

NO. 23665

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE INTEREST OF JANE DOE
Born on February 5, 1995
(NO. 23665 (FC-S NO. 98-05490))

IN THE INTEREST OF JANE DOE
Born on July 16, 1998
(NO. 23682 (FC-S NO. 98-05491))

APPEALS FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NOS. 98-05490 & 98-05491)

SUMMARY DISPOSITION ORDER

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

Mother-Appellant (Mother)¹ appeals from a July 19, 2000 order of the district family court of the first circuit (the court)² awarding permanent custody and establishing a permanent plan that concluded it was not reasonably foreseeable that Mother would become willing and able to provide her children, Jane Doe 1 and Jane Doe 2, with a safe family home, even with the assistance of a service plan, within a reasonable period of time, and from its July 28, 2000 order denying Mother's motion for reconsideration of the July 19, 2000 order.

Mother contends that the family court erred when (1) it

¹ For purposes of preserving confidentiality, Mother-Appellant is referred to as Mother and the subject children are referred to as Jane Doe 1 (Jane 1) and Jane Doe 2 (Jane 2).

² The Honorable Paul T. Murakami presided over this matter.

allowed a clinical psychologist to testify to a psychological evaluation when the psychologist had not personally interviewed Mother and (2) in determining that it was not reasonably foreseeable that Mother would be willing and able to provide a safe family home for her children within a reasonable period of time.

Whether expert testimony should be admitted at trial rests within the sound discretion of the trial court and will not be overturned unless there is a clear abuse of discretion. In re Doe, 91 Hawai i 166, 176, 981 P.2d 723, 733 (App. 1999) (internal quotation marks and citation omitted). In short, expert testimony must be (1) relevant and (2) reliable. Id. There is no requirement that an expert who testifies must have personally obtained the facts or data upon which the expert relies. Experts may base their opinions on facts or data made known to the expert at or before the hearing and of a type reasonably relied upon by experts in the particular field. Hawai i Rules of Evidence Rule 703 (1993). The clinical psychologist apparently relied on tests given in his field of expertise, and Mother does not contend otherwise. An expert may rely on presentation of data to the expert outside of court and other than by his or her own perception. Lai v. St. Peter, 10 Haw. App. 298, 309, 869 P.2d 1352, 1359 (1994), overruled on other grounds by Richardson v. Sport Shinko, 76 Hawai i 494, 880

P.2d 169 (1994). The testimony of the clinical psychologist falls into this category and, thus, the court did not commit any error by allowing it.

As to Mother's second point, there was substantial evidence to support the finding that it was not reasonably foreseeable that Mother would be able to provide a safe family home for her children within a reasonable amount of time. Findings of the family court are reviewed under the clearly erroneous standard. In re John Doe, 89 Hawaii 477, 486, 974 P.2d 1067, 1076 (App.) cert. denied, 89 Hawaii 477, 974 P.2d 1067 (1999). A finding . . . is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. State v. Okamura, 78 Hawaii 383, 392, 894 P.2d 80, 89 (1995) (internal quotation marks and citation omitted). Conclusions of law are reviewed de novo under the right/wrong standard. In re Doe, 84 Hawaii 41, 46, 928 P.2d 883, 888 (1996). Substantial evidence . . . is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Id.

Jane Doe 2 tested positive for methamphetamine at birth on July 16, 1998. Prior to Jane Doe 2's birth, Mother tested

positive for drug use on three of seven tests. Jane 2 has been in foster custody since July 21, 1998. Mother has a long history of drug abuse beginning at a young age and until she was pregnant with Jane Doe 1. Mother apparently continued to use drugs after Jane Doe 1's birth.

As of December 1998, Mother had been discharged from two outpatient drug treatment programs for non-compliance, and was unwilling to enter a residential drug program. On December 29, 1998, Jane 1 was placed in foster custody. Although Mother completed an outpatient drug program in March 2000, she had relapsed in February 2000 and the program recommended she continue with her relapse plan, parent educational classes, anger management program, and noted that she would benefit from psychological counseling, even after her discharge from the program. Mother failed to complete a required psychological evaluation. The partial evaluation completed on February 3, 2000 indicated that Mother was at a high risk for relapse and addiction. After Jane Doe 1 and Jane Doe 2 were placed in foster care, Mother did not initiate visits with her children and did not inform herself of care necessary for the asthmatic condition of Jane 2.

Under the foregoing circumstances, the court's finding that it was not reasonably foreseeable that Mother would be able to provide a safe family home in a reasonable amount of time was

not clearly erroneous, and we are not left with a definite and firm conviction that a mistake has been made. We conclude the court did not abuse its discretion. The

[f]amily court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion. Under the abuse of discretion standard of review, the family court's decision will not be disturbed unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant, and its decision clearly exceeded the bounds of reason.

Doe, 84 Hawaii at 46, 928 P.2d at 888 (internal quotation marks and citations omitted). Therefore,

IT IS HEREBY ORDERED that the court's July 19, 2000 order awarding permanent custody and establishing a permanent plan, and the July 28, 2000 order denying Mother's motion for reconsideration are affirmed.

DATED: Honolulu, Hawaii, August 31, 2001.

On the briefs:

Joseph Dubiel for
Mother-Appellant.

David McCormick and Mary Anne
Magnier, Deputy Attorneys
General, for Department
of Human Services-Appellee.