

NO. 22601

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE INTEREST OF JOHN DOE,¹
Born on July 16, 1994

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-S NO. 96-0028K)

SUMMARY DISPOSITION ORDER

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

Respondent-Appellant Mother (Mother)² appeals from the February 18, 1999 order of the family court of the third circuit (the court) awarding permanent custody to the Department of Human Services and establishing a permanent plan for Child (Child), born July 16, 1994, and from the court's May 6, 1999 decision on Mother's motion to vacate, alter, or reconsider the aforesaid order.

First, Mother argues that the court abused its discretion in the ordering of several service plans. Because the family court has "wide discretion" and its decisions will not be overturned "unless there is a manifest abuse of discretion[,]" In

¹ The caption on the August 24, 1999 Amended Record on Appeal states that this case involves "Jane Doe." However, the petition and the record indicate that the minor involved is a male. Therefore, the minor is referred to as "John Doe."

² For purposes of preserving confidentiality, Respondent-Appellant Mother is referred to as "Mother" and the subject child is referred to as "Child."

re Jane Doe, 84 Hawai'i 41, 46, 928 P.2d 883, 888 (1996), the court did not abuse its discretion in ordering service plans which required Mother to complete substance abuse treatment. Mother's history of substance abuse, her inability to complete several treatment programs, and her continued use of drugs, were factors the court could properly consider in determining whether Mother was capable of providing a safe family home for Child. Contrary to Mother's assertion that the service plans failed to take into account the purpose set forth in Hawai'i Revised Statutes (HRS) § 587-1 (1993), prompt action is necessary in "cases involving children who have been harmed or are threatened with harm[.]" HRS § 587-1. We conclude the court did not abuse its discretion in ordering the service plans.

Second, Mother maintains that the court abused its discretion in determining there was clear and convincing evidence that she would be unable to provide Child with a safe family home within three years, citing HRS § 587-73(a)(2) (1993). The three-year time period in HRS § 587-73(a)(2) "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 Doe, 89 Hawai'i 477, 492, 974 P.2d 1067, 1082 (App. 1999).

The record contains evidence detailing Mother's history of substance abuse, inability to fully participate in and

complete treatment, denial of her abuse problem, and continued use of drugs, as well as evidence of Child's behavioral and developmental problems. Mother enrolled in at least seven different substance abuse treatment programs, but had yet to successfully complete one by the time of the February 1, 1999 permanent plan hearing. In light of this evidence, the court did not abuse its discretion in finding that there was clear and convincing evidence Mother would not be able to provide a safe family home within three years.

Third, Mother asserts that the court abused its discretion in denying her motion to vacate, alter or reconsider the February 18, 1999 order, because it did not consider that she was participating in the Hawai'i Alcoholism Foundation's Sand Island Treatment Center. However, this information was made available to the court in the safe family home "guidelines" filed on January 14, 1999 in FC-S No. 96-0029K, a case involving Child's half-sibling.³ Additionally, in arguing that she would have been able to provide a safe family home in three years, Mother appears to raise the same argument regarding the phrase "foreseeable future" in HRS § 571-61(b)(1)(E), which was raised and rejected in Doe, 89 Hawai'i at 491-92, 974 P.2d 1081-82. The court did not abuse its discretion in rejecting Mother's assertion that it was foreseeable she would provide a safe

³ We take judicial notice of the "guidelines."

family home in seven months in light of Mother's failure to complete a single substance abuse program in two years and five months. Therefore,

IT IS HEREBY ORDERED that the court's February 18, 1999 order awarding permanent custody and establishing a permanent plan, and its May 6, 1999 decision on Mother's motion to vacate, alter or reconsider the aforesaid order, are affirmed.

DATED: Honolulu, Hawai'i, September 6, 2000.

On the briefs:

Stephanie St. John,
for Respondent-
Appellant.

Mary Anne Magnier,
Nolan Chock and
Christobel K.
Kealoha, Deputy
Attorneys General,
State of Hawai'i, for
Department of
Human Services-Appellee.