

NO. 23422

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of Doe Children:

Jane Doe, born on February 20, 1983
Jane Doe, born on September 2, 1985; and
John Doe, born on December 23, 1986

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 97-4835)

SUMMARY DISPOSITION ORDER

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

Respondent-appellant Father (Father)¹ appeals an order from the family court of the first circuit, the Honorable Marilyn Carlsmith presiding, filed on March 1, 2000. On appeal, Father asserts that the family court committed reversible error when it: (1) ruled that Father was not entitled to cross-examine Doe A, Doe B, and Doe C (collectively "the Children"); (2) failed to invoke judicial estoppel when it allowed Child Protective Services (CPS) to argue that the Children's sexual allegations were true; and (3) ruled that it had jurisdiction to review the case and award foster custody of the Children.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve Father's arguments as follows: (1) Father's constitutional rights were not violated when the trial court ruled that the Children would not be subjected to cross-

¹ To preserve confidentiality, Father-Appellant is referred to as "Father," and Father's three children are referred to respectively as "Doe A," "Doe B," and "Doe C."

examination because, in weighing the private interest affected by the proceeding, the risk of error by the procedure used, and the government's interest in the use of the procedure, the Children's welfare outweighed Father's private interest pursuant to In re Doe Children, 85 Hawai'i 119, 123, 938 P.2d 178, 182 (1997); (2) the family court was not required to invoke judicial estoppel because the DHS's 1997 petition for family supervision was dismissed by stipulation, and not court order, and its prior position was not inherently inconsistent with its stance in the present case; and (3) it was not clearly erroneous for the family court to find that Father posed a threat of harm to the Children, and for the court to retain jurisdiction pursuant to Hawai'i Revised Statutes §§ 571-11(9) (1993) and 587-11 (1993) because there was substantial evidence to support this conclusion.

THEREFORE, IT IS HEREBY ORDERED that the family court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, March 7, 2002.

On the briefs:

Brian Custer for
father-appellant

Lili A. Young and Mary Anne
Magnier, Deputy Attorneys
General, for Department of
Human Services-appellee

I concur in the result.