NO. 23392

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of JOHN DOE,
Born on July 3, 1998

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 99-05796)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Appellant Father timely appeals the Family Court of the First Circuit's February 23, 2000 order awarding permanent custody to the Department of Human Services, and the family court's March 22, 2000 orders concerning the Child Protective Act, denying Father's motion for reconsideration. Father does not challenge the family court's conclusions that the requirements of Hawai'i Revised Statues (HRS) §§ 587-73(a)(1) and (3) (1993) were met by clear and convincing evidence, but only challenges the family court's conclusion with respect to HRS § 587-73(a)(2) (1993).[1]

---

[1] HRS § 587-73(a) provides in relevant part as follows:

> 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 [father] 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

(continued...)

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that:

(1) assuming, arguendo, the family court erred in admitting direct testimony by Caroline Alfonso, a pretrial officer with the Department of Public Safety, that the result of Father's February 8, 2000 urine drug test was positive, the error was harmless because additional testimony by Ms. Alfonso, Father, and social worker Melissa Soon constitute substantial evidence supporting the court's findings of fact that Father tested positive for and used drugs;

(2) the family court did not apply the incorrect standard to HRS § 587-73(a)(2) because (a) the family court's February 23, 2000 order awarding permanent custody specifically indicated that the statutory requirements were met by clear and convincing evidence; (b) the safe family home guidelines referenced in HRS § 587-73(a) impliedly mandate consideration of Child's interest in determining what constitutes a "reasonable period of time" pursuant to HRS § 587-73(a)(2); and (c) the entire context of the closing arguments in the February 23, 2000

[1](...continued)

not exceed three years from the date upon which the child was first placed under foster custody by the court[.]

custody trial reveals that the parties were not discussing the appropriate legal test to apply, but were merely discussing whether, under HRS § 587-73(a)(2), the court was required to wait until February 12, 2002 to reach its legal conclusion, or whether the court could reach its conclusion at the instant hearing; and

(3) the family court did not err in concluding that it was not reasonably foreseeable that Father would become willing and able to provide a safe family home for Child, even with the assistance of a service plan, within a reasonable period of time, because the evidence demonstrated that Father had chronic drug addiction and anger management problems and had not been significantly successful in treatment for either, notwithstanding the fact that Father could theoretically complete another recommended treatment program and observation period before the running of the maximum "reasonable period of time" allowable by HRS § 587-73(a)(2).

Moreover, HRS § 587-73(a)(2) does not require the family court to wait until the end of the time period specified in the statute before formulating its legal conclusions as to Father's future ability to provide a safe family home, nor even to consider the entire time period in its determination. Rather, the statute only mandates that the court shall not extend its period of consideration beyond the specified period. Therefore,

IT IS HEREBY ORDERED that the February 23, 2000, and March 22, 2000 orders from which this appeal is taken are affirmed.

DATED: Honolulu, Hawai‘i, MARCH 20, 2001

On the briefs:

Kevin S. Adaniya,
for appellant Father

Julio C. Herrera and
Mary Anne Magnier,
Deputy Attorneys General,
for Appellee Department of
Human Services
