

NO. 22304

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

In the Interest of JANE DOE,
Born on December 7, 1983

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 97-35951)

MEMORANDUM OPINION

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

Minor-Appellant Jane Doe (Jane), born on December 7, 1983, appeals the January 11, 1999 Decree Re: Law Violation Petitions entered by District Family Court Judge Rodney K. F. Ching, which decided that Jane "is a law violator within the purview of [Hawai'i Revised Statutes (HRS) Section 571-11(1)]" and sentenced her as follows:

1. [Jane] is placed on probation until the further order of the court.
2. [Jane] shall be detained in Hale Ho'omaluku forthwith until Friday, January 15, 1999 at 4:00 p.m., release to parent.
3. [Jane] shall participate in counseling as arranged by Dept. of Health and YMCA until clinically discharged.
4. [Jane] is hereby released from protective supervision to Family Court and the Department of Education.

We vacate and remand.

BACKGROUND

May 7, 1997

Plaintiff-Appellee State of Hawai'i (the State) filed a petition alleging that Jane was truant on certain days.

May 16, 1997

Jane admitted she was truant and was adjudicated a status offender under HRS § 571-11(2). In the decree, District Family Court Judge Vernon Woo placed Jane on Protective Supervision.

The same two Rules of Protective Supervision were ordered in the instant case as were ordered in In re Jane Doe, Born on June 16, 1983, 96 Hawai'i 73, 26 P.3d 562 (2001). One was the Department of Education's form (RPS-DOE). The other was the family court's form (RPS-FC). Both were signed by Jane.

In relevant part, the RPS-DOE stated, "IF YOU FAIL TO OBEY THE ABOVE RULES, YOU MAY BE ORDERED TO PERFORM COMMUNITY SERVICE. MAJOR VIOLATIONS MAY RESULT IN DETENTION. THESE RULES WILL BE ATTACHED TO A COURT ORDER [AND] WILL BE A PART OF THAT COURT ORDER. THESE RULES WERE EXPLAINED TO ME AND I UNDERSTAND THEM." (Emphasis in original.)

In relevant part, the RPS-FC stated:

- 1. You are to obey laws of the City and County of Honolulu, State of Hawaii and U.S. Government. Failure to do so may change your status to that of "**LAW VIOLATOR.**"

. . . .

- 4. You must attend your classes at school regularly, unless excused by the school or this Court. . . .

. . . .

- 6. You are not to remain away from your residence overnight without first having permission from your parent(s), guardian(s), or foster parent(s).

. . . .

IF YOU FAIL TO OBEY THE ABOVE RULES, IT MAY BE NECESSARY FOR THE COURT TO TAKE FURTHER ACTION.

. . . .

THE ABOVE RULES OF MY PROTECTIVE SUPERVISION HAVE BEEN EXPLAINED TO ME. I UNDERSTAND AND ACCEPT THEM. I AGREE TO FOLLOW THE RULES AND TO COOPERATE WITH MY COURT OFFICER.

(Emphases in original.)

July 11, 1997 The State filed a petition alleging that Jane violated RPS-FC Rule 6 on June 3, 1997.

August 13, 1997 The State filed a second petition alleging a similar violation on August 1, 1997.

September 15, 1997 Jane admitted the allegations of the petitions and the court continued her on protective supervision.

December 9, 1997 The State filed three petitions alleging that Jane violated RPS-FC Rule 4 on certain days in September, October, and November of 1997.

January 14, 1998 The State filed a fourth petition alleging that Jane violated RPS-FC Rule 6 on January 5, 1998.

January 30, 1998 Family Court Judge John C. Bryant dismissed all four petitions without prejudice and ordered the State to file a contempt of court petition.

November 20, 1998 A probation officer filed four petitions alleging that Jane violated RPS-FC Rules 4 and 6 on certain dates in August, September, and October of 1998.

December 7, 1998 The Deputy Prosecuting Attorney filed three petitions. Each alleged that Jane committed the offense of Contempt of Court, HRS § 710-1077(g).¹ The first petition was for violation of RPS-FC Rule 6 on January 5, 1997. The second and third petitions were for violations of RPS-FC Rule 4 in October and November of 1997 and September of 1997, respectively.

January 11, 1999 Judge Ching presided at the hearing on the December 7, 1998 petitions. The court decided that Jane had committed the offenses of Contempt of Court as alleged in the two RPS-FC Rule 4 truancy petitions but dismissed

¹ Hawaii Revised Statutes § 710-1077(1)(g) (1993) states, "A person commits the offense of criminal contempt of court if: . . . [t]he person knowingly disobeys or resists the process, injunction, or other mandate of a court."

the third RPS-FC Rule 6 petition with prejudice. Additionally, the court dismissed with prejudice the three petitions filed on November 20, 1998.

January 25, 1999 Jane filed a Motion for Reconsideration of Adjudication, arguing that a violation of a rule of protective supervision was a status offense and it was against public policy for it to be the basis for an adjudication of a contempt of court law violation.

January 29, 1999 After a hearing on the January 25, 1999 motion, the court denied the motion and entered written Findings of Fact.

STANDARDS OF REVIEW

Conclusions of law are reviewed *de novo* under the right/wrong standard of review. Raines v. State, 79 Hawai'i 219, 222, 900 P.2d 1286, 1289 (1995). Under this standard, the appellate court is not required to give any deference to the trial court's conclusion. Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994).

DISCUSSION

1.

Jane contends that the family court failed to set forth, in the January 11, 1999 Decree Re: Law Violation Petitions, the particular circumstances of the offense of criminal contempt for which Jane was adjudicated and, thereby, violated HRS § 710-1077. We agree.

HRS § 710-1077(5) specifically requires that "[w]henever any person is convicted of criminal contempt of court

or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment." The Hawai'i Supreme Court has noted that "[t]his is required whenever there is a conviction, not only in cases where imprisonment is imposed. Oral findings are not enough to satisfy the mandate of the statute." State v. Hicks, 71 Haw. 564, 567, 798 P.2d 906, 907 (1990).

2.

Jane argues that

the written findings recited what the witnesses testified to at the hearing, not the particular circumstances of the offense. Recitation of testimony is not [the] finding of the court. Accordingly, the instant case should be remanded to the Family Court for findings in accordance to the mandate of [the] statute defining the offense of criminal contempt. State v. Lloyd, 88 Hawai'i 188, 964 P.2d 642 (1998).

We conclude that Jane is right.

In their entirety, the family court's findings state as follows:

1. [Jane] was born on December 7th, 1983.

2. Under Rule 201 of the Hawai'i Rules of Evidence, the Court took judicial notice of the records and files in FC-J No. 97-35951 including the Order and Rules of Protective Supervision issued by the Honorable Vernon Woo on May 16th, 1997.

3. Court Officer Gordean Akiona (hereinafter, "Akiona") of the Juvenile Intake Branch of the Family Court of the First Circuit testified to the following: On June 23rd, 1997, the Family Court of the First Circuit assigned her as [Jane's] probation officer. Between June 23rd, 1997 and July 23rd, 1997, Akiona went over all the Rules of Protective Supervision with [Jane]. Furthermore, [Jane] indicated she understood the Rules of Protective Supervision including Rule 4 which stated [Jane] must attend all her classes at school regularly unless excused by the school.

4. Waianae Intermediate School counselor Lindsey Ho then presented the following evidence: He was an authorized representative of Waianae Intermediate School and had personal

knowledge of the attendance records taken by the school teachers. He stated the school kept attendance records by having the teachers submit the attendance sheet after each school day to the office where the staff then scanned the sheet through a machine. The records indicated [Jane] was either truant, unexcused tardy, or unexcused absent on the following dates: September 15th, 16th, 17th, 19th, 22nd, 24th, 1997, October 10th, 28th, 1997, and November 4th, 10th, 1997.

3.

Recently, in In re Jane Doe, Born on June 16, 1983, supra, the Hawai'i Supreme Court concluded that "HRS chapter 571 does not expressly bar the family court from dealing with violators of court orders of protective supervision under its inherent authority to punish contempts and its jurisdiction over 'law violators' in HRS § 571-11(1)." The court held that "the family court may adjudicate and punish status offenders in violation of a court order of protective supervision under HRS § 571-11(1)." Id. at 82, 26 P.3d at 571. However, the court stated that

in line with other courts, we impose several limitations on the family court's contempt powers. First, the minor must receive sufficient notice to comply with the court's order and must understand its terms and operation, in particular, the possibility of secure detention for disobedience. Second, the court must consider less restrictive alternatives and determine them ineffective or inappropriate. While the court need not necessarily have attempted lesser penalties before imposing secure confinement, the record should indicate that lesser alternatives were considered by the juvenile court before ordering incarceration. Third, contact between the minor and juvenile delinquents convicted of other crimes must be kept to a minimum. These protective conditions strike the appropriate balance between the competing policies of limiting the secure detention of status offenders and preserving the dignity and authority of the family court.

Id. (footnotes, internal citations, and quotation marks omitted).

CONCLUSION

Accordingly, we vacate the family court's January 11, 1999 Decree Re: Law Violation Petitions and remand for further proceedings in the light of this opinion.

DATED: Honolulu, Hawai'i, August 16, 2001.

On the briefs:

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Alexa D. M. Fujise,
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Associate Judge