

NO. 23412

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of JOHN DOE, Born on May 19, 1994
(NO. 23412 (FC-S NO. 94-03400))

In the Interest of JOHN DOE, Born on April 1, 1991
(NO. 23413 (FC-S NO. 95-03707))

In the Interest of JANE DOE, Born on February 3, 1997
(NO. 23414 (FC-S NO. 98-05583))

In the Interest of DOE CHILDREN:

JANE DOE, Born on December 18, 1988
JOHN DOE, Born on November 10, 1989
(NO. 23415 (FC-S NO. 89-01583))

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 94-03400, FC-S NO. 95-03707,
FC-S NO. 98-05583, and FC-S NO. 89-01583)

SUMMARY DISPOSITION ORDER

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

In this consolidated matter,¹ Mother and Father each appeal from: (1) the February 25, 2000 order of the first circuit family court, the Honorable R. Mark Browning presiding, granting the Department of Human Service's motion for permanent custody, revoking the existing service plan, and terminating

¹ By order dated July 12, 2000, this court consolidated Nos. 23412, 23413, 23414 and 23415 under No. 23412.

Mother and Father's parental rights in their five children,
(2) the April 3, 2000 order of the first circuit family court denying Mother and Father's motion for reconsideration, and
(3) the first circuit family court's May 30, 2000 findings of fact and conclusions of law.

On appeal, Mother argues that the family court:

(1) erred by discrediting the testimony of Dan Motet, M.D.;
(2) erred by reaching a conclusion other than that recommended by Ewa Stamper, M.D.; and (3) erred by refusing to grant Mother and Father additional time to demonstrate compliance with the October 20, 1999 service plan. Father argues: (1) that the family court abused its discretion by concluding that Father was not able to provide the children with a safe family home in the reasonably foreseeable future, even with the assistance of a service plan; (2) that sixteen of the family court's findings of fact are clearly erroneous; and (3) that three of the family court's conclusions of law are erroneous.

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 by the parties, we hold as follows:

Mother's first point of error is without merit because the credibility of witnesses and the weight to be given their testimony are within the province of the trier of fact and, generally, will not be disturbed on appeal. State v. Jenkins, 93

Hawai'i 87, 101, 997 P.2d 13, 27 (2000) (citation omitted); Bank of Hawai'i v. Kunimoto, 91 Hawai'i 372, 390-91, 984 P.2d 1198, 1216-17 (1999) (citing In re Estate of Herbert, 90 Hawai'i 443, 454, 979 P.2d 39, 50 (1999) (citation omitted)). With respect to Mother's second and third points of error, the record contains substantial evidence supporting the family court's conclusions that (1) Mother was not willing or able to provide the children with a safe family home, even with the assistance of a service plan, and (2) it was not reasonably foreseeable that Mother would become willing and able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time. See HRS § 587-73(a) (Supp. 2000).

With respect to Father's arguments on appeal, the record contains substantial evidence supporting the family court's conclusions that (1) Father not willing and able to provide the children with a safe family home, even with the assistance of a service plan, (2) it was not reasonably foreseeable that Father would become willing and able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time, and (3) the proposed permanent plans would assist in achieving a goal which was in the best interest of the children. See HRS § 587-73(a) (Supp. 2000). In addition, all of the challenged findings of fact are supported by substantial evidence. Accordingly,

IT IS HEREBY ORDERED that the order filed on February 25, 2000, the order filed on April 3, 2000, and the written findings of fact and conclusions of law filed on May 30, 2000 by the family court of the first circuit from which this appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, June 5, 2001.

On the briefs:

Jeffry R. Buchli for
father-appellant

Edward J.S.F. Smith for
mother-appellant

Susan Barr Brandon and
Mary Anne Magnier for
Appellee Department of
Human Services