

NO. 23788

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE INTEREST OF JANE DOE
Born on February 8, 1997
(NO. 23788 (FC-S NO. 97-04714))

IN THE INTEREST OF JANE DOE
Born on December 18, 1995
(NO. 23795 (FC-S NO. 97-04711))

IN THE INTEREST OF JANE DOE
Born on February 27, 1999
(NO. 23796 (FC-S NO. 99-06253))

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NOS. 97-04714, 97-04711 & 99-06253)

SUMMARY DISPOSITION ORDER

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

In this consolidated matter,¹ Mother-Appellant appeals from the family court's July 10, 2000 Orders, the Honorable Marilyn Carlsmith presiding, awarding permanent custody of Jane Doe, born on December 18, 1995 (Jane 1), Jane Doe, born on February 8, 1997 (Jane 2), and Jane Doe, born on February 27, 1999 (Jane 3) to the Department of Human Services (DHS), and the

¹ Nos. 23788, 23795, and 23796 were consolidated for appeal for purposes of briefing and disposition under No. 23788 by order of this court, filed on December 20, 2000.

family court's August 31, 2000 orders denying Mother's Motion for Reconsideration. On appeal, Mother contends the family court erred when it granted the DHS's motion for Permanent Custody and Establishing a Permanent Plan because: (a) DHS did not exert reasonable and active efforts to reunify the children with Mother; (b) the service plans offered by DHS and ordered by the court were not fair, appropriate, or comprehensive; and (c) the two-year statutory marker to establish the ability to provide a safe family home did not provide adequate time to deal with Mother's childhood traumas and thus constituted an unconstitutional deprivation of due process. Mother further contends the family court erred by denying her Motion for Reconsideration.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and issues raised, we hold as follows: (1) the family court did not err when it granted the state's motion for permanent custody and establishing a permanent plan because (a) the family court's conclusion that DHS demonstrated "reasonable efforts" to reunify Mother and children was not clearly erroneous, (b) the service plans offered by DHS and ordered by the family court were fair, appropriate, and comprehensive, and (c) in accordance with In re Jane Doe, Born on June 20, 1995, 95 Hawai'i 183, 20 P.3d 616 (2001), the two-year

statutory marker under HRS § 587-73(a)(2) (1993)² to establish the ability to provide a safe family home is constitutional, and thus did not constitute an unconstitutional deprivation of Mother's due process rights. As such, the family court also did not err by denying Mother's Motion for Reconsideration.

IT IS HEREBY ORDERED that the family court orders from which the appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, January 8, 2002.

On the briefs:

Glenn D. Choy
for mother-appellant

James W. Walther,
Jay K. Goss, and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-appellee

² HRS § 587-73 states in relevant part,
Permanent plan hearing. (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that: . . .
(2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed two years from the date upon which the child was first placed under foster custody by the court