

NO. 27382

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

IN THE INTEREST OF DOE CHILDREN:
K-L. N-S. and R. N-S.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 04-09499)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Foley, and Fujise, JJ.)

In this termination-of-parental-rights case, Father-Appellant (Father) appeals from: (1) the April 22, 2005 order entered by the Family Court of the First Circuit (the family court),¹ awarding permanent custody of Father's two children, K-L. N-S. and R. N-S. (Children), to Department of Human Services-Appellee (DHS); and (2) the June 2, 2005 Orders Concerning Child Protective Act.

On appeal, Father, who was incarcerated at all times during the proceedings below, argues that: (1) the family court clearly erred in finding, by clear and convincing evidence, that it was not reasonably foreseeable that he would become able to provide Children with a safe family home, even with the assistance of a service plan, within a reasonable period of time; and (2) the family court abused its discretion in granting DHS's motion for an order awarding permanent custody and establishing a permanent plan.

¹ The Honorable Paul T. Murakami presided over the proceedings below.

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Generally, the family court possesses wide discretion in making its decisions regarding the placement of dependent children, and those decisions will not be disturbed on appeal unless there is a manifest abuse of discretion. In re Doe, 101 Hawai'i 220, 227, 65 P.3d 167, 174 (2003). An appellate court "will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason." Id. (brackets, ellipsis, and quotation marks omitted). In addition, "the family court is given much leeway in its examination of the reports concerning a child's care, custody, and welfare, and its conclusions in this regard, if supported by the record and not clearly erroneous, must stand on appeal." Id. (brackets and quotation marks omitted).

The question on appeal is whether the record contains substantial evidence supporting the family court's determinations, and appellate review is limited to assessing whether the family court's determinations are supported by credible evidence of sufficient quality and probative value. In re Doe, 95 Hawai'i 183, 196, 20 P.3d 616, 629 (2001). "In this regard, the testimony of a single witness, if found by the trier of fact to have been credible, will suffice." Id. at 196, 20 P.3d at 629. Additionally, while the incarceration of a parent "does not mandate a per se forfeiture of a parent's rights to a child[,]" In re Doe, 100 Hawai'i 335, 345, 60 P.3d 285, 295

(2002), incarceration may be considered along with other facts and circumstances that may impact on a parent's ability to remedy conditions of abuse and neglect. Id.

Applying the foregoing standards in our review of the record in this case, we conclude that there was substantial evidence in the record to support the family court's termination of Father's parental rights and award of permanent custody of Children to DHS and that the family court's determination was not clearly erroneous.

Accordingly, we affirm the family court's orders from which this appeal was taken.

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

On the briefs:

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