NO. 24386

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

IN THE INTEREST OF JOHN DOE
Born on September 16, 1999

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 00-06577)

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

Mother-appellant ("Mother") appeals from the Order Awarding Permanent Custody filed in the Family Court of the First Circuit on May 23, 2001 and the Orders Concerning Child Protective Act filed in the Family Court of the First Circuit on June 12, 2001.[1] On appeal, Mother argues that the family court clearly erred in finding by clear and convincing evidence that: (1) Mother would not be able to provide the child with a safe family home in the reasonably foreseeable future, and (2) permanent custody was in the best interests of the child.

Upon carefully reviewing the record and the briefs submitted by both parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows:

There is nothing in the record to indicate that the family court clearly erred in its determination that there was clear and convincing evidence that Mother will not become able to

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[1] The Honorable Lillian Ramirez-Uy presided on both motions.

provide a safe home for the minor within a reasonable period of time, even with the assistance of a service plan. There is substantial evidence in the record indicating that Mother failed to provide adequate care for the minor, that she has not made the necessary progress in her own treatment, and that she will not be able to provide a safe family home within a reasonable period of time. See In re Jane Doe, Born on June 20, 1995, 95 Hawai'i 183, 192, 197, 20 P.3d 616, 625, 630 (2001). Accordingly, Mother's first argument fails.

There is nothing in the record to indicate that the family court clearly erred in its determination that permanent custody was in the best interests of the child. Upon fulfilling the requirements of HRS § 587-73(a), HRS § 587-73(b) instructs that the court shall order that the existing service plan be terminated, that temporary foster custody is revoked, that permanent custody to 'an authorized agency' be awarded, and that 'an appropriate permanent plan' be implemented. See HRS § 587-73(b). Mother cites In re John Doe:

> The fact that the best interests of the children would be better served by their adoption or that they would receive better care in the custody of foster parents does not satisfy the HRS 571-61(b)(1)(E) requirement that the parent be found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the children.

In re John Doe, Born on March 12, 1981, 8 Haw. App. 377, 381, 805 P.2d 1215, 1218 (1991). In the present case, the family court correctly considered and decided the unfitness of the child's parents before ordering the permanent plan. See In re Jane Doe,

95 Hawai‘i at 194, 197, 20 P.3d at 627, 630. HRS § 587-73(a)(3) provides a statutory presumption that where parental unfitness has been proven by clear and convincing evidence, "[i]t is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes," especially where a child is of very young age. No evidence was offered here to overcome that presumption. Accordingly, the family court did not err in determining that permanent custody was in the child's best interests, and Mother's second argument fails. Therefore,

IT IS HEREBY ORDERED that the family court's May 23, 2001 Order Awarding Permanent Custody and June 12, 2001 Orders Concerning Child Protective Act are affirmed.

DATED: Honolulu, Hawai‘i, June 20, 2002.

On the briefs:

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