

NO. 22437

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

In the Interest of JANE DOE,
Born on February 18, 1982

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 97-38348)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

Minor-Appellant Jane Doe (Doe), born on February 18, 1982, appeals the February 1, 1999 Decree Re: Law Violation Petitions entered by District Family Court Judge Karen M. Radius, which decided that Doe "is a law violator within the purview of [Hawai'i Revised Statutes (HRS)] Section 571-11(1)" and sentenced her as follows:

1. [Doe] is placed on probation for a period of 1 year(s).
2. The order placing [Doe] under protective supervision to the Family Court is hereby revoked.
3. [Doe] shall continue in counseling with Dr. Heintz until clinically discharged.
4. [Doe] shall cooperate with the Department of Education.¹

Based on the Hawai'i Supreme Court's April 30, 2001 opinion in In re Jane Doe, Born on June 16, 1983, No. 21876, (Hawai'i, April 30, 2001), we affirm.

¹ Minor-Appellant Jane Doe and "parent" were also ordered to "appear for a trial on March 1, 1999 at 8:30 a.m. before Judge Number 3 as to two petitions, Contempt of Court, filed on January 27, 1999." After a continuance, the family court, on March 17, 1999, granted Appellee State of Hawai'i's oral motion to withdraw the two petitions.

BACKGROUND

June 9, 1998 Appellee State of Hawai'i (the State) filed a petition in the interest of Doe, alleging that she was a "run away" [sic] giving the family court jurisdiction over her under HRS § 571-11(2).

August 3, 1998 District Family Court Judge Rodney K. F. Ching entered Findings, Order and Decree adjudicating Doe as a status offender and placing Doe on Protective Supervision.

The Rules of Protective Supervision of the Family Court (RPS-FC) ordered, in relevant part, as follows:

While you are under this protective supervision, you are to follow these rules, and any added rules set forth below:

1. You are to obey laws of the City and County of Honolulu, State of Hawaii and U.S. Government. Failure to do so may change your status to that of "**LAW VIOLATOR.**"

. . . .

4. You must attend your classes at school regularly, unless excused by the school or this Court. At school you are not to behave in any manner which might cause you to be suspended or expelled.

. . . .

6. You are not to remain away from your residence overnight without first having permission from your parent(s), guardian(s), or foster parent(s).

. . . .

IF YOU FAIL TO OBEY THE ABOVE RULES, IT MAY BE NECESSARY FOR THE COURT TO TAKE FURTHER ACTION.

(Emphases in original.)

September 8, 1998 The State filed another petition alleging that Doe had violated Rule 6 of the RPS-FC by running away from home.

Doe admitted to this petition and District Family Court Judge John C. Bryant continued Doe on protective supervision but added the special conditions that "[a]ny further

referrals to be set before this court[,]" and that "[i]f minor continues to violate her rules of protective supervision, court will recommend that Prosecutors file contempt charges."

- January 13, 1999 The State filed a contempt of court petition requesting family court jurisdiction over Doe under HRS § 571-11(1) as a law violator, charging Doe with failure to attend school from August 25, 1998, to September 15, 1998, constituting a violation of Rule 4 of the RPS-FC.
- January 27, 1999 The State filed two additional contempt of court petitions alleging that Doe had been truant from school on January 8 and 11, 1999.
- February 1, 1999 A hearing was held on the January 13, 1999 contempt of court petition, after which Judge Radius issued her Decree re: Law Violation Petitions adjudicating Doe as a law violator.
- February 18, 1999 Doe moved for reconsideration of the adjudication on the grounds that the court had erred in "bootstrapping," a violation of a rule of protective supervision into a law violation by means of filing a contempt of court petition.
- March 17, 1999 The two additional contempt of court petitions filed on January 27, 1999, were withdrawn via oral motion to the court and the court denied the February 18, 1999 motion for reconsideration.
- April 9, 1999 Doe filed a notice of appeal.
- May 14, 1999 Judge Radius entered her Findings of Fact and Conclusions of Law; Order Adjudicating Minor a Law Violator.

STANDARDS OF REVIEW

Conclusions of law are reviewed *de novo* under the right/wrong standard of review. Raines v. State, 79 Hawai'i 219, 222, 900 P.2d 1286, 1289 (1995). Under this standard, the appellate court is not required to give any deference to the trial court's conclusion. Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994).

DISCUSSION

Recently, in In re Jane Doe, Born on June 16, 1983, slip op. at 15, the Hawai'i Supreme Court stated, "HRS chapter 571 does not expressly bar the family court from dealing with violators of court orders of protective supervision under its inherent authority to punish contempts and its jurisdiction over 'law violators' in HRS § 571-11(1)." The court held that "the family court may adjudicate and punish status offenders in violation of a court order of protective supervision under HRS § 571-11(1)." Id. at 19.² However, the court stated that

in line with other courts, we impose several limitations on the family court's contempt powers. First, the minor must receive sufficient notice to comply with the court's order and must understand its terms and operation, in particular, the possibility of secure detention for disobedience. Second, the court must consider less restrictive alternatives and determine them ineffective or inappropriate. While the court need not necessarily have attempted lesser penalties before imposing secure

² The legislative history of Hawai'i Revised Statutes Chapter 571 clearly states that "although the intent . . . is to clearly afford extensive opportunity and programs for rehabilitating juveniles in trouble, its thesis also includes the position that our laws are intended to have substantial preventive influence by their inherent punishment that is sufficiently buttressed by certainty of imposition." Hse. Conf. Comm. Rep. No. 85-80, in 1980 House Journal, at 1136.

confinement, the record should indicate that lesser alternatives were considered by the juvenile court before ordering incarceration. Third, contact between the minor and juvenile delinquents convicted of other crimes must be kept to a minimum. These protective conditions strike the appropriate balance between the competing policies of limiting the secure detention of status offenders and preserving the dignity and authority of the family court.

Id. at 19-20 (footnotes, internal citations, and quotation marks omitted).

The only difference between the instant case and In re Jane Doe, Born on June 16, 1983, is that, in the instant case, the Rules of Protective Supervision of the Department of Education (RPS-DOE) were not ordered. Specifically, the following statement in the RPS-DOE was not ordered: "IF YOU FAIL TO OBEY THE ABOVE RULES, YOU MAY BE ORDERED TO PERFORM COMMUNITY SERVICE. MAJOR VIOLATIONS MAY RESULT IN DETENTION." In In re Jane Doe, Born on June 16, 1983, however, the fact that Doe testified that she understood that "DETENTION" referred to being "put into DH"³ did not deter the Hawai'i Supreme Court from deciding that Doe understood "the possibility of secure detention for disobedience." In the words of the court,

[i]ndeed, neither set of rules contained reference to 'contempt of court,' but simply explained that Doe must follow the rules and that failure to do so might well result in more severe measures, which Doe admitted that she understood to include secure detention. Under these circumstances, we hold that Doe had sufficient notice and understanding of the terms of the orders of protective supervision to be convicted of criminal contempt.

Id. at 21.

³ "DH" means "Detention Home."

CONCLUSION

Accordingly, based on the Hawai'i Supreme Court's April 30, 2001 opinion in In re Jane Doe, Born on June 16, 1983, we affirm the family court's February 1, 1999 Decree Re: Law Violation Petitions.

DATED: Honolulu, Hawai'i, August 9, 2001.

On the briefs:

Theodore Y. H. Chinn,
Deputy Public Defender
for Minor-Appellant.

Chief Judge

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Appellee.

Associate Judge

Associate Judge