NO. 23066

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

IN THE INTEREST OF

JOHN DOE,
Born on August 6, 1987

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 88-00789)

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

Mother-Appellant (Mother)[1] appeals from a September 27, 1999 order and an October 4, 1999 amended order of the Family Court of the First Circuit (the court), awarding permanent custody of Child to Appellee Department of Human Services of the State of Hawai‘i (DHS), concluding that Mother could not provide a safe family home for Child, even with the assistance of a service plan, and establishing a permanent plan of foster care, leading to Child’s potential adoption by third parties. In

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[1] For purposes of preserving confidentiality, Mother-Appellant is referred to as “Mother,” and the subject child is referred to as “Child.”

addition, Mother appeals from the court's December 9, 1999 order denying her motion for reconsideration.

First, we discern no judicial impropriety that requires a new trial. Any taint from the judge's September 2, 1997 pre-trial hearing statement that "under no circumstances will the court not grant a Motion for Permanent Custody" did not affect the September 27, 1999 trial which was presided over by a different judge; Mother did not file an appropriate affidavit alleging that judicial disqualification was proper; and although appearances of impropriety may require recusal even absent bias in fact, "'bad appearances alone do not require disqualification.'" State v. Ross, 89 Hawai'i 371, 380, 974 P.2d 11, 20 (1998) (quoting Del Vecchio v. Illinois Dept. of Corrections, 31 F.3d 1363, 1372 (7th Cir. 1994), cert. denied, 514 U.S. 1037, 115 S. Ct. 1404 (1995)).

Second, the court did not improperly consolidate the issues for hearing in light of the past court history of the case and of Mother's and her trial counsel's agreement to do so at the June 19, 1999 hearing. Also, no further reunification efforts were required in light of the foregoing; the prior failed efforts at reunification ("at the permanent plan hearing the court shall

consider fully all relevant prior and current information . . .," Hawai'i Revised Statutes (HRS) § 587-73 (Supp. 1999)); the prior appellate affirmation that the court was not clearly erroneous in finding that the DHS had previously employed reasonable efforts to reunite the family, see In re John Doe Born August 6, 1987, 83 Hawai'i 367, 371 n.8, 926 P.2d 1290, 1294 n.8, reconsideration granted, 83 Hawai'i 545, 928 P.2d 39 (1996); the court's authority to make appropriate orders if it determines "the child's family home is not a safe family home even with the assistance of a service plan," HRS § 587-71(d) (Supp. 2000); and the apparent existence of a service plan in effect prior to the September 27, 1999 trial.

Third, the court did not err in finding there was clear and convincing evidence that Mother could not presently or in the reasonably foreseeable future provide a safe family home. "'The decision as to what custodial arrangements are in the best interest of a child is a matter or question of ultimate fact reviewable under the clearly erroneous standard of review,'" In re Doe, 89 Hawai'i 477, 487, 974 P.2d 1067, 1077 (App.), cert. denied, 89 Hawai'i 477, 947 P.2d 1067 (1999) (quoting In re Doe, 7 Haw. App. 547, 55[7], 784 P.2d 873, 880 (1989)), and there was substantial evidence in the record to support the court's

conclusions that Mother was not presently willing and able to provide a safe family home and that it was not reasonably foreseeable Mother would become willing and able to do so.

Fourth, the court did not improperly apply the "best interest of the child" standard. Parental rights cannot be terminated for the sole reason that it would be in Child's best interest, see Woodruff v. Keale, 64 Haw. 85, 99, 637 P.2d 760, 769 (1981); however, in deciding whether to terminate Mother's parental rights, the record reflects that the court considered other factors in the present case. The court also did not err in determining, based on the evidence, that the best interest of the child did not favor reunification with Mother. When applying the best interest of the child standard, the court retains a large amount of discretion. See In re Doe, 90 Hawai'i 200, 210, 978 P.2d 166, 176 (1999).

Finally, the court's rejection of Mother's assertion that the absence of a parent-child bond between her and Child should be attributed to DHS was not clearly erroneous, and In re Valerie D., 223 Conn. 492, 613 A.2d 748 (1992), cited by Mother, is distinguishable because, in the present case, Child was in foster care since Father voluntarily placed Child with DHS, Mother was unavailable for placement for approximately three years, attempts at visitation appeared traumatic for Child, and,

following the prior two appeals, Mother apparently left the jurisdiction. Therefore,

IT IS HEREBY ORDERED that the court's September 27, 1999 order, October 4, 1999 amended order awarding custody of Child to DHS, and December 9, 1999 order denying Mother's motion for reconsideration are affirmed.

DATED: Honolulu, Hawai‘i, January 30, 2001.

On the briefs:

Chris C. China, for
Mother-Appellant.

Patrick A. Pascual and
Mary Anne Magnier, Deputy
Attorneys General, for
Department of Human
Services-Appellee.