

NOT FOR PUBLICATION

NO. 25592

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

IN THE INTEREST OF JOHN DOE,
Born on January 4, 2002

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-07982)

MEMORANDUM OPINION

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

The mother (Mother) of a male child (Son) born on January 4, 2002 appeals from the November 26, 2002 Order Awarding Permanent Custody and January 10, 2003 Orders Concerning Child Protective Act entered in the Family Court of the First Circuit.¹ The father (Father) cross-appeals from the same orders. We affirm.

BACKGROUND

Son is the younger brother of the following three sisters: Daughter 1, born on May 25, 1984; Daughter 2, born on November 5, 1992; and Daughter 3, born on March 7, 1994.

On July 12, 2002, after a trial, the court awarded permanent custody of Daughter 2 and Daughter 3 to the Director of Human Services, State of Hawai'i (Director) and ordered the April 24, 2002 service plan into effect.

On October 8, 2002, the Department of Human Services (DHS) filed a Motion for Permanent Custody of Son.

¹ Judge Kenneth E. Enright presiding.

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On November 26, 2002, after a hearing, the court entered its Order Awarding Permanent Custody of Son to the Director and ordered the September 30, 2002 Permanent Plan into effect. That Permanent Plan stated a "goal of adoption within six months of [November 26, 2002,] the date that DHS is awarded Permanent Custody."

On January 10, 2003, the court entered Orders Concerning Child Protective Act which, among other things, denied Mother's and Father's respective motions for reconsideration.

On February 12, 2003, after Mother and Father each filed notices of appeal, the court entered Findings of Fact and Conclusions of Law which state, in relevant part, as follows:

FINDINGS OF FACT

. . . .

1. On January 7, 2002, protective custody of [Son] was assumed by the Honolulu Police Department and immediately thereafter temporary foster custody of [Son] was assumed by DHS pursuant to HRS § 587-22(c).

. . . .

22. Mother and Father first came to the attention of DHS when Mother was hospitalized November 7, 2000 for a suicide attempt involving cutting her wrists after taking valium, amphetamine and marijuana and hospital staff noted aggressive behavior by Father.

23. DHS filed a Chapter 587 petition for family supervision . . . for Mother and Father's three daughters

24. Prior to the filing of the petition, Mother had voluntarily placed [Daughter 1] with maternal grandmother, with whom that child had lived for most of her life.

. . . .

26. [Daughter 2 and Daughter 3] were removed from Mother and Father's care on February 21, 2001 and placed in foster custody with maternal grandmother.

27. Father was incarcerated in October of 2001 after which Mother began engaging in services at IHS (Institute for

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Human Services] and cooperating with DHS for the first time since losing custody of her daughters.

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29. Mother's more-than-twenty-year relationship with Father includes chronic and frequent domestic violence, verbal and physical abuse, threats and arguing, often in the presence of their daughters.

30. Exposure to domestic violence was psychologically harmful to the children.

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34. Mother is still very much in denial concerning how the domestic violence in the home so harmed her daughters.

35. Mother and Father surprised and shocked their daughters by appearing without warning at [Daughter 1's] graduation on June 6, 2002, in violation of foster mother's restraining order . . . which demonstrated that the parents continue to lack empathy or insight into the children's psychological and emotional needs.

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44. During the year 2000, restraining orders were awarded to paternal grandmother . . . , maternal grandmother . . . , and paternal uncle . . . against Father because of his abusive behavior, psychological abuse, hostility, anger, threats, mood swings, property damage and stealing.

45. From [F]ather's actions including the June 6, 2002 restraining order violation, it is clear that Father still does not recognize how seriously the domestic violence has harmed his daughters and would harm this child, and he continues to fail to take responsibility for his actions.

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47. In June of 2000, Father was involved in an auto accident while under the influence of crystal methamphetamine, and was later charged with multiple felonies

48. Father was incarcerated on a felony theft charge from October of 2001 to January of 2002, and was placed on probation March 25, 2002.

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50. Father has apparently remained drug free since his January, 2002 release from incarceration, but he avoided drug treatment and has stopped attending AA or NA meetings, which leaves him without support and places him at high risk for future substance abuse

51. Father and Mother have been homeless since February of 2001 and have struggled to provide for themselves with the

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support of IHS, which stress increases the risk of future domestic violence and substance abuse.

- 52. Prior to becoming homeless [Father and Mother] always lived with extended family members, but [Father and Mother] have distanced themselves from their families and no longer have a supportive relationship with family.
- 53. Father presently poses a serious risk of harm to [Son] due to his psychological problems, continued denial of his problems, lack of insight concerning the serious effects of past domestic violence on his daughters, and the strong probability of future substance abuse and domestic violence.

. . . .

- 58. [Son] has been residing in the current foster home since February 1, 2002.
- 59. The child's current foster parents, his paternal uncle and aunt, want to adopt him.
- 60. In light of [Son's] need for stability, and [Father's and Mother's] lack of progress in services, further delay in determining whether [Father and Mother] can regain custody of [Son] is not in [Son's] best interest.
- 61. The goal of the permanent plan for the adoption by paternal uncle and aunt who have been caring for [Son], is in [Son's] best interests due to his need for a permanent, safe and secure home with responsible and competent substitute parents and family.

. . . .

- 67. From 1999 to the present, DHS has provided Mother and Father with every reasonable opportunity to succeed in remedying the problems which seriously harmed [Son's] sisters and continue to place [Son] at risk of harm.
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- 76. The testimony of Mother and Father that they can provide a safe home for [Son] was not credible.

. . . .

CONCLUSIONS OF LAW

. . . .

- 6. The permanent plan ordered by the court will assist in achieving the goal which is in the best interest of [Son].

This appeal was assigned to this court on November 5, 2003.

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POINTS ON APPEAL

Mother contends, in essence, that she was not afforded enough time to show that she could provide a safe home for Son.

Similarly,

Father believes that DHS has failed to make reasonable efforts in its placement and reunification efforts.

Father did [not] have timely access or assistance to services he needed, as DHS has failed to make reasonable efforts in providing services to Father.

Father can provide [Son] with a safe family home with the assistance of a service plan, within a reasonable period of time. And Father has already completed most of the services required.

Father is concerned for [Son] being placed with [Father's] brother, due to past violent behaviors. Therefore, the permanent plan is not in [Son's] best interest.

DISCUSSION

1. Sufficiency of Time

Father argues that "[Son] was first placed under foster custody by the court on April 17, 2002. Father's parental rights were terminated by this court on November 26, 2002, 7 months after the April 17, 2002 date. Father doesn't feel that he was given a reasonable period of time to reunify with [Son]."

Father fails to recognize that, in this case, it was reasonable for the family court to consider the time Father was allowed for reunification with Son's older sisters. The fact that Father was unable to provide a safe home for Son's older sisters is evidence that he will be unable to provide a safe home for Son.

Father argues that the family court should have "allowed Father more time to reunify with [Son] as [Father] was

finally making real progress." Hawaii Revised Statutes § 587-73(a) (2) (2003) allows Father "a reasonable period of time which shall not exceed two years from the date upon which the child was first placed under foster custody by the court[.]"² We agree with the court that Father and Mother each had that statutorily required reasonable period of time to acquire the skills each needed to demonstrate his or her ability to provide a "safe home" for Son.

2. Reasonable Efforts by the DHS

Father argues "that reasonable efforts were not made in providing him with realistic/available services to assist him in his reunification efforts." Father cites the following testimony by the DHS worker:

Q Okay. Prior to [F]ather taking anger management classes from Ms. Akiona, isn't it true that [F]ather had a very difficult time getting into anger management classes?

A. Yes. There were -- there were delays partly from his own doing. He's resistant to getting into services. And it was only after I believe he was released from prison. And being that

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§ 587-73 Permanent plan hearing. (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

. . . .

(2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed two years from the date upon which the child was first placed under foster custody by the court[.]

there's a long wait list to begin with, those -- those are the things that needs [sic] to be initiated way in advance. And one needs to be very aggressive and very motivated to get into these classes. So yeah, those are factors that sometimes delay the -- the services.

We conclude that this testimony is not, and that Father has not cited, substantial evidence "that reasonable efforts were not made in providing [Father] with realistic/available services to assist him in his reunification efforts."

3. Placement in Son's Best Interest

Father notes that he

is concerned for [Son] being placed with [Father's] brother, due to past violent behaviors. Therefore, the permanent plan is not in [Son's] best interest.

. . . .

DHS through its permanent plan intends to allow the current foster parents (paternal uncle) to adopt [Son]. At the initial temporary foster custody hearing on January 14, 2002, [Father and Mother] have noted their objection to all parties and the court regarding placement of [Son] with paternal uncle, . . . due to a history of domestic violence and other safety issues. This concern and objection was again presented to the parties and the court at the April 30, 2002 disposition hearing.

DHS claims that paternal uncle has resolved his domestic violence and safety issues by attending and completing a domestic violence class. Father feels that DHS is using a double standard, as he also had completed a domestic violence program, without the acknowledgment that his brother is receiving. Father strongly feels that [Son] will be harm[ed] under paternal uncle's (. . .) care, and doesn't feel that the permanent plan is in the best interest of [Son].

At the April 30, 2002 disposition hearing, in response to Father's stated concern, the court advised counsel for Father that

[w]hat [Father] should do is provide [counsel for Father] with all of the information that he has in that regard, and [counsel for Father] should provide it to the [DHS] and the GAL [Son's Guardian Ad Litem] --

. . . .

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-- so that they are informed of this. And prior to the children being placed with [Father's] brother, this matter should be moved on and reviewed by the Court.

Father does not, in his opening brief or reply brief, cite any part of the record filed subsequent to the April 30, 2002 hearing in support of this point. In other words, the court reasonably imposed on Father two burdens and he failed both of them. It is reasonable to assume that Father's failure to satisfy those burdens proves his lack of evidence in support of his allegation "that [Son] will be harm[ed] under paternal uncle's . . . care."

CONCLUSION

Accordingly, we affirm the family court's November 26, 2002 Order Awarding Permanent Custody and January 10, 2003 Orders Concerning Child Protective Act.

DATED: Honolulu, Hawai'i, September 27, 2004.

On the briefs:

Joseph Dubiel
for Mother-Appellant.

Chief Judge

Tae Chin Kim
for Father-Cross-Appellant.

Jay K. Goss and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-Appellee

Associate Judge

Associate Judge