

**NOT FOR PUBLICATION**

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NO. 25801

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

IN THE INTEREST OF DOE CHILDREN:  
JOHN DOE, Born on December 13, 1994, and  
JOHN DOE, Born on November 17, 1996

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NO. 97-04804)

SUMMARY DISPOSITION ORDER

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

Mother appeals from the January 21, 2003 Order Awarding Permanent Custody and Letters of Permanent Custody, entered in the Family Court of the First Circuit,<sup>1</sup> which terminated the parental rights of the Father and Mother of John Doe, born on December 13, 1994 (Doe 2), and John Doe, born on November 17, 1996 (Doe 3), and appointed the Director of Human Services, State of Hawai'i, as permanent custodian of Doe 2 and Doe 3.

BACKGROUND

More than two years prior to May 19, 1997, Mother signed a power of attorney and placed the eldest son, born on July 8, 1989 (Doe 1), in the care of Father's parents.

On May 20, 1997, the Department of Human Services (DHS) filed a petition for foster custody of Doe 1, and family supervision of Doe 2 and Doe 3, alleging that the three children were subject to threatened harm due to Mother's and Father's lengthy history of substance abuse and domestic violence.

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<sup>1</sup> Judge Kenneth E. Enright presiding.

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On June 2, 1997, after a hearing, Judge Allene R. Suemori entered Orders Concerning Child Protective Act dismissing the petition as to Doe 1, awarding DHS family supervision of Doe 2 and Doe 3, and ordering the May 19, 1997 Service Plan into effect. The goal of this plan was reunification.

On May 27, 1998, after a hearing on April 7, 1998, Judge Suemori entered Orders Concerning Child Protective Act. It stated, in relevant part, that "[o]n April 7, 1998 the children will be removed from the family home and DHS shall assume foster custody." The June 30, 1998 Supplemental Safe Family Home Report affirms that Doe 2 and Doe 3 "were placed with paternal grandparents on April 7, 1998[.]"

On August 21, 2002, after a hearing, Judge Enright entered Orders Concerning Child Protective Act continuing the May 28, 2002 Service Plan #13. The goal of this plan was reunification.

On October 25, 2002, more than five years after the initial June 2, 1997 order, the DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan. This motion was based on the October 10, 2002 Safe Family Home Report and sought court approval of the October 5, 2002 Permanent Plan. The goal of this plan was long-term foster care of each child by the DHS until the child's eighteenth birthday.

On January 21, 2003, after a hearing, Judge Enright

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entered an Order Awarding Permanent Custody. This order terminated Mother's and Father's parental rights to Doe 2 and Doe 3, and awarded permanent custody of them to the DHS. Letters of Permanent Custody were entered on the same day.

On February 7, 2003, Mother filed a motion for reconsideration. On April 4, 2003, Judge Enright entered Orders Concerning Child Protective Act denying Mother's motion.

On May 1, 2003, Mother filed a notice of appeal. The court entered Findings of Fact and Conclusions of Law on June 3, 2003. This appeal was assigned to this court on February 18, 2004.

POINTS ON APPEAL

Hawaii Revised Statutes § 587-73(a)(2) (2003) allows Mother "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[.]"<sup>2</sup> Mother challenges the conclusion in finding of fact (FOF) no. 76 and conclusion of law

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<sup>2</sup>

**§ 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 587 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[.]

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(COL) no. 4 that it is not reasonably foreseeable that Mother will become able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time.

Mother also challenges the conclusion in FOF no. 113 that the DHS made reasonable efforts to reunify the children with Mother by offering service plans specifically designed to meet their needs. She says that the "DHS did not even give [M]other the opportunity to demonstrate that she could meet the children[']s needs."

Both challenges are not supported by the record, especially the following FsOF, none of which are clearly erroneous:

- 37. Mother's history of substance abuse, domestic violence, and co-dependency issues, that remain unresolved, prevent her from providing a safe home for her children notwithstanding the services that have been provided to her for nearly five years.  
.....
- 62. Throughout this case Mother acknowledged her inability to provide a safe and stable home for her children and continuously requested more time to be able to secure employment and a home for her children.  
.....
- 68. Mother is unable to maintain her employment, meet her own needs and become the children's primary caretaker without jeopardizing her sobriety.  
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- 70. After nearly three years of sobriety, and two completed drug treatment programs, Mother relapsed and tested positive for cocaine on September 30, 2002.

Mother also challenges COL no. 6 that "[t]he permanent

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plan ordered by the court is in the best interest of the children." Mother contends that,

[i]n the present case, DHS does not intend to pursue adoption or guardianship with the present caretakers and are planning to maintain the children under a long term foster care arrangement with the paternal grandparents. If something were to happen to the paternal grandparents, the children would need to be removed and placed in another foster home which is not in their best interests.

We conclude that, in the absence of any evidence of any probability that something will happen to the paternal grandparents, this contention lacks the necessary basis in fact.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the family court's January 21, 2003 Order Awarding Permanent Custody and Letters of Permanent Custody are affirmed.

DATED: Honolulu, Hawai'i, October 12, 2004.

On the briefs:

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

Chief Judge

Associate Judge

Leland B.T. Look  
for Mother-Appellant

Associate Judge