

NO. 24160

IN THE SUPREME COURT OF THE STATE OF HAWAII

No. 24160

In the Interest of

JANE DOE, Born August 12, 2000
(FC-S No. 00-06862)

No. 24164

In the Interest of

JOHN DOE, Born November 17, 1994
(FC-S No. 98-05390)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NOS. 00-06862 & 98-05390)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Masuoka, assigned by
reason of vacancy)

Mother-appellant (Mother) appeals from: (1) the January 18, 2001 order awarding permanent custody of John Doe,¹ born November 17, 1994, and Jane Doe, born August 12, 2000, to the Department of Human Services (DHS); and (2) the February 14, 2001 order denying Mother's January 29, 2001 motion for reconsideration, entered by the Family Court of the First Circuit, the Honorable Marilyn Carlsmith, presiding.

¹ Mother's appeal with respect to John Doe was dismissed via a stipulated order, filed on August 13, 2002.

*** * * NOT FOR PUBLICATION * * ***

With respect to her appeal regarding Jane, Mother argues that the family court's various findings of fact (FOF) and conclusions of law (COL) are "clearly erroneous because DHS did not exert reasonable efforts to assist Mother with her mental health issues, and Mother was therefore not given a reasonable period of time to provide a safe family home for [Jane]."

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, we address Mother's arguments as follows.

Hawai'i Revised Statutes (HRS) § 587-1 (1993) states in relevant part that "[e]very reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems which put the child at substantial risk of being harmed in the family home." In addition, HRS § 587-26(d) (1993) states that "[t]he service plan should include steps that are structured and presented in a manner which reflects careful consideration and balancing the priority, intensity, and quantity of the services which are needed with the family's ability to benefit from those services."

Upon consideration of Dr. Steven Choy's advice and balancing the priority of needed services, DHS structured Mother's individualized service plan to target Mother's substance abuse issues before referring her for a psychological evaluation,

*** * * NOT FOR PUBLICATION * * ***

and, therefore, we cannot say that DHS's delay in referring Mother to a psychological evaluation was in violation of its statutory duties under HRS chapter 587. In light of the evidence in the record, we conclude that DHS exerted reasonable and active efforts to reunify Mother with Jane.

Moreover, because Mother resisted the services offered by DHS, disobeyed court orders for testing to determine her sobriety, and failed to comply with the court-ordered service plans, we hold that the family court did not clearly err in determining that it was not reasonably foreseeable that Mother would be willing and able to provide Jane with a safe family home, even with the assistance of a service plan, within a reasonable period of time. Therefore,

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

DATED: Honolulu, Hawai'i, May 2, 2003.

On the briefs:

Kevin S. Adaniya,
for appellant-mother

Jay K. Goss and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services