

NO. 23317

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE INTEREST OF JANE DOE, Born on October 4, 1995, Minor
(NO. 23317 (FC-S NO. 95-04144))

IN THE INTEREST OF JOHN DOE, Born on August 10, 1998, Minor
(NO. 23322 (FC-S NO. 98-05685))

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

Donovan Morikawa (Father)¹ appeals from the orders of the Family Court of the First Circuit, the Honorable Allene Suemori presiding, awarding permanent custody of Jane Doe, born on October 4, 1995, and John Doe, born on August 10, 1998, (collectively, Children) to the State of Hawai'i Department of Human Services (DHS). Prior to the termination of Mother's and Father's parental rights, the parties entered into a stipulation in which Mother and Father agreed, inter alia, that, if either Mother or Father tested positive for drugs or alcohol, both Mother and Father would be divested of their parental rights. On appeal, Father argues that the family court erred in: 1) dismissing Father from the permanent plan hearing and depriving him of his right to participate in the hearing; 2) entering findings of fact that were irrelevant to the issue whether Mother

¹ Shevelle Morikawa (Mother) filed a statement of jurisdiction and several motions to extend time to file an opening brief. However, Mother did not file an opening brief and the supreme court clerk sent a letter of default to Mother's attorney on April 18, 2001.

or Father violated the stipulation; and 3) granting DHS's motion where there was not clear and convincing evidence that Father had failed to comply with the stipulation.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve Father's arguments as follows: 1) contrary to Father's assertion, DHS was not required to establish that adoption by the foster parents was in the Children's best interests in order to establish that Father's parental rights should be terminated; cf. Hawai'i Revised Statutes (HRS) § 587-27 (1993) (establishing general rule that the identity of the prospective adoptive parents should not be revealed to the natural parents); 2) in light of the magnitude of the rights involved in the present case and the duration of the case, the family court did not abuse its discretion in basing its ultimate decision upon a review of the entire proceedings, rather than relying solely upon the stipulation; and 3) even assuming arguendo that the family court's finding that Father tested positive for crystal methamphetamine during the permanent custody trial was clearly erroneous, the error would be harmless because there was substantial evidence that Mother violated the terms of the stipulation and, based upon the review of the entire record, the trial court's finding that Father was not willing and able to

provide a safe family home, even with the assistance of a service plan, and that he would not be able to do so in the future was not clearly erroneous; see generally HRS § 587-73 (Supp. 2000).

THEREFORE, IT IS HEREBY ORDERED that the family court's orders are affirmed.

DATED: Honolulu, Hawai'i, August 23, 2001.

On the briefs:

Dean T. Nagamine for
father-appellant

Ryan H. Tomasa for
mother-appellant,
no brief filed

Christobel K. Kealoha,
Deputy Attorney General,
for appellee Department
of Human Services