

NOT FOR PUBLICATION

NO. 24115

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Interest of

JOHN DOE,

Born on November 15, 1990, Minor

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 96-04512)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Wong, assigned by reason of vacancy)

Mother-appellant (Mother) appeals from: (1) the November 24, 2000 order awarding permanent custody of John Doe, born on November 15, 1990 (Doe), to the Department of Human Services-Appellee (DHS); and (2) the January 24, 2001 order denying Mother's December 4, 2000 motion for reconsideration, entered by the Family Court of First Circuit (the court), the Honorable Karen M. Radius, presiding.

On appeal, Mother argues that the court erred in determining as a matter of law that Mother was not willing and able to provide a safe home for her child.

Generally, the family court possesses wide discretion in making its decisions regarding the placement of a dependent child, and those decisions will not be set aside unless there is a manifest abuse of discretion. See In re Jane Doe, Born on June 16, 1999, 101 Hawai'i 220, 227, 65 P.3d 167, 174 (2003).

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The applicable test is as follows:

[T]he family court's determinations pursuant to [Hawai'i Revised Statutes (HRS)] § 587-73(a) with respect to (1) whether a child's parent is willing and able to provide a safe family home for the child and (2) whether it is reasonably foreseeable that a child's parent will become willing and able to provide a safe family home within a reasonable period of time present mixed questions of law and fact; thus inasmuch as the family court's determinations in this regard are dependant upon the facts and circumstances of each case, they are reviewed on appeal under the 'clearly erroneous' standard.

In re Jane Doe, Born June 20, 1995, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) (citations omitted) (emphases added). The family court "is given much leeway in its examination of the reports concerning [a child's] care, custody[,] and welfare, and its conclusions [in this regard], if supported by the record and not clearly erroneous, must stand on appeal." Id. at 190, 20 P.3d. at 623 (quoting In re John Doe, Born on September 14, 1996, 89 Hawai'i 477, 487, 974 P.2d 1067, 1077 (App.), cert denied, 89 Hawai'i 477, 974 P.2d 1067 (1999) (brackets in original) (citations omitted). Hence, unless the court's determinations are clearly erroneous, the judgment must be affirmed.

In general, a matter is clearly erroneous when "(1) the record lacks substantial evidence in support of the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made." In re John Doe, 89 Hawai'i at 487, 974 P.2d at 1077 (quoting Hirono v. Peabody, 81 Hawai'i 230, 232, 915 P.2d 704, 706 (1996)).

The court reviewed substantial evidence that, inter alia, Mother had been diagnosed with Post Traumatic Stress

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Disorder, Dysthymic Disorder, and Personality Disorder, which had been reflected in Mother's troubled marriage, in a prior incident where she sexually propositioned a minor, and in the frequency of her different sexual partners. In addition, Mother had a history of sexually abusing Doe, and there was testimony that she could possibly abuse him again. On the other hand, during the time that Doe was placed in foster care, his school attendance, behavior, attitude, and school work improved. In sum, the court decision is amply supported by substantial evidence in the record and, thus, is not clearly erroneous.

Accordingly, 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, we hold that the court's determination was supported by substantial evidence on the record and was not clearly erroneous. Therefore,

IT IS HEREBY ORDERED that the court's November 24, 2000 order awarding permanent custody of Doe to DHS and its January 24, 2001 order denying Mother's motion for reconsideration, from which this appeal is taken, are affirmed.

DATED: Honolulu, Hawai'i, June 26, 2003.

On the briefs:

Richard D. Gronna for
mother-appellant.

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