NO. 23229

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE MATTER OF THE ADOPTION OF A FEMALE CHILD
BORN ON AUGUST 6, 1997, by JOHN DOE and
JANE DOE, Husband and Wife, Petitioners-Appellees,
and JOHN DOE, Legal and Natural
Father/Party-in-Interest-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-ADOPTION NO. 97-0278)

MEMORANDUM OPINION
(By: Burns, C.J., and Lim, J.,
with Watanabe, J., concurring separately)

Legal and Natural Father/Party-in-Interest-Appellant John Doe, the biological father (Father) of the female child born on August 6, 1997 (Child), appeals from Judge Paul T. Murakami's March 7, 2000 Adoption Decree granting the April 5, 1999 "Amended Petition for Adoption" (Amended Petition) of Child filed by Petitioners-Appellees John Doe and Jane Doe, Husband and Wife, the proposed adoptive father and the proposed adoptive mother (Petitioners). We affirm.

RELEVANT STATUTES

The Hawaii Revised Statutes (HRS) specify three ways parental rights may be terminated. The first way is described in the Child Protective Act, HRS § 587-73 (Supp. 2002). It states, in relevant, part as follows:

> **Permanent plan hearing.** (a) At the permanent plan hearing, the court shall . . . determine whether there exists clear and convincing evidence that:
>
> (1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;
>
> (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;
>
> (3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; . . . :
>
> . . . .
>
> (B) . . . ; and
>
> (4) If the child has reached the age of fourteen, the child consents to the permanent plan, unless the court, after consulting with the child in camera, finds that it is in the best interest of the child to dispense with the child's consent.
>
> (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:
>
> . . . .
>
> (3) That an appropriate permanent plan be implemented concerning the child whereby the child will:
>
> (A) Be adopted pursuant to chapter 578[.]

The second way is described in HRS § 571-61 (1993). It states, in relevant part, as follows:

> **Termination of parental rights; petition. . . .**
>
> (b) Involuntary termination.
>
> (1) The family courts may terminate the parental rights in respect to any child as to any legal parent:
>
> . . . .

> (C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;
>
> (D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;
>
> . . . .
>
> (3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. If personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.

The third way parental rights may be terminated is described in HRS § 578-2 (1993). It states, in relevant part, as follows:

> **Consent to adoption.** (a) Persons required to consent to adoption. Unless consent is not required or is dispensed with under subsection (c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:
>
> . . . .
>
> (2) A legal father as to whom the child is a legitimate child;
>
> . . . .
>
> (c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.
>
> (1) Persons as to whom consent not required:
>
> . . . .
>
> (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;

> (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so[.]

RELEVANT PRECEDENT

In 1975, the Hawai‘i Supreme Court stated, in relevant part, as follows:

> Accordingly, we hold that the phrase "has failed to communicate" as used in HRS § 578-2[(c)(1)(C)(1993)] means the failure on the part of a parent who is able to do so, either through neglect or refusal, to maintain any contact which would provide the opportunity to express or to show parental presence, concern, love, care and filial affection to his [or her] child.

In re Adoption of a Male Child, Born April 5, 1968, 56 Haw. 412, 418, 539 P.2d 467, 471 (1975) (citation omitted).

In 1981, the Hawai‘i Supreme Court stated, in relevant part, as follows:

> The words "care and support" [in HRS § 571-61(b)(1)(D)] clearly inform parents that, at the very least, they must provide financially for their child to avoid the risk of involuntary termination. . . . The statute articulates an objective standard that is not subject to arbitrary application, and, subject to the limitation we find below, does not impermissibly encroach upon the constitutional right to family integrity recognized by numerous United States Supreme Court Decisions.
>
> . . . .
>
> We do find, however, that the trial court erroneously refused to consider the circumstances surrounding appellants' failure to send support payments to [Child's mother's distant relatives with whom Child was residing]. We rule that in addition to finding conduct as described in HRS § 571-61(b)(1)(C) and (D), the court must also find from such behavior a settled purpose to relinquish all parental rights in the child.
>
> Adoption cases decided by this court prior to the 1969 and 1970 amendments defined "abandonment" as conduct which evinced a settled purpose to sever the parent-child relationship. This definition of abandonment, requiring some showing of intent, has been embraced by other jurisdictions.
>
> . . . .
>
> The legislature's reframing of the abandonment terminology in the adoption and termination statutes was done with the apparent

> intent of combining both intent and conduct, so that from proof of the latter the former is conclusively established. However, we find that HRS § 571-61(b)(1)(D) cannot be applied to all custodial situations without also encompassing those cases in which intent to drop all parental rights is absent. We are particularly concerned about the situation in which natural parents, while financially able to support their child, leave their child in an environment where the child is known to be receiving proper care. This may occur where natural and custodial parents voluntarily agree that the latter will provide financially for the child, with no intent on either side of permanently depriving the natural parents of the child's legal custody. Without a separate inquiry into the parents' intent as evinced by such action or from the totality of circumstances, natural parents may inadvertently lose their parental rights in arranging for the full, but temporary care of their child.
>
> In view of the statute's avowed purpose of preserving natural relationships wherever feasible, and especially in view of the constitutional protection afforded the right to family integrity, we cannot allow a conclusive presumption of intent to arise automatically from conduct which did not import the same. We therefore conclude that involuntary termination of parental rights under HRS § 571-61(b)(1)(C) and (D) may not occur absent a finding of both the conduct described and a settled purpose to abdicate all parental rights as evinced by such conduct and its entire context.

Woodruff v. Keale, 64 Haw. 85, 95-98, 637 P.2d 760, 767-68 (1981) (footnotes and citations omitted). It being logical to do so and there being no reason not to do so, we assume that the Woodruff precedent also applies to HRS § 578-2(c)(1)(C) and (D).

The facts in Woodruff explain the kind of situation the Hawai‘i Supreme Court did not want subsumed by the statute when it said "[w]ithout a separate inquiry into the parents' intent as evinced by such action or from the totality of circumstances, natural parents may inadvertently lose their parental rights in arranging for the full, but temporary care of their child." Id. at 97, 637 P.2d at 768. In Woodruff, the child and her twin sister were born on January 19, 1975. Id. at 87, 637 P.2d at 762. Shortly after their birth, the child and the twin sister were taken

to Kauai to stay with their maternal uncle and his wife. Id., 637 P.2d at 762. Soon thereafter, the child was returned to Honolulu and, between early 1975 and May 1976, the child was with her mother and father where she spent a lot of time with the three children of Mr. and Mrs. Keale. Id. Mrs. Keale was the mother's second or third cousin. In May 1976, the child's father moved to Guam and the child was taken to Niihau to stay with Mr. and Mrs. Keale and Mrs. Keale's mother. Id. The child's mother followed the child's father to Guam in January 1977. Id. The child's father and mother visited Hawai‘i in February 1977. Id. at 88, 637 P.2d at 762. Mrs. Keale brought the child to see the child's mother on Kauai and in Honolulu and then went back to Niihau with the child. Id., 637 P.2d at 762. When the child's mother visited Honolulu in August 1977, she did not see the child. Id. at 88, 637 P.2d at 763. The child's mother and father moved back to Honolulu in June 1978. Id., 637 P.2d at 763. On June 13, 1978, after taking the child for the day, the child's mother and father breached an agreement to bring her back in the evening and brought the child from Kauai to Honolulu. Id. On June 26, 1978, without permission from the child's mother or father, Mr. and Mrs. Keale took the child back to Kauai and then to Niihau. Id. In July 1978, Mr. and Mrs. Keale petitioned the family court for termination of the parental rights of the child's mother and father regarding the child. Id. The sole ground asserted was HRS § 571-61(b)(1)(D) (failure to provide

for care and support when able to do so). In October 1978, at the request of the child's mother and father, the maternal uncle and his wife returned the twin sister to them. Id. at 87, 637 P.2d at 762.

CHRONOLOGICAL REPORT OF RELEVANT EVENTS
PRIOR TO APRIL 1998

May 8, 1995	Father admitted that he committed an offense on May 24, 1993, and was placed on community supervision. While on community supervision, he failed to pay a $25 fee and committed the following offenses: burglary and possession of a controlled substance.
1996-97	In Texas, while the mother of Child (Mother) and Father were married, Mother conceived Child.
August 6, 1997	While Father was in prison, Mother gave birth to Child.
August 8, 1997	Mother relinquished her parental rights to Child. In an affidavit, Mother stated that a man other than Father was the biological father. Child was placed in the custody of the proposed adoptive father who then returned to Hawai‘i to join his wife and their young son.
August 20, 1997	Petitioners filed a "Petition for Adoption" alleging, in relevant part, as follows:

> 7. [W]ritten consent is not required or it may be dispensed with under HRS section 578-2(c), as amended, by reason of the fact, to be proved at the hearing of this petition, that the natural father was not married to the child's mother at the time of the child's conception or birth and does not fall within the provisions of subsection (a)(3), (4) or (5), and the legal or presumed father is not the natural parent of the child and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education.

This "Petition for Adoption" was accompanied by an "Order for Personal Service Without the State" and a "Notice of Time and Place of Hearing." The latter scheduled the hearing for October 21, 1997.

August 20, 1997 The family court entered an order that Petitioners

> shall be entitled to retain the custody and control of [Child] . . . and shall be responsible for the care, maintenance and support of [Child], including any necessary medical and surgical treatment, until of [sic] the date of the adoption hearing or such other extension as may be granted after written motion.

September 8, 1997 The attorney for Petitioners wrote a letter to Father in prison seeking his written consent to the proposed adoption.

September 26, 1997 Father responded by letter, in relevant part, as follows:

> I do not want my daughter adopted out. If it was proved beyond a shadow of a doubt that I am not the father I would have no problem signing these papers.
>
> My father and stepmother are taking care of our . . . little girl that [sic] is now three and a half years old. . . . I know I have gotten into some trouble but when I get out of here I will straighten my life out and I want my daughter, . . . , to know her sister and if I sign these papers she will never know her. . . .
>
> If my daughter is in Honolulu I want her back here. If my daughter is still in Texas I would like my father and stepmother to be able to see her. . . . I will be out of here in 3 months and will be able to take care of her myself and thats [sic] what I want. . . .
>
> . . . So if you can prove to me that beyond a shadow of a doubt that she is not mine, I will sign the papers. But if this cannot be proven to me I want her back.

January 18, 1998 Father was released from prison.

January 21, 1998 Father telephoned the attorney for Petitioners. Regarding this conversation, the attorney for Petitioners testified, in relevant part, as follows:

> Q. Did he tell you anything about his living situation?
>
> A. Well, I asked him if he could give me, you know, where he was, if he could give me an address in case we needed to contact him or if we needed -- ever needed to serve him . . . .
>
> He was out of jail, he said that he -- he said it's none of my business where he was. And I said, well, it is sort of, if you're making a claim in this matter. And he said, well, he lived in -- in the street on his -- in his camaro [sic]. And I said, well, what street? And he says, well, I -- from -- I go from street to street.

> And I said, I'd want -- can you give me the address of your father. He said, it's none of your business. And I said, could you give me a telephone number. And he said, it's none of your business.
>
> I asked him how did he feel that in this situation or in any situation he was going to be able to care for this child? And he said that that was none of my business and that, you know, the whole thing was up to his -- up to [Father's stepmother (Paternal Stepgrandmother)] basically. He said, it's what [Paternal Stepgrandmother] wants.
>
> And I said, well, it would be nice if -- we've already paid for the gene screen could you pay us half. And he said no, . . . you can't make me do anything.
>
> He didn't ask me how the child was, he didn't ask me where she was, he didn't ask me anything, you know. He just got belligerent when we started discussing the natural mother. He talked -- started to tell me, you know, she brought all this on, she's the one that put their other daughter in jeopardy. You know, and then he just started swearing. So --
>
> Q. Did you ever hang up on him?
>
> A. No. But I ended the conversation[.][1]

[1/] In contrast, Legal and Natural Father/Party-in-Interest-Appellant John Doe, the biological father (Father) of the female child born on August 6, 1997 (Child), testified that the attorney for Petitioners-Appellees John Doe and Jane Doe, Husband and Wife, the proposed adoptive father and the proposed adoptive mother (Petitioners) "stated, look, there's not going to be no contact. You're going to have to go through me, and to go through me you're going to need a lawyer. And hung up in my face."

In deciding the credibility issue, the court had Father's deposition testimony to consider. The following is an example:

> Q. Okay. I have a bunch of copies of records I've put together collectively as Exhibit No. 5. Would you take your time and look at those, and I want to ask you about them. Those purport to be copies of Bill of Indictment and the charges that have occurred over the years.
>
> A. What does this have to do with the adoption actually?
>
> Q. What I want to know is do you recognize those charges, and is that your signature on those papers?
>
> A. What do you think?
>
> Q. I think it is.

(continued...)

(Footnote added.)

January 22, 1998 Father submitted to a genetic test.

March 3, 1998 The genetic test results confirmed that Father is the biological father of Child.

March 13, 1998 The attorney for Petitioners received a letter from the attorney for Father indicating that Father would be seeking return of Child.

March 24, 1998 The attorney for Petitioners wrote to the attorney for Father stating that she would let him know what her clients decided when she heard from them.

March 1998 In a phone conversation, the attorney for Petitioners and the attorney for Father discussed matters and agreed to continue the discussion after subsequent consultation with their clients. The attorney for the Petitioners described the phone conversation, in relevant part, as follows:

> A. I told him that, you know, we had been involved, you know, truly believing that [Father] was not the father of the child. And also truly believing that [Father] himself was not interested in

---

[1/](...continued)

> A. Bingo. It's a legal document. Come on, now, I ain't stupid. Been doing your homework. How does this pertain to this case, though? What does this have any bearing on that? Okay, you know what I've done in the past.
>
> [ATTORNEY FOR FATHER]: I'm going to object to being nonresponsive. You need to answer the questions that he asks you and not --
>
> [FATHER]: I'm sitting here getting pissed off, okay.
>
> [ATTORNEY FOR FATHER]: You need to get the answers and not --
>
> [FATHER]: Okay. Quit being a smart ass, I know. I apologize. If you can understand where I'm coming from.
>
> [ATTORNEY FOR PETITIONERS]: I know you're under a lot of stress. I appreciate that.
>
> [FATHER]: Well, I mean, the wife wound up with a brand new car after the adoption went through.

[Child], that his stepmother may be, but he himself was not making -- had not or would not be making efforts to care for [Child] or assert the appropriate level of interest in [Child] as required by statute.

But that we understood that, you know, we could be in a position to return [Child], that my clients would be consulting counsel that I'd refer them to, so that they could have an idea of what their position is.

I asked him if he could -- that, you know, if it came down to us returning [Child], you know, we wanted to be sure that the child -- that there was a plan and that [Child] was going to be safe.

My conversation with [Father] didn't lead us to believe that, you know, he had a stable home. And we wanted to know where he was going to take [Child] and that kind of thing.

We -- so, I suggested that perhaps we could see the home study of his stepmother and father and how -- you know, how much contact he would be having with -- if we could look at his criminal record or at least get some idea if [Child] was going to be okay. That was the major things [sic] the [Petitioners] were concerned about.

And I also asked him if at this point -- you know, we -- we've raised this issue a number of times with [Paternal Stepgrandmother] . . . , [and] I'd raised it with [Father] when he called me, if they would be willing to do a more open kind of adoption, you know, where they would have visitation, they could meet the family, they could speak with them.

Of course we've offered this sort of all along, up until, you know -- and this where -- it's about March of '98 -- is it? And we'd offered that kind of all along. And we offered to speak with them, we offered to have the families meet, but they never followed up on that.

CHRONOLOGICAL REPORT OF RELEVANT EVENTS
AFTER MARCH 1998

July 31, 1998 — By letter, the attorney for Father advised all relevant persons involved in the case of his withdrawal from the case.[2] Father testified

---

[2/] Father testified, in relevant part, as follows:

Q. As far as you know, did your lawyer file any paperwork?

A. I'm not fully sure what went on with him. My parents had gotten contact with him.

Q. Did you pay him or did your parents pay him?

A. I give [sic] him $700.

that the attorney "did step down and quit because I couldn't afford to pay him."

January 27, 1999 — Father went back to prison.

February 1, 1999 — Father was indicted for offering, on January 21, 1999, to sell methamphetamine. On April 22, 1999, he confessed in open court and was sentenced to three years in the penitentiary and fined $300.

March 8, 1999 — The family court entered an "Order of Dismissal and Notice" advising Petitioners of the dismissal of the case, without prejudice, for want of prosecution.

April 5, 1999 — The family court entered an "Ex Parte Order Granting Motion to Reinstate" the case. Petitioners filed the Amended Petition alleging, inter alia, that Father's written consent was not required. The Amended Petition was served on Father on April 15, 1999.

May 3, 1999 — The family court filed a letter dated April 27, 1999, unsigned, but allegedly from the paternal grandfather (Paternal Grandfather) and Paternal Stepgrandmother stating, in relevant part, as follows:

> We pray that the courts will not allow these people to adopt our Granddaughter for the following reasons:
>
> . . . .
>
> (2) We would like the child returned to us, the paternal Grandparents, because we have her biological sister born to [Mother] and [Father]. We feel that she should be raised with her sister . . . , who lives with us. We do not think they should have to grow up not knowing each other and living worlds apart.
>
> (3) We are able to give her a good home and we are financially able to take care of her.
>
> (4) [Petitioners] knew when they took this child they were doing it at risk. . . .
>
> (5) [Petitioners] have stated that [Father] never tried to contact the child. They never tried to contact [Father] to let him know where his child was and they knew how to contact him . . . . All of this was kept a secret and we know why because they did not want him to be able to contact or support [Child]. . . .

> We fill [sic] that this baby was taken to Hawaii illegally. The State of Texas and Hawaii were wrong to give an ICPC[3] letting the child be taken there. . . . Our son ask [sic] for a DNA to be done in September and it was not done until Jan. 22, 1998.[4] We feel that this was more or less a black market baby deal.
>
> We pray the courts will have compassion for . . . her sister and us the Grandparents. . . . [Father] tried to get her back but ran out of financial funds. Our belief was that he should not have had to do all of that. Only [Mother] signed her rights away[,] he never did and still does not want this done.
>
> If you need a home study from the state of Texas we can furnish one due to the fact we have had one done. This was done when [Mother] abandoned [Child's sister] in Missouri and the state had custody of [Child's sister] and we had to go to court to get her back with us.

(Footnotes added.)

October 26, 1999	Judge Murakami held the trial. Father's testimony is in a deposition.[5] At the conclusion of the trial, Judge Murakami stated his oral decision granting the petition.
November 15, 1999	Father filed a motion for reconsideration.
February 3, 2000	Judge Murakami filed his order denying Father's motion for reconsideration.
March 7, 2000	Judge Murakami filed his "Findings and Decision of the Court Granting Petition for Adoption."
March 7, 2000	The family court filed its Adoption Decree.

Father's amended opening brief notes, in relevant part, as follows:

> [Father] was incarcerated at the time of service. On April 27, 1999, the paternal grandparents of the child wrote to the Court objecting to the adoption and forwarding a copy of a September 27, 1997, letter from [Father] to the attorney for Petitioners stating

---

3/ The "ICPC" is the "Interstate Compact on the Placement of Children[.]"

4/ The record is clear that it was because of Father's imprisonment that the DNA was not done until January 22, 1998.

5/ At his deposition, Father was represented by the court-appointed lawyer in his criminal case. At the trial, Father was represented by a lawyer paid for by his parents.

> that he would not consent to the adoption. [Father] had been proved to be the natural father by DNA testing on March 3, 1998.
>
> . . . .
>
> . . . The trial . . . was continued to October 26, 1999, to allow for the deposition of [Father] to be conducted at the Tarrant County Correctional Center.
>
> The trial of the contested adoption took place on October 26, 1999, before [the] Honorable Paul T. Murakami. After trial the Court issued an oral ruling granting the adoption.
>
> On May 4, 2000, the Court entered its Findings of Fact and Conclusions of Law. [Father's] deposition testimony had been entered into evidence in lieu of [Father's] "live" testimony.

(Record citations omitted.)

With the findings and conclusions challenged by Father in this appeal outlined in bold print, Judge Murakami's May 4, 2000 "Findings of Facts and Conclusions of Law" **[R 296}** state, in relevant part, as follows:

> As to dispensing of natural and legal father's consent to the adoption, the court makes the following findings of fact and conclusions of law based on the requisite standard of proof as required by Woodruff ex rel. Jane Doe v. Keale, 64 Haw. 85, 637 P.2d 760 (1975), i.e. clear and convincing evidence.
>
> FINDINGS OF FACTS
>
> 1. The subject child, ("Child") was born on August 6, 1997 . . . .
>
> 2. Mother and Father were married to each other at the time of conception and birth.
>
> 3. Forty-eight hours after the Child's birth, Mother signed an Affidavit of relinquishment of Parental Rights, thus consenting to the adoption of the Child. . . .
>
> 4. On August 8, 1997 in Texas, the Child was placed in the care of . . . male Petitioner ("Adoptive Father").
>
> 5. The requirements of the Interstate Compact on the Placement of Children were followed, and on August 8, 1997, Adoptive Father, a military member stationed in Hawaii, returned to Hawaii with the Child, ...

> 6. On August 20, 1997, in this Court, Petitioners filed their Petition to Adopt the Child, ... The Ex Parte Motion for Custody of Child Pendente Lite was granted by the Hon. Michael A. Town the same day.
>
> . . . .
>
> 9. By letter of September 8, 1997, Petitioners' then attorney, Laurie Loomis, wrote Father a letter requesting his consent, as the legal father to the adoption of the Child.
>
> 10. By letter of September 27, 1997, Father responded, in essence, that if the Child was not his biological child he would consent to the adoption; if not he wished the Child returned to Texas. Father requested that arrangements be made to "prove to me that she is not mine."
>
> 11. Arrangements for genetic testing were made by Ms. Loomis, ... However, because Father was incarcerated, the lab technicians retained to conduct the genetic testing were not permitted inside the prison.
>
> 12. The parties agreed to conduct the genetic tests after Father's release from prison, on January 18, 1998; he was tested on January 22, 1998.
>
> 13. On or about January 21, 1998 Father contacted Ms. Loomis by telephone. Ms. Loomis requested Father's address for purposes of service of process. Father responded that he did not have one. Ms. Loomis asked Father where he lived; his response was "in the street." Ms. Loomis then requested [Paternal Grandfather's] address. Father stated he would not release his father's address. Father's telephone call to Ms. Loomis on or about January 21, 1998 was the last communication Ms. Loomis had directly with [Father].
>
> 14. The test results, dated March 3, 1998, indicated that [Father] could not be excluded as the biological father of the Child.
>
> 15. On March 13, 1998[,] James Rudd, Texas attorney for Father wrote Ms. Loomis requesting return of the Child to [Father].
>
> 16. Ms. Loomis responded to Mr. Rudd and informed him that if any decision was made to return the child, Petitioners would need to be reassured that the [C]hild would be safe and well-cared for, and that no further action would be taken until the attorneys had a chance to speak.
>
> 17. . . . Ms. Loomis did not hear from Mr. Rudd again until her receipt of Mr. Rudd's letter of July 31, 1998, withdrawing as counsel for [Father].[6]

[6/] Father testified that his attorney, James Rudd, withdrew due to lack of additional payment.

18. The requirements of the Interstate Compact on the Placement of Children were followed, i.e. certain completed forms had to be provided to the sending State (Texas) and the receiving State (Hawaii). . . .

19. ICPC Form A included the names, address and phone number of Petitioners under Section II of that form, "Placement Information".

20. ICPC Form B included the names, and address of the Petitioners.

21. The adoptive home study of Petitioners included their names and address.

22. By letter of March 26, 1998, Carolyn Thompson, Texas Interstate Placement Compact representative, informed Ms. Loomis that she had received a letter from James T. Rudd, attorney for Father, in which he requested all the records pertaining to the interstate adoptive placement of the Child. . . .

23. The ICPC packet was released to Mr. Rudd.

. . . .

25. By letter of July 31, 1998, with copy to Father and others, James Rudd informed Ms. Loomis that he was no longer the attorney for [Father].

26. Thereafter Father made no contact with Laurie Loomis, or either one of Petitioners.

27. On or about January 22, 1999, Father was again incarcerated and on April 22, 1999 plead guilty to the felony of unlawful delivery of a controlled substance in the second degree. He was sentenced to three years' confinement in the Institutional Division of the Texas Department of Criminal Justice, said term to commence on April 22, 1999.

. . . .

31. On April 5, 1999 Petitioners filed an Amended Adoption Petition, alleging that Father's consent to the adoption was not required or dispensed with because Father had failed to communicate with and had failed to provide for the care and support of the child for a period of one year, when able to do so.

. . . .

33. Father was served with the Petition in prison on April 15, 1999.

34. On May 3, 1999[,] paternal grandparents, not Father, caused to be filed with the Court a letter dated April 27, 1999 in which they interposed their objection to the adoption of the Child.

. . . .

36. On May 18, 1999[,] Father, through his attorney, Charles Brower, filed an Answer to the Amended Petition for Adoption.[7]

. . . .

40. The contested adoption trial was heard on October 26, 1999.

41. Father's oral deposition was taken at the Tarrant County Jail on September 22, 1999. The deposition and Exhibits attached thereto, were entered into evidence in lieu of Father's testimony.

42. . . . Father had been incarcerated prior to and after the Child's birth. Father was released from jail on January 18, 1999[8] [(sic)] and remained out of jail until January 27, 1999.

43. During the one year Father was out of jail, he worked as a coat presser and did miscellaneous warehouse work for Anderson's Formal Wear for Men.[9]

[7/] In the answer to the Amended Petition for Adoption, Father stated, in relevant part, that

> his consent to the adoption is required in that he has notified attorneys for the Petitioners that he does not consent to the adoption, and further, that he has been unable to communicate nor support the child in that since birth [Father] did not know the location of said child which [sic] was evidently placed with Petitioners soon after birth with no notice to [Father]. The child is less than two years old.

[8/] The year was "199<u>8</u>" and not "199<u>9</u>." <u>See</u> finding of fact no. 12.

[9/] In his deposition, Father testified that he had "worked for Anderson's Formal Wear For Men for seven years off and on."

> Q. And what was your job with them?
>
> A. Miscellaneous warehouse work. My main job was coat presser, but I did it all.
>
> . . . .
>
> Q. What did they pay when you worked there?
>
> A. That's irrelevant.
>
> Q. Well, it's relevant for this case right here.
>
> A. That ain't none of your business, sir.
>
> Q. Do you have any idea how much they pay?
>
> A. Of course. They paid me.

(continued...)

44. During his one year of freedom Father also worked at other jobs, earning minimum wage.

45. Father knew the address and telephone number of Petitioners' attorney, Laurie Loomis.

46. Father did not provide financial support for the Child.

. . . .

55. Father knew or should have known the names, address, and phone number of Petitioners.

56. Father had not provided any financial assistance to the child since birth, including not paying any birth-related expenses, nor had he communicated with the child.

57. Father's deposition regarding employment indicates that he was physically able to work and that he indeed worked.

58. Father was able to provide care and support for the Child for a period of more than one year but failed to do so.

59. Even through his periods of incarceration and thereafter, Father was able to communicate, minimally by card or letter, with the child, but failed to do so for a period of one year.

[9/](...continued)

Q. Was it by the hour or by the month?

A. That's irrelevant.

Q. I'll leave a blank in your deposition and you can talk to your lawyer about that.

A. Okay.

Father subsequently testified, in relevant part, as follows:

Q. Could you fill in when you started and when you stopped and the various jobs in 1998 and approximately how much they paid, if anything, for these jobs?

A. Minimum wage.

Q. $5.25 an hour?

A. Sure.

. . . .

Q. What kind of hours would you get?

A. It would vary.

> **60. Father was able to provide financial support for the child for a period of one year and failed to do so.**
>
> . . . .
>
> **CONCLUSIONS OF LAW**
>
> Based on the above findings of facts the Court makes the following conclusions of law:
>
> . . . .
>
> **5. As proven by clear and convincing evidence adduced at trial[,] [Father] failed to communicate with the Child for a period of one year when able to do so.**
>
> **6. As proven by clear and convincing evidence adduced at trial[,] [Father] failed to provide support for the child for a period of one year when able to do so.**
>
> **7. Based on the totality of the circumstances, [Father] evinced a settled purpose to relinquish all parental rights to the child.**
>
> **8. [Father's] consent to the adoption of the Child may and shall be dispensed with pursuant to HRS Section 578-2(c)[.]**
>
> . . . .
>
> 10. A decree [of] adoption terminating all outstanding parental rights inconsistent or incompatible with the adoptive parental rights acquired by said Petitioners through this adoption shall take effect nunc pro tunc to August 20, 1997.

(Footnotes added.)

DISCUSSION

Conclusions of Law nos. 5, 6, and 7 are findings of fact. The question on appeal is whether any of the challenged findings of fact are clearly erroneous. We decide that the answer is no.

Father contends that

> [Father] was never at any time aware of the child's exact location, other than that she was in Hawaii, and therefore was not able to contact the child, nor provide support.
>
> . . . .
>
> [Father] had clearly been unable to communicate with or know where to send support to his daughter.

> Under the circumstances the Petitioners made it impossible for [Father] to visit or provide support, and therefore, he was not able to do so[.]

In his reply brief, Father argues that

> [n]othing in the record subsequent to the March 13, 1998, letter of [the attorney for Father] shows that [Father] ever had a change of position with regard to the return of the child. Yes, he did not contact the child by phone or letter between March 13, 1998, and April 1999 when the Amended Petition was filed. During that period the child was 7 months to 18 months of age. Certainly failure to contact such an infant did not prove a "settled purpose" to give up parental rights by [Father]."

Findings of Fact nos. 45 and 55 are not clearly erroneous.[10] Father had personally written to and telephoned the attorney for Petitioners. The family court reasonably was not persuaded by Father's excuses for not communicating with Child or providing care and support for her. Assuming Father could not have communicated with Child by telephone or in person, that fact does not preclude the finding that he was able to communicate with Child.

The family court reasonably was not persuaded by the following explanation by Father for his failure to provide for the care and support of Child:

> Q. So I take it then that you have not mailed any check or money order to [the attorney for the Petitioners] or to the [Petitioners] or anyone else for the support of the child?
>
> A. I don't know where the [Petitioners] live except for Hawaii. And I'm not in a habit of mailing my hard-earned money to [the attorney for the Petitioners] in Hawaii not knowing the full situation, and being hung up on when I try to talk to her.

[10/] The attorney for Father possessed the ICPC packet which included the names, address, and phone number of Petitioners. The knowledge of an attorney acquired while acting within the scope of his/her employment is imputed to the client. 7 AM. JUR. 2D Attorneys at Law § 154 (1997); Medeiros v. Udell, 34 Haw. 632, 635 (1938).

. . . .

> Q. Have you paid any child support then for the support of the little girl now age two?
>
> A. Where would I send it to? And why would I pay child support for my child that's mine when I didn't sign my rights over and still wanted my child? But my child was taken to Hawaii without my consent, and I'm married to her. I'm her legal husband. That's my child. That child is mine. But yet they took the child away.

The record shows the interest of Paternal Grandfather and Paternal Stepgrandmother in Child. It shows that Father wanted Child "to know her sister" who was living with and being cared for by Paternal Grandfather and Paternal Stepgrandmother. It does not show Father's desire "to express or . . . show parental presence, concern, love, care and filial affection to his child[.]" Father clearly showed his opposite desire when he, on January 21, 1999, offered to sell methamphetamine.

HRS § 578-2(c)(1)(C) and (D) show the legislature's recognition of the fact that actions speak louder than words. In light of the record, we conclude that Father's failure to communicate with Child, failure to provide for the care and support of Child, failure to have anything to do with Child during the relevant period, offer to sell methamphetamine on January 21, 1999, notwithstanding his prior criminal history, and all other relevant facts in the case support the family court's finding that the evidence was clear and convincing that Father had a settled purpose to relinquish all of his parental rights in Child.

CONCLUSION

Accordingly, we affirm the family court's March 7, 2000 Adoption Decree granting Petitioners' April 5, 1999 Amended Petition for Adoption of the female child born on August 6, 1997.

DATED: Honolulu, Hawai‘i, June 18, 2003.

On the briefs:

Charles H. Brower
for Legal and Natural
Father/Party-in-Interest-
Appellant.

Chief Judge

Kimberly S. Towler
for Petitioners-Appellees.

Associate Judge

I concur in the result.

Associate Judge