

NO. 23592

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Interest of JANE DOE, Born on December 21, 1994;  
(No. 23592 (FC-S 98-05146))

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In the Interest of JANE DOE, Born on September 17, 1992; and  
(No. 23593 (FC-S 98-05145))

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In the Interest of JANE DOE, Born on June 3, 1997,  
(No. 23594 (FC-S 98-05147))

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APPEALS FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NOS. 98-05146, 98-05145, & 98-05147 )

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Father appeals the judgment of the family court of the first circuit, the Honorable Paul T. Murakami presiding, awarding custody of Child 1, Child 2, and Child 3 (collectively the "Children") to the Department of Human Services (DHS) pursuant to the Child Protective Act, chapter 587 of the Hawai'i Revised Statutes (HRS). On appeal, Father argues that the family court erred in: (1) concluding that Father was not presently willing and able to provide the Children with a safe family home, even with the assistance of a service plan; (2) concluding that 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 time; and (3) finding that the permanent plan proposed by the DHS, which recommended adoption, was in the best interests 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, we resolve defendant-appellant's arguments as follows: (1) the family court did not err in its determination that Father was not presently willing and able to provide the Children with a safe family home; (2) the family court did not err in its determination that it was not reasonably foreseeable that Father would be able to provide a safe family home; and (3) the family court did not err in concluding that the permanent plan was in the best interests of the Children.

The family court possesses "wide discretion in making its decisions and those decisions will not be set aside unless there is manifest abuse of discretion." In re Jane Doe, 77 Hawai'i 109, 115, 883 P.2d 30, 36 (1994). Moreover, these determinations "are reviewed on appeal under the 'clearly erroneous' standard." In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001). Thus, on appeal the issue is whether the record contained substantial evidence to support the family courts determination.

The family court found the DHS's sole witness, a DHS social worker, to be credible. See State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996) (stating that the "testimony of a single witness, if found by the trier of fact to have been credible" to be sufficient for a finding of substantial evidence). The social worker determined through independent investigation that Father drank during an unsupervised visit in violation of the reunification plan. Upon learning that the Children informed the foster mother of his drinking, Father hit two of the Children. The Guardian Ad Litem confirmed both of these allegations independently. Father testified that, despite having been informed that he must attend Alcoholics Anonymous/Narcotics Anonymous meetings and abstain from drinking alcoholic beverages, he continued to drink socially. Father was

removed from his parents' property by the police in response to his inebriated behavior. Finally, all of the parties conceded that the Children love Father and had no reason to lie about Father's conduct during visits. The evidence produced by the DHS was substantial. The record contains no information that leaves this court with the definite and firm conviction that a mistake has been made. Therefore, we cannot say that the family court clearly erred in awarding custody of the Children to the DHS pursuant to the Child Protective Act.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's award of permanent custody of the Children to DHS is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2002.

On the briefs:

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for father-appellant

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