permanent Custody in favor of, the State of Hawai'i Director of Human Services. On December 16, 2004, Mother filed a motion for reconsideration. On December 22, 2004, Father filed a motion for reconsideration. Both motions for reconsideration were denied on March 31, 2005 by Judge Gale L. F. Ching. Mother filed a notice of appeal on April 26, 2005. Father filed a notice of appeal on April 28, 2005.

The Findings of Fact and Conclusions of Law (FsOF and CsOL) were signed by Judge Enright and entered on May 31, 2005.

The FsOF state in part as follows:

23. . . . [T]he Children's current guardian ad litem, Gaye Flores, testified that permanent custody of the children should be awarded to [the State of Hawai'i Director of Human Services] because it is in the children's best interest.

. . . .

30. At the March 3, 2005 hearing on the Motions for Reconsideration, Judge Gale Ching presiding, the

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parties agreed that it was still unknown when Judge Enright would be available to hear the motions; the parties also agreed that the motions offered no new evidence and made no new arguments beyond what had been argued at trial; therefore the motions were heard and denied by Judge Ching.

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39. As of the date of trial, the children had been in DHS' foster custody for more than 13 months and out of the family home for 22 of the past 26 months.

40. Further delay in providing a permanent safe home for the children would not be in their best interest.

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45. Mother has a very serious drug problem involving the use of crystal methamphetamine and marijuana beginning at the age of 13.

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79. Father has a very serious and chronic domestic violence and anger management problem.

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94. Although Father admitted at trial that exposure to domestic violence is probably not good for children, he has not shown by his behavior he even begins to understand how damaging his behavior towards Mother and the children has been or would be on the children.

95. The arrival of another child will be an additional source of stress to Father.

96. Father needs to devote his entire effort to trying to become able to provide a safe family home for his [and Mother's] next child expected soon after the date of trial.

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98. Father is unable and unlikely to resolve his very serious anger management, domestic violence and parenting problems within a reasonable period of time.

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101. It is not reasonable to give Father more time within which to attempt to address and resolve his problems because it is not in the children's best interest to wait any longer for a permanent safe home.

This case was assigned to this court on December 16,

2005.

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Father challenges FsOF nos. 24, 79, 97, 98, 99, 100, 101, and 109; asserts that Judge Ching was not authorized to decide Father's motion for reconsideration because he was not the trial judge; and argues that he should not be penalized for the fact that the State of Hawai'i Department of Human Services failed to exert reasonable efforts to make domestic violence classes available to him.

Mother challenges FsOF nos. 40, 55, 58, 70, 71, 72, 73, 74, 102, and 103; contends that she was willing and able to provide the children with a safe family home; and contends that it was reasonably foreseeable that she would become willing and able to provide the children with a safe family home, but was not allowed enough time.

Upon a review of the record, we conclude that none of Father's and Mother's points on appeal have any merit. We will further discuss only Father's assertion that Judge Ching was not authorized to decide Father's motion for reconsideration.

Prior to deciding Father's motion for reconsideration, Judge Enright went on extended leave for extensive treatment necessitated by a serious physical injury. Was Judge Ching authorized to rule on the motion for reconsideration of Judge Enright's decision? The answer is yes. If the motion for reconsideration presented a "cogent reason" for modification and/or change of Judge Enright's decision, Judge Ching was authorized to take such action. The applicable rule is that "[u]nless cogent reasons support the second court's action, any modification of a prior ruling of another court of equal and

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concurrent jurisdiction will be deemed an abuse of discretion." Wong v. City & County of Honolulu, 66 Haw. 389, 396, 665 P.2d 157, 162 (1983) (emphasis in original; citations omitted).

In this case, Father did not present a cogent reason for Judge Ching to modify and/or change Judge Enright's decision.

The purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion. See, e.g., *Gossinger [v. Association of Apartment Owners of the Regency Ala Wai]*, 835 P.2d at 634-35; *Briggs v. Hotel Corp. of the Pacific, Inc.*, 831 P.2d 1335, 1342 (Haw.1992) ("[A] motion for reconsideration is not time to relitigate old matters.").

Amfac, Inc. v. Waikiki Beachcomber Investment Company, 74 Haw. 85, 114, 839 P.2d 10, 27 (1992). In his motion for reconsideration, Father did not present evidence and/or arguments that was/were not presented during the earlier adjudicated motion.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, IT IS HEREBY ORDERED that the December 6, 2004 Order Awarding Permanent Custody and Letters of Permanent Custody, and the March 31, 2005 order denying Mother's and Father's motions for reconsideration are affirmed.

DATED: Honolulu, Hawai'i, August 4, 2006.

On the briefs:

Herbert Y. Hamada
for Father-Appellant.

Joseph Dubiel
for Mother-Appellant.

Susan Barr Brandon and
Mary Anne Magnier,
Deputy Attorneys General
for Department of Human
Services-Appellee


Chief Judge


Associate Judge


Associate Judge