NO. 23635

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of JANE DOE, Born on February 6, 1993, a minor,
(No. 23635 (FC-S No. 93-02807))

In the Interest of DOE CHILDREN:
JOHN DOE, Born on June 17, 1994; and
JOHN DOE, Born on December 10, 1997, minors,
(No. 23636 (FC-S No. 98-05366)).

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NOS. 93-02807 AND 98-05366)

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

In this consolidated matter[1] arising under the Child Protective Act, see Hawai'i Revised Statutes (HRS) chapter 587 (1993 & Supp. 2000), Mother and Father appeal from the orders of the family court, the Honorable Bode A. Uale presiding, (1) awarding the Department of Human Services (DHS) permanent custody of their three children and, thereby, divesting Mother and Father of their parental rights in the children, (2) denying their respective motions for reconsideration, (3) denying the DHS's motion seeking reconsideration of the family court's denial of Mother's and Father's motions for reconsideration, and (4) written findings of fact (FOFs) and conclusions of law (COLs).

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to

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[1] By order of this court, filed on October 11, 2000, Father's appeal in No. 23636 was consolidated with Mother's appeal in No. 23635 for purposes of briefing and disposition under No. 23635.

the arguments advanced and the issues raised by the parties, we hold that, inasmuch as (1) Father's sundry due process arguments are without merit and (2) the family court's challenged FOFs and COLs (which present mixed questions of law and fact) are reviewed for clear error, see In re Jane Doe, Born on June 20, 1995, 95 Hawai‘i 183, 190, 20 P.3d 616, 623 (2001), and are not clearly erroneous, Judge Uale did not abuse his discretion in awarding DHS permanent custody of the children. As to Mother's contention that the evidence was insufficient to support the family court's permanent custody order, we note that her argument is nothing more than an assertion that the family court erred in assessing the credibility of the witnesses and the weight to be given to their testimony. This court, however, "will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence." See Doe, 95 Hawai‘i at 190, 20 P.3d at 623 (citations omitted). In any event, the record reflects substantial evidence supporting the family court's order as to Mother. The DHS provided her with numerous services designed to equip her with the parenting skills and education necessary for her to provide a safe family home for the children, but Mother failed consistently to avail herself of these services and did not benefit from them. The record further reflects that Mother used cocaine while pregnant with Jane and relapsed during the pendency of these proceedings, despite participating in drug treatment programs and therapy. Finally, none of the service providers who testified at the permanent plan hearing could recommend that she so much as visit with the children unsupervised, much less that she regain custody of them. As to Father's contention that there was insufficient evidence to support the family court's permanent custody order, we note that his argument, like Mother's, rests

upon his assertion that the family court did not find him to be a credible witness and, correlatively, erred in concluding that the testimony of other witnesses weighed in favor of granting the DHS's motion. Be that as it may, the record reflects substantial evidence supporting the family court's order. As with Mother, none of Father's service providers were able to testify that he be allowed unsupervised visitation with the children, much less that he regain custody of them. Each service provider harbored concerns regarding his ability to control his anger and believed that his parenting techniques remained lacking despite participation in services provided by the DHS.

We further hold that the family court's alleged error, if any, in summarily denying Mother's and Father's respective motions for reconsideration without first conducting a hearing with regard to the motions is harmless because, inasmuch as neither Mother nor Father presented any new argument, authority, or evidence beyond that adduced at the permanent plan hearing, the family court's failure to conduct a hearing does not appear to be "inconsistent with substantial justice" and, in any event, did not affect their substantial parental rights. See Hawai‘i Family Court Rules Rule 61 (2000) (providing, inter alia, that a family court's omission is not a ground for vacating, modifying, or otherwise disturbing a judgment or order, "unless refusal to take such action appears . . . inconsistent with substantial justice" and that, "at every stage of the proceeding," an error or defect that "does not affect the substantial rights of the parties" "shall be disregarded").

Therefore,

IT IS HEREBY ORDERED that the family court's orders from which the appeal is taken are affirmed.

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

On the briefs:

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mother-appellant
in connection with
No. 23635

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