NO. 23659

IN THE SUPREME COURT OF THE STATE OF HAWAI I

IN THE INTEREST OF DOE CHILDREN:

JANE DOE, Born on March 17, 1986[1]
JOHN DOE, Born on April 17, 1995

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 98-05716)

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

Respondent-Appellant Mother (Mother)[2] appeals a June 23, 2000 order of the family court of the first circuit (the court)[3] awarding permanent custody of John Doe (John) to the Department of Human Services (DHS), pursuant to Hawai i Revised Statutes (HRS) §§ 587-2 (1993 & Supp. 1999) and 587-73 (1993), and a July 14, 2000 order denying Mother s motion for reconsideration. We affirm the orders for the reasons stated herein.

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[1] The petition sought family supervision of twelve-year-old Jane Doe (Jane), but the family court of the first circuit ordered placement of Jane with Mother in family supervision status because such placement was determined to be in Jane s best interest. On September 1, 2000, the court terminated jurisdiction with respect to Jane on the ground that Mother could provide a safe family home for her.

[2] For purposes of preserving confidentiality, Mother-Appellant is referred to as Mother, and the subject child is referred to as John Doe.

[3] The Honorable Robert Mark Browning presided over the trial proceedings discussed herein.

On appeal, Mother alleges that she was not afforded a reasonable opportunity to reunify with John: (1) because the court misapplied the clear and convincing evidence standard relating to permanent custody; and (2) because an amendment to HRS § 587-73(a)(2)(1993),[4] effective July 1, 1999, does not apply to the instant case, Mother was entitled to three years within which to establish a safe family home prior to termination of her parental rights.

A family court s [findings of fact] are reviewed on appeal under the clearly erroneous standard, . . . [and its conclusions of law] are reviewed on appeal de novo, under the right/wrong standard. In re Jane Doe, born on June 20, 1995, 95 Hawai i 183, 190, 20 P.3d 616, 623 (2001) (citations omitted). However, a determination regarding whether it is reasonably foreseeable that a parent will become able to provide a safe family home within a reasonable period of time presents mixed

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[4] In 1998, when the petition was filed, HRS § 587-73(a)(2) provided that the foreseeable maximum length of time for safe family home status was three years:

> (a) At the permanent plan hearing, the court shall . . . determine whether there exists clear and convincing evidence that:
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> . . . .
>
> (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 three years from the date upon which the child was first placed under foster custody by the court[.]

questions of law and fact and is, therefore, subject to the clearly erroneous standard. See id.

The record supports the conclusion that the court did not make a clearly erroneous determination in ruling there was clear and convincing evidence that   it [wa]s not reasonably foreseeable that [Mother]. . . w[ould] become willing and able to provide [John] with a safe family home, even with the assistance of a service plan, within a reasonable period of time[.]   Expert testimony indicated that there was not a fixed and identifiable point in time whereupon a reasonable opinion could be rendered with respect to Mother s ability to provide a safe family home. Dr. Jeanne Hoffman, John s psychologist, testified that persons such as Mother who are diagnosed with Munchausen s Syndrome by Proxy have a   very long   road to recovery, normally spanning several years, and that the disorder is a potentially life-threatening form of child abuse. Irrespective of her Munchausen s Syndrome by Proxy diagnosis, Mother s psychological traits had   pose[d] a handicap to [her] ability to parent a special needs child.   Dr. Brenda Wong, a psychologist who had prepared a comprehensive psychological evaluation of Mother, stated that she needed   at least a year   with   solid motivation on Mother s behalf to treat her   dysthymic . . . personality disorder . . . [which is] a chronic depressive kind of disorder. DHS social worker Tracy Ober believed that Mother was   willing

to provide a safe family home but didn t think the ability [wa]s there[.] As to the length of time it would take Mother to provide a safe family home, Ober ascertained that we can t look at a normal time frame like other kids. She was unable to render an opinion as to the length of time required for Mother to provide a safe family home. The record further reflects that John had made substantial physical, developmental, and emotional progress since being placed in foster care.

As to Mother s second argument, the court did not erroneously find or conclude that Mother would not become willing and able to provide a safe family home within a reasonable time because there was evidence that Mother would not be able to sufficiently resolve her problems at an identifiable point in the future. HRS § 587-73(a)(2) does not require the family court to wait three years before terminating parental rights, but only that it forecast whether a safe family home would be provided within three years.

> [T]he three-year period defines the limits of that reasonable period of time for which a parent s willingness and ability to provide a safe family home must be forecasted. HRS § 587-73(a)(2), therefore, does not apply to reunification efforts per se, but establishes the period of time which must be taken into account in predicting when a safe home will become available for the purpose of determining whether parental rights should be terminated.

In re John Doe, born on September 14, 1996, 89 Hawai i 477, 492, 974 P.2d 1067, 1082 (App.), cert. denied, 89 Hawai i 477, 974 P.2d 1067 (1999). Therefore,

IT IS HEREBY ORDERED that the court s June 23, 2000 order awarding permanent custody and the July 14, 2000 order denying Mother s motion for reconsideration are affirmed.

DATED: Honolulu, Hawai i, August 31, 2001.

On the briefs:

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Mother-Appellant.

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