NO. 24796

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Interest of

DOE CHILDREN:
JOHN, Born on July 3, 1995
JOHN, Born on October 18, 1996
(No. 24796) (FC-S No. 99-06260))

In the Interest of

DOE CHILDREN:
JOHN, Born on July 19, 1988
JANE, Born on October 10, 1990
(No. 24792) (FC-S No. 99-06258))

In the Interest of

JOHN DOE, Born on September 23, 1986
(No. 24797) (FC-S No. 99-06259))

APPEALS FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NOS. 99-06260, 99-06258, & 99-06259)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.[1])

Mother-Appellant (Mother) and Father-Appellant (Father) separately appeal from the order awarding permanent custody of John Doe, Born on July 3, 1995, and John Doe, Born on October 18, 1996, to the Department of Human Services-Appellee (DHS) filed on November 16, 2001 and the order denying reconsideration filed on

---

[1] Justice Ramil, who heard oral argument on December 4, 2002, retired from the court on December 30, 2002. See HRS § 602-10 (1993).

December 7, 2001 by the family court of the first circuit[2] (the court) (FC-S No. 99-06260). Additionally, Mother appeals from the court's November 16, 2001 order awarding permanent custody of John Doe, Born on July 19, 1988, and Jane Doe, Born on October 10, 1990, to DHS and the December 7, 2001 order denying reconsideration (FC-S No. 99-06258), and from the court's December 5, 2001 order awarding permanent custody of John Doe, Born on September 23, 1986, to DHS and the December 7, 2001 order denying reconsideration (FC-S No. 99-06259).

On appeal, Mother argues that the court erred in finding that Mother is willing, but not able, to provide the children with a safe family home, even with the assistance of a service plan, and that it is not reasonably foreseeable that Mother will become willing and able to provide the children with a safe family home, even with the assistance of a service plan, within a reasonable period of time. Father argues that: (1) the evidence was not clear and convincing that Mother and Father could not provide a safe family home for the children with the assistance of a service plan; (2) DHS has not exerted reasonable and active efforts to reunify the children with Mother and Father; and (3) the permanent plan is not in the best interests of the children.

As to their assertion that the court erred in finding

[2] The Honorable Marilyn Carlsmith presided over this matter.

that Mother and Father were not able to provide the children with a safe home within a reasonable time, the record indicates that: (1) Mother and Father reportedly had been unable to protect their children from harm and had allowed the children's educational and psychological needs to go unmet; (2) the problem was not with Mother's and Father's willingness to participate and complete all the recommended services, but their inability to provide the children with the support, safety, and love that they needed within a reasonable time frame; (3) the children have special needs and required much help in all areas of their lives; (4) one of the children has been diagnosed with Attention Deficit Hyperactivity Disorder; (5) all except one of the children need special education; (6) Mother and Father had not supervised or supported the children enough to prevent physical and psychological harm; (7) the physical environment of the family was not safe, as one or more of the children had been injured during their visits; (8) Jane's leg became infected as a result of one of these incidents and Mother failed to get appropriate medical attention in a timely manner; and (9) there have been times when Mother and Father could not provide the basic necessities during the short times that Mother and Father have cared for the children.

As to Father's contention that DHS has not exerted reasonable and active efforts to reunify the children with Father and Mother, the record indicates that: (1) DHS remained in constant contact with the guardian ad litem, the children, the

foster parents, and the service providers to provide support and ensure that the services being provided were in the best interest of the family; (2) the social worker assigned to the case attended numerous Individualized Education Program and family meetings and remained in regular telephone contact with the family and all service providers in the case; (3) Mother and Father had been given an opportunity to demonstrate that they are able to provide a safe and nurturing home for the children when the children were returned to Mother's and Father's care from June 8, 2001 through September 20, 2001; (4) however, Mother and Father failed and the children were removed from Mother's and Father's care on September 21, 2001 because of threatened abuse and neglect.

As to Father's argument that the permanent plan is not in the best interests of the children, the record indicates that: (1) as stated previously, there have been times when Mother and Father could not provide the basic necessities during the children's short stay with Mother and Father; (2) as mentioned supra, the children have been hurt on several occasions during weekend visits; (3) a guardian ad litem for the children stated that Mother and Father continued to be unemployed and the guardian ad litem remained skeptical about Father's job prospects; (4) one of the family therapists reported that Father had no motivation to work; (5) even with the support of their church, public assistance, and hands-on budgeting provided by the outreach provider, Mother and Father continue to fall short of

insuring the basic needs of the children; (6) Father reportedly was not willing to discipline the children or help in raising them because he felt that they did not listen to or respect him at all; (7) Father left all the parenting responsibilities to Mother; and (8) Mother did not support Father when he had tried to parent the children.

In light of the foregoing, we hold that the court's findings of fact were not clearly erroneous, see In re Doe, 89 Hawai‘i 477, 487, 974 P.2d 1067, 1077 (App. 1999) ("A finding of fact is clearly erroneous when (1) the record lacks substantial evidence in support of 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." (Quoting Hirono v. Peabody, 81 Hawai‘i 230, 232, 915 P.2d 704, 706 (1996).)), and the court was not clearly erroneous in concluding that Mother and Father would not become able to provide the children with a safe family home, even with the assistance of a service plan, see id. at 486, 974 P.2d at 1076 ("[A] conclusion that presents mixed questions of fact and law is reviewed under the clearly erroneous standard because the court's conclusions are dependent upon the facts and circumstances of each individual case." (Internal quotation marks and citations omitted.)).

In accordance with Hawai‘i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the

law relevant to the arguments and issues raised by the parties, we hold that the court did not err in issuing the November 16, 2001 and December 5, 2001 orders awarding permanent custody and the December 7, 2001 orders denying reconsideration. Therefore,

IT IS HEREBY ORDERED that the court's November 16, 2001 and December 5, 2001 orders awarding permanent custody and the December 7, 2001 orders denying reconsideration are affirmed.

DATED: Honolulu, Hawai'i, February 12, 2003.

Joseph A. Dubiel
for Mother-Appellant.

Jeffrey R. Buchli
for Father-Appellant.

Susan Barr Brandon,
Deputy Attorney General,
for Department of Human
Services-Appellee.