

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27939

IN THE INTERMEDIATE COURT OF APPEALS
 OF THE STATE OF HAWAI'I
 IN THE INTEREST OF S.K.

NORMA I. YARA
 CLERK, APPELLATE COURTS
 STATE OF HAWAI'I

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
 (FC-S NO. 04-09504)

SUMMARY DISPOSITION ORDER

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

The legal mother (Mother) of S.K. appeals from the April 19, 2006 Order Awarding Permanent Custody and April 20, 2006 Orders Concerning Child Protective Act that denied Mother's April 5, 2006 motion for reconsideration. Both orders were entered in the Family Court of the First Circuit.¹

Mother is the biological and custodial mother of three other children: an older daughter, an older son, and a younger daughter. In February 2004, the older daughter was age 17, the older son was age 11, and the younger daughter was age 7.

S.K. was born on April 12, 2000. The State of Hawai'i Department of Human Services (DHS) removed S.K. from his biological parents and placed S.K. with Mother, who is S.K.'s biological maternal grandaunt, on May 19, 2000². On August 21,

¹ Judge William J. Nagle, III, presided.

² Placement of S.K. with Mother may have occurred sooner. At the hearing on July 13, 2004, Mother testified in part:

Q. Okay. [Mother], how long did [S.K.] have therapy when he was with you?

2002, the family court terminated the parental rights of S.K.'s biological parents. On February 6, 2003, Mother adopted S.K.

On February 4, 2004, DHS filed a Petition for Temporary Foster Custody pursuant to the Child Protective Act, Hawaii Revised Statutes (HRS) Chapter 587, specifically HRS §§ 587-21(b)(4) and 587-31 (Supp. 2004). This petition was heard and foster custody was awarded to DHS on February 20, 2004.

On September 8, 2005, DHS filed a motion for permanent custody. The trial was held on January 18 and 27, 2006. On March 17, 2006, the court entered an Order and Decision. On April 19, 2006, the court entered the Order Awarding Permanent Custody. On April 20, 2006, the court entered the Orders Concerning Child Protective Act denying Mother's April 5, 2006 motion for reconsideration.

In this appeal, in essence, Mother contends that the evidence in support of the court's decision is not clear and convincing. We note that some relevant evidence was not presented and that much of the evidence that was presented is testimony. Although Mother presents some significant challenges to the credibility of the testimony, the following is the applicable precedent:

"We have long held that evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal

A. [S.K.] had therapy since one week of birth. Our public health nurse would come out and work with him with his gross motor skills.

sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed."

"'Substantial evidence' as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable [a person] of reasonable caution to support a conclusion. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence."

State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) (quoting *State v. Batson*, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992)) (brackets in original); see also *State v. Reed*, 77 Hawai'i 72, 81-82, 881 P.2d 1218, 1227-28 (1994); *In re John Doe, Born on January 5, 1976*, 76 Hawai'i 85, 92-93, 869 P.2d 1304, 1311-12 (1994); *State v. Silva*, 75 Haw. 419, 432, 864 P.2d 583, 589-90 (1993).

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. . . It is for the trial judge as fact-finder to assess the credibility of witnesses and to resolve all questions of fact; the judge may accept or reject any witness's testimony in whole or in part. *Lono v. State*, 63 Haw. 470, 473, 629 P.2d 630, 633 (1981). As the trier of fact, the judge may draw all reasonable and legitimate inferences and deductions from the evidence, and the findings of the trial court will not be disturbed unless clearly erroneous. *Id.* at 473-74, 629 P.2d at 633. An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge. *Domingo v. State*, 76 Hawai'i 237, 242, 873 P.2d 775, 780 (1994); *Amfac, Inc. v. Waikiki Beachcomber Investment Co.*, 74 Haw. 85, 117, 839 P.2d 10, 28 (1992), reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992); *State v. Aplaca*, 74 Haw. 54, 65-66, 837 P.2d 1298, 1304-05 (1992).

State v. Eastman, 81 Hawai'i 131, 135, 139, 913 P.2d 57, 61, 65, (1996).

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs,

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and duly considering and applying the law relevant to the issues raised and arguments presented, we affirm the April 19, 2006 Order Awarding Permanent Custody and the April 20, 2006 Orders Concerning Child Protective Act.

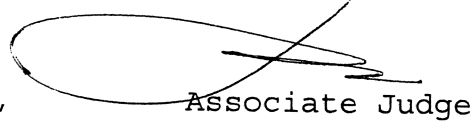
DATED: Honolulu, Hawai'i, April 2, 2007.

On the briefs:

Dean T. Nagamine
for Mother-Appellant.


Chief Judge

Patrick A. Pascual and
Mary Anne Magnier,
Deputy Attorneys General,
for Petitioner-Appellee.


Associate Judge


Associate Judge