

NO. 23611

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE INTEREST OF JOHN DOE, born on November 13, 1990

and

IN THE INTEREST OF JOHN DOE, born on June 3, 1992
(FC-S NO. 97-04815)

and

IN THE INTEREST OF JANE DOE, born on May 20, 1993
(FC-S NO. 97-04816)

and

IN THE INTEREST OF JOHN DOE, born on December 8, 1994
(FC-S NO. 97-04817)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

MEMORANDUM OPINION

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

Mother-Appellant (Mother) appeals from the Order Awarding Permanent Custody filed on May 26, 2000¹ and the Orders Concerning Child Protective Act² filed on June 28, 2000 (which denied Mother's motion for reconsideration of the Order Awarding Permanent Custody) in the Family Court of the First Circuit (the

¹This appeal consolidates Nos. 23611 (John Does 1 and 2), 23612 (Jane Doe), and 23613 (John Doe 3).

²In her Notice of Appeal, Mother titled this document "Order Denying Motion for Reconsideration of Order Denying Permanent Custody."

family court).³ The Order Awarding Permanent Custody terminated Mother's and Father's⁴ (collectively "Parents") parental rights over the following four children (collectively "children"):

John Doe, born November 13, 1990 (John Doe 1);

John Doe, born June 3, 1992 (John Doe 2);

Jane Doe, born May 20, 1993 (Jane Doe); and

John Doe, born December 8, 1994 (John Doe 3).

Mother is the natural and legal mother of John Does 1, 2, and 3 and Jane Doe. Father is the natural and legal father of John Does 1 and 2 and the legal father of Jane Doe and John Doe 3. The natural father of Jane Doe is known only as "Eddie" (he has had no contact with Jane Doe and his whereabouts are unknown), and the natural father of John Doe 3 is unknown.

In her appeal, Mother contends the family court erred (a) in finding that Mother and Father are not presently willing and able to provide the children with a safe family home, even with the assistance of a service plan; (b) in finding that it was not reasonably foreseeable that Mother and Father would 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; (c) in finding that the Permanent Plan was in the

³The Honorable Karen M. Radius presided.

⁴Father's appeal was dismissed on 11/21/00 by the Hawai'i Supreme Court for lack of jurisdiction. Father's right to appeal was based on his filing motions for reconsideration of the 5/26/00 custody orders. No motions were filed by Father; therefore, the jurisdictional requirements were not met.

best interests of the children; (d) in granting the Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan; (e) in divesting the parental and custodial duties and rights of Mother pursuant to Hawai'i Revised Statutes (HRS) §§ 587-2 (1993) and 587-73 (1993); (f) in divesting the parental and custodial duties and rights of Father pursuant to HRS §§ 587-2 and 587-73; (g) in making Findings of Fact 26, 45, 51-128, 131-182; and (h) in making Conclusions of Law 2-5.

We disagree with Mother and affirm the family court's Order Awarding Permanent Custody filed on May 26, 2000 and the Orders Concerning Child Protective Act filed on June 28, 2000.

I. BACKGROUND

On May 22, 1997, the Department of Human Services (DHS), through a duly-appointed social worker, filed, pursuant to HRS Chapter 587, a Petition for Family Supervision of the children in the family court. The petition alleged that the children were subject to threatened harm by the acts or omissions of the children's family. The factors supporting the filing of the petition were as follows:

(1) John Doe 1 was not doing well in kindergarten and was functioning below kindergarten level according to his school counselor, despite his participating in extra educational and counseling programs.

(2) John Doe 1 had numerous absences in the 1996-97 school year, and his numerous absences in the previous school year were part of the reason for his retention in kindergarten.

(3) Despite Mother's stating that John Doe 1's absences from school were due to illness, John Doe 1 was overheard at school talking about playing at home and not coming to school because Mother did not want to get up. When John Doe 1 did come to school, he looked and acted tired and had been overheard talking about late bedtimes.

(4) John Doe 1 reported to school staff that Mother used his asthma medication.

(5) A social worker at Kapiolani Women's and Children's Medical Center Pediatrics Clinic, the children's primary medical provider, stated that all of the children had missed medical appointments (19 appointments for John Doe 1; 10 for John Doe 2; 6 for Jane Doe; and 7 for John Doe 3) and each had numerous emergency room visits (13 visits for John Doe 1; 5 for John Doe 2; 5 for Jane Doe; and 5 for John Doe 3).

(6) According to their dentist, John Does 1 and 2 were last seen in March 1995 and were behind in their dental care (there were no dental records for Jane Doe and John Doe 3).

(7) On April 11, 1997, DHS received a report of threatened harm to John Doe 1 by Parents due to an unstable home environment and lack of follow-up medical care.

(8) On April 14, 1997, John Doe 1 stated that Father smoked pakalolo (marijuana) in his presence (Father denied smoking marijuana) and that both parents smoked cigarettes in the house, despite Parents having been instructed not to do so because John Doe 1 suffered from asthma. On April 17, 1997, Father stated he was aware that a nurse had told Mother to stop smoking in the house; Mother and Father both stated they smoked outside the house.

(9) On April 14, 1997, Mother stated there had been domestic violence in the marriage. Spouse abuse of Mother by Father in 1992 was substantiated by the Family Advocacy at Pearl Harbor.

(10) On May 8, 1997, John Doe 1's teacher reported that John Doe 1 got into trouble at school for grabbing another child in the groin area. John Doe 1 revealed that Mother grabbed him in the same manner because "she loves me." During the sexual abuse investigation, John Doe 1 remained in the care of his Maternal Grandmother (Grandmother) and Father.

At the May 27, 1997 hearing on the petition, the family court sustained the petition and ordered that the May 22, 1997 service plan⁵ be put into effect.

⁵The 5/22/97 service plan required Parents to complete the following items by 5/22/98:

(1) Ensure the children's medical and dental needs are met, schedule appointments in a timely manner and follow the medical recommendations made, keep all follow-up appointments, make physical changes in the home, not smoke
(continued...)

On June 2, 1997, a Guardian Ad Litem (GAL) was appointed for the children. The GAL's report of November 6, 1997 recommended that family supervision be continued for six months and that Mother and Father engage in necessary services

^{5/}(...continued)

in the house or in the presence of the children, and give prescribed medication only to the person for whom it has been prescribed.

(2) Ensure the children's education needs are met by regular school attendance, supervise homework assignments, check with children for any correspondence from the school, meet with school officials as recommended, contact school counselor to explore the need for a special education evaluation for John Doe 1 and follow any recommendation made; take John Doe 1 to the doctor if he is too sick to go to school and keep him home only if doctor recommends it.

(3) Cooperate with outreach services, keep all scheduled appointments, and follow all recommendations.

(4) Discipline children in a positive manner, free of physical discipline, yelling, and name calling.

(5) Participate in parenting education, attend and actively participate in all scheduled sessions, and follow the recommendations made.

(6) Complete a psychological evaluation and ensure that John Doe 1 completes a psychological evaluation, cooperate with psychologist in completing the interviews and testing required, and follow the treatment recommendations.

(7) Communicate with each other in a positive manner and refrain from using verbal and physical violence as a way to resolve problems.

(8) Cease the use of illegal drugs and complete a random drug screen within 24 hours of a DHS social worker's request; complete a drug/alcohol assessment if drug screen results are positive.

(9) Allow the sharing of information between DHS and all service providers.

(10) Contact DHS social worker within 48 hours regarding any changes in address, phone number, employment, family composition, etc.

(11) Contact DHS social worker immediately regarding any barrier/concern in complying with service plan.

The plan also set forth the following:

(12) Mother shall attend individual counseling to address past sexual abuse issues and acquire anger management skills, schedule an intake appointment by 6/15/97, keep all scheduled appointments, and follow the treatment recommendations made; ensure her own medical needs are addressed and follow all medical recommendations; and communicate with Grandmother in a calm, positive manner, refraining from yelling, swearing or negative comments.

(13) Grandmother shall participate in counseling with Mother as recommended and follow all treatment recommendations, contact DHS if the children are threatened with abuse or neglect, and communicate with Mother in a calm, positive manner, refraining from yelling, swearing or negative comments.

(including therapy) and follow up on the children's medical, dental and educational needs.

At a review hearing on November 10, 1997, the family court ordered that family supervision be continued and ordered the October 30, 1997 service plan⁶ into effect.

At a December 5, 1997 hearing, the family court ordered continuation of DHS family supervision and the October 30, 1997 service plan.

At a May 21, 1998 hearing, the family court ordered that the May 19, 1998 service plan⁷ be adopted; the children be

⁶The 10/30/97 service plan stated that Mother and Father needed to secure stable, safe, and adequate housing; develop and demonstrate adequate self-sufficiency skills; improve and demonstrate adequate parent-child relationships; and understand the dynamics that lead to sexual abuse and learn new behaviors so no further harm occurs; and that Mother needed to resolve her childhood sexual abuse issues and assume responsibility for the sexual harm to John Doe 1. The family court ordered that Mother and Father were to find housing by 12/31/97; keep children's asthma under control and reduce the number of emergency room (ER) visits; enroll Jane Doe and John Doe 3 in Head Start, meet with a school counselor by 12/31/97 to discuss need for special educational evaluation, make sure John Does 1 and 2 attended school regularly and completed their homework, and maintain communication with the school; participate in services with a DHS Family Service Assistant to improve and develop home management skills (i.e. budgeting, shopping, scheduling) and to learn to better meet the children's needs and to effectively discipline the children; participate in individual, joint and family therapy to understand dynamics that lead to sexual abuse and harm suffered by John Doe 1 and to enable Mother to accept responsibility for harm to John Doe 1 and learn new behaviors so no further harm occurs.

⁷The 5/19/98 service plan stated that Parents' suspected drug use interfered with their ability to get the children to school and to participate in court-ordered services; Mother's unresolved childhood sexual abuse issues placed the children at risk for sexual harm; and Father's lack of support for John Doe 1's allegations placed the children at greater risk for threatened sexual harm. The objectives were for Parents to achieve and maintain a drug-free lifestyle; secure stable, safe, and adequate housing for the family; and understand the dynamics that lead to sexual abuse and learn new behaviors so further harm did not occur. The individual objective for Mother was to resolve her childhood sexual abuse issues and assume responsibility for the sexual harm to John Doe 1.

(continued...)

enrolled in summer school by May 22, 1998; and Grandmother be defaulted.

At a May 22, 1998 hearing, the family court ordered that the prior award of family supervision was revoked, DHS was awarded foster custody over the children, and Parents were permitted reasonable supervised visitation with the children.

At an August 13, 1998 hearing, the family court ordered that foster custody be continued and DHS should explore increased visitation at the Word of Life Ministry in consultation with the GAL. The family court adopted the July 30, 1998 service plan.⁸

^{7/}(...continued)

Parents were to participate in an ohana conference to identify all family members who could provide appropriate support to the family (e.g., help Parents participate in court-ordered services and act as potential caretakers); complete by 6/5/98 an alcohol and drug assessment with a DHS approved substance abuse treatment program; follow through with all recommendations of drug assessment by 6/19/98; complete random urinary analyses (UA's) (a no-show would be considered a presumptive positive drug screen); find stable, safe, and adequate housing; participate in individual, joint, and family therapy with Child and Family Services and Parents United Plus Program until clinically discharged (for sexual abuse issues); participate in any scheduled appointments; allow outreach service providers and DHS social worker to enter the family home; notify social worker within 48 hours of any significant changes in their situation (i.e., residence, telephone, etc.); and call the social worker at least once a month. Mother was to keep her asthma under control and minimize the number of missed appointments because of her asthma.

DHS recommended that Parents be allowed supervised visitation with the children twice a week for 1-2 hours. Parents were to call the day before visitation to confirm; be on time for visitation (a 15 minute grace period was allowed); not discuss case matters or talk badly of anyone in front of children; speak in a voice that could be heard by remain in hearing distance of DHS staff at all times. Any violation would result in a warning; if the warning were disregarded, the visit would be terminated. The service plan also set forth specific caretaker responsibilities.

^{8/}The 7/30/98 service plan's focus and objectives were the same as those set forth in the 5/19/98 service plan. Parents were ordered to complete a psychological evaluation; participate in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings (as set forth in the 5/19 plan), provide attendance verification to DHS on a monthly basis, and find a sponsor to

(continued...)

The family court also issued a temporary restraining order, which ordered, in pertinent part, that Parents were prohibited from threatening or physically abusing the children and Grandmother or maliciously damaging Grandmother's property, and Parents were enjoined and restrained from personally contacting the children and Grandmother (including telephoning, visiting, and/or remaining within three blocks of the place of residence, school, and/or employment of the other party). Parents could have limited contact with the children for visitation and counseling.

At a December 3, 1998 hearing, the family court ordered that foster custody be continued; the November 30, 1998 service plan⁹ be made part of the order; Mother and Grandmother attend joint therapy and counseling; Mother's therapist from Catholic Charities, Child Sexual Abuse Treatment Program (CSATP) submit a report prior to the next hearing; and Parents attend

^{8/}(...continued)

provide information to Parents' social worker; participate in individual, joint, and family therapy with Catholic Charities, Child Sexual Abuse Treatment Program; complete random UA's; and find and maintain stable, safe, and adequate housing for themselves. Father was to participate in an outpatient drug treatment program until clinically discharged. Mother was to meet her own medical needs in a timely manner, including stopping smoking.

^{2/}The 11/30/98 service plan was almost the same as the 7/30/98 service plan, except for the following:

(1) The focus stated that the lack of parenting skills had prevented Parents from getting the children regularly to school and the doctor; Parents' unawareness of the children's needs had prevented them from seeing the importance of participating in court-ordered services; and Mother's unresolved childhood sexual harm placed all the children at risk for sexual harm.

(2) Visitation was changed to two to three visits a week each week for between two and eight hours, and some visits were to be held at the PACT visitation center.

psychological evaluations as scheduled by DHS. The family court also rescinded the August 13, 1998 restraining order and entered a new restraining order (filed December 3, 1998), which prohibited the same behavior but deleted all reference to the children.

At the January 29, 1999 hearing, the family court ordered that foster custody be continued; the January 22, 1999 service plan¹⁰ be made part of the order; during visits with the children, Parents were not to drink, take drugs, fight, argue, or discuss the case, including where they would live; if Parents were going to be late, Mother was to call Grandmother; DHS was to follow up with therapy with Mother and John Doe 1; and DHS was to file a motion for immediate review upon receipt of Interstate Compact on the Placement of Children approval of the children's transfer to Oklahoma (to reside with Parents and their paternal grandparents). The family court also ordered a new visitation schedule for Parents and children.

On April 15, 1999, a Motion to Intervene was filed by Grandmother "to preserve her custody/placement and visitation

¹⁰The 1/22/99 service plan was basically the same as the previous plans. However, this plan set forth new visitation rules. Visitations were to be increased or decreased or become unsupervised at the discretion of the social worker in consultation with the GAL and all relevant service providers. Due to Father's arrest [on 12/18/98 for abusing Mother], visits were to be supervised (DHS was to find an appropriate supervisor). Parents were to not discuss the case or talk badly of anyone in front of the children, to speak in a calm voice that could be heard by the supervisor, and to remain within hearing distance of the supervisor at all times. Any violation of these rules would result in a warning, which, if disregarded, would result in termination of the visit. A return home date of 3/1/99 for the children was projected.

interests of the children." Grandmother asked the family court to allow the children to remain in her care and not be allowed to move to Oklahoma.

At the April 23, 1999 hearing, the family court ordered that foster custody be continued; the April 22, 1999 service plan¹¹ be made part of the order; and Grandmother and/or Parents were to bring the children to court. The family court granted Grandmother's motion to intervene.

At a June 15, 1999 hearing, the family court ordered that foster custody be continued; the June 9, 1999 service plan¹² be made a part of the order; a new summer visitation schedule be implemented, in which if Parents came twenty minutes earlier or dropped off children twenty minutes later than the schedule called for, all future visits were suspended until Parents met face-to-face with a DHS social worker; Grandmother was to call DHS immediately if Parents were late; prior to school starting, the visitation schedule was to be changed and Parents were to meet with the social worker to receive the new schedule; the GAL and Grandmother were to provide DHS with a schedule for the children's activities for the school year when the new schedule

¹¹/The 4/22/99 service plan was basically the same as the previous service plans except that it ordered DHS to maintain contact with Oklahoma DHS and service providers and to coordinate services with Oklahoma. An estimated return home date for the children of 10/1/99 was set.

¹²/The 6/9/99 service plan was essentially the same as the previous service plans. The projected return home date for the children was 12/15/99.

was implemented; and if Parents failed to engage in services, then DHS was to file a motion for permanent custody within six months.

At the November 1, 1999 hearing, the family court ordered foster custody continued; the October 27, 1999 service plan¹³ be made part of the order; all Tuesday visitations be done at a library where the children were to do their homework; Mother was to take John Doe 1 to football practice and ensure that he attended all practices; all other visits were to occur per the service plan schedule; and DHS was to serve Jane Doe's unknown father by publication.

On January 13, 2000, DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan.

At a January 24, 2000 hearing, the family court ordered that foster custody be continued; the service plan dated

¹³The 10/27/99 service plan stated that Mother was to comply with services through Comprehensive Counseling and Support Services for hands-on parenting to demonstrate that she was able to understand the children's needs and provide a safe home; continue to attend NA/AA meetings and provide attendance proof to DHS; regularly attend therapy sessions; and participate in church classes on anger management, "shelter from the storm," and substance abuse. Father was to cooperate with outreach services, cooperate with terms of his probation (random UA's and keep in contact with his probation officer), and refrain from further incidents of violence. DHS was to refer the family for other services if indicated and keep in monthly contact with family members and in contact with service providers. The plan also set forth a specific visitation schedule (including pick ups and drop offs), caretaker responsibilities, and DHS services to caretaker/children.

Parents were advised that if they successfully completed and utilized the services outlined in the plan, they would then be able to demonstrate that the children were not at risk for abuse or neglect in the family home and DHS could close the case. Parents were also advised that if they failed to provide a safe family home within a reasonable amount of time, their parental duties and rights might be terminated by an award of permanent custody.

January 10, 2000¹⁴ be made part of the order; all parties were to appear at a pretrial hearing on February 8, 2000; visits between Parents and children were suspended forthwith; and all parties were to attend a trial on May 2, 2000.

On February 16, 2000, Father filed a Motion for Immediate Review, in which he asked the family court to allow Parents to be heard regarding the family court's January 24, 2000 order suspending visitation and to reinstate overnight visitation since Parents had rented an apartment. On March 9, 2000, the family court held a hearing on Father's motion and ordered, in relevant part: (1) the motion to resume day visits was granted; (2) Parents were to have the children once a week and Child & Family Services (C&FS) was to determine the date and time of the visit and provide transportation; (3) every other Sunday beginning March 26, 2000 from 10:00 a.m. to 6:00 p.m., Parents were to have visitation and be responsible for transportation, pick up, and drop off of the children at Burger King; (4) Parents were not prohibited from attending the children's baseball games; (5) Grandmother was to provide the baseball schedule to DHS and GAL; (6) Father's motion for overnight visits was denied; and (7) the unknown father of Jane Doe was defaulted for failure to appear and notice of future hearings as to him was waived.

¹⁴The 1/10/00 service plan was identical in all relevant aspects to the 10/27/99 service plan.

At the May 2, 2000 trial, the family court heard testimony from Dr. Charlene Bell, Psy.D.; Linda Laughinghouse, a therapist with C&FS; Mother, as an adverse witness for the State and on her own behalf; a Child Protective Services (CPS) Supervisor, an expert witness in the area of social work at CPS; and Father.

On May 15, 2000, the family court rendered its oral decision, finding by clear and convincing evidence that Parents could not provide a safe home either then or in the reasonably foreseeable future for children. The family court found that Parents clearly loved the children; Parents had completed parenting classes; Father had obtained employment; Parents had housing; and Parents had engaged in various portions of services, although not a full completion had been done. The family court also found that, although Parents had made strides, given the problems of the past, Mother's untreated problems from her youth and Parents' inability to cope with life and its daily problems, Parents could not provide a safe home. The family court also expressed serious concerns about Grandmother as the proposed adoptive parent because of sex abuse allegations and because the children's continued living with Grandmother was setting up for future contact and further problems between Mother and Grandmother. The family court ordered a full investigation of sex abuse allegations by June 26, 2000.

On May 26, 2000, the Order Awarding Permanent Custody and the Letters of Permanent Custody were filed.

On May 26, 2000, Mother filed a Motion for Reconsideration of the family court's May 15, 2000 oral decision terminating Parents' parental rights. At a hearing on June 26, 2000, the family court denied Mother's motion (order filed June 28, 2000) and ordered DHS, the GAL, and Grandmother to appear at a permanent plan review hearing on September 7, 2000. At the hearing, the family court issued a Family Court Restraining Order (filed June 28, 2000), which stated in relevant part that Parents were prohibited from threatening or physically abusing the children and Grandmother or maliciously damaging Grandmother's and the children's property, and were enjoined and restrained from personally contacting the children and Grandmother (including telephoning, visiting, and/or remaining within one hundred feet of the place of residence, school, and/or employment of the other party). Parents were served with the restraining order on July 19, 2000.

On July 26, 2000, Father and Mother filed separate appeals from the Order Awarding Permanent Custody filed May 26, 2000 and the Orders Concerning Child Protective Act filed June 28, 2000.

On September 7, 2000, the family court ordered that permanent custody to DHS be continued and the August 23, 2000 Permanent Plan¹⁵ be adopted.

On September 14, 2000, the family court filed its Findings of Fact and Conclusions of Law. Mother contends the family court erred when it made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

. . . .

THE CHILDREN

. . . .

26. The children are bonded with their Mother and Father, with the exception of [John Doe 1] who is not attached to Father.

. . . .

45. [John Doe 1] is not attached to Father.

. . . .

MOTHER

. . . .

51. Mother has a previous history of substance abuse.

52. Mother failed to follow through with services to address the risk of relapsing into abuse of substances as required by the service plans agreed to by the parties and ordered by the court.

53. Mother does not work.

¹⁵The 8/23/00 Permanent Plan stated that the goal was the adoption of the children by Grandmother by 12/31/00. A Permanency Review Team had met on 1/10/00 and approved the goal of adoption. Before adoption was completed, DHS was to complete the following:

- (1) Provide the children with a continuous safe and nurturing environment.
- (2) Assure the children's health needs were met.
- (3) Assure that the children received adequate and appropriate educational services.
- (4) Provide the children with appropriate therapy or counseling services.
- (5) Maintain the relationship between the children and their birth family as long as it was in the children's best interest.
- (6) Provide children with a sense of identity through understanding of their cultural heritage.

The plan further stated that after adoption/guardianship was completed, decisions about the children's placement, health, education, therapy, cultural awareness and contact with birth family would be at the sole discretion of their adoptive parent/guardian.

54. Mother has communicated to her children that she has inadequate food for herself.

55. Mother has been involved in a series of relationships which involve abuse and is the victim of physical and sexual abuse.

56. Mother was the victim of sexual abuse as a child.

57. Mother does not understand how the sexual abuse perpetrated upon her has a detrimental effect on the children's physical and psychological well-being.

58. Mother has been in an abusive relationship with Father.

59. Mother does not understand how the abusive relationship between herself and Father has a detrimental effect on the children's physical and psychological well-being.

60. Mother is in an ongoing abusive relationship with her mother [Grandmother], who is the children's caretaker.

61. Mother does not understand how the abusive relationship between herself and [Grandmother] has a detrimental effect on the children's physical and psychological well-being.

62. Mother failed to demonstrate an understanding of the importance of routines and structure in the children's lives.

63. Mother has no social support system other than Father and a friend who is trying to avoid being caught in the middle between Mother and [Grandmother].

64. Mother continued to smoke cigarettes in front of [John Doe 1] despite his severe asthma.

65. Mother has exhibited poor judgment in not properly budgeting for the children's needs.

66. Throughout this case, Mother has exhibited a pattern of alternating between insight and denial, compliance and non-compliance, participation and non-participation, improvement and regression, and insight and lack of insight into her child's needs.

67. Service providers reported that Mother was only "going through the motions."

68. Throughout this case, Mother has exhibited a pattern of not assuming responsibility for the harm and threatened harm she has perpetrated upon the children.

69. Throughout this case, Mother has demonstrated a pattern of manipulation of the situation and/or taking advantage of a situation.

70. Mother has continuously tested limits and boundaries, up to and including trial.

71. Mother failed to turn over evidence of compliance with services in a timely manner to either DHS or her own counsel.

72. Mother failed to provide a signed consent to Jerry Brennan, Ph.D., to provide information to DHS.

73. Mother failed to provide proof of her engagement in the services required by and agreed to by Mother and her counsel as contained in the service plans attached to the court orders enter [sic] in this case. On the date of trial she brought some documents.

74. Mother's has continually violated the Family Court Restraining Orders issued on August 13, 1998, and December 3, 1998.

75. Mother failed to return the children from visits on several occasions.

76. Mother failed to attend and/or participate in the children's extracurricular and sporting activities.

77. Mother violated the court's order regarding having the children attend their extracurricular and sporting activities.

78. Mother failed to engage in and complete in individual, conjoint marital therapy with Father and family therapy with CSATP.

79. Mother has no insight into the children's ordinary and special needs in that she failed to secure proper medical treatment and the necessary education for her children. While the children were with parents, [John Doe 2] missed 54 days of school in 1997-98 school year.

80. Mother failed to review homework assignments, get her children to sports activities and demonstrate an ability to assume other parental responsibilities.

81. A referral to Parents and Children Together ("PACT") was accepted on November 27, 1998, so as to allow Mother an opportunity to be supervised by a professional staff who can model appropriate parenting.

82. PACT terminated supervision of the visits due to Mother arguing with the visitation supervisor.

83. Mother fails to understand that children need supervision and discipline as well as love.

84. Mother failed to return the children in a timely manner after visitation so as to ensure that they had sufficient rest for school or that their homework was completed.

85. Mother has made the children have divided loyalties due to her ongoing confrontations with [Grandmother].

86. Mother has a history of unstable housing and homelessness.

87. Mother has an inability to control her anger.

88. Mother has displayed explosive anger during two supervised visits with her children which resulted in two visits ending prematurely.

89. The Institute for Human Services terminated the services provided to the family because Mother assaulted a staff person.

90. On June 26, 1998, when [John Doe 1] stated that he wanted to live with [Grandmother] for a long time, Mother became angry, referred to having him adopted and stomped out of the room upsetting all of the children.

91. On July 24, 1998, Mother had a visit with only two of her children due to a miscommunication between DHS and Father. When she realized that only two children would be attending the visit, Mother became upset and took time from the visitation to call her social worker. Mother was very hostile to the volunteer and demanded a meeting with the social worker. Upon the social worker's arrival he found

Mother yelling at the two DHS staff. The worker ended the visit due to Mother's angry outburst. In an attempt to discuss the situation with Mother and Father both parents became extremely angry and left the DHS, Mother shouting "Fuck Neal".

92. Mother threatened the DHS supervisor after a hearing at court in April 1999.

93. Mother's angry outbursts have necessitated the escorting of DHS personnel and [Grandmother] out of Family Court after several hearings by the Department of Public Safety and/or counsel.

94. Mother has displayed inappropriate behaviors.

95. Mother has demonstrated a pattern of being evasive and untruthful in reporting information concerning herself and Father.

96. Mother did not complete conjoint therapy with [Grandmother].

97. In a psychological evaluation administered by Charlene Bell, Psy.D., Mother was diagnosed as suffering from dysthymia and antisocial personality disorder.

98. The psychological evaluation conducted by Dr. Bell was an adequate representation of Mother's functioning and abilities, based on the information provided to Dr. Bell at the time the evaluation was conducted.

99. A person with dysthymia may not be aware of what is going on.

100. Dysthymia can impair one's relationship and the development of coping functions.

101. A parent diagnosed with dysthymia would be more concerned with their own needs than with the needs of their children.

102. A person with a personality disorder would be difficult to treat therapeutically.

103. Mother would have to be willing to change in order to be therapeutically treated for her antisocial personality.

104. Mother would have to demonstrate appropriate interactions with her children and her therapist to show therapeutic progress.

105. Mother would also have to demonstrate an ability to appropriately interact with the children while under stress in order to demonstrate therapeutic progress.

106. Mother's behavior places the children at risk for abuse.

107. Mother was angry, argumentative and irritable during the initial portion of her clinical interview with Dr. Bell.

108. Mother's Child Abuse Potential Inventory results raise serious concerns about her ability to parent in a safe and nurturing manner.

109. Despite her attempt to present herself in a favorable manner, her potential for abuse is high with corresponding elevations in her levels of distress, rigidity and admitted problems with family and others.

110. Despite the bond with her children and desire to have them back, she is considered at significant risk for potential abuse because of her personality disorder and resulting misperceptions.

111. Poor parenting skills coupled with unruly children can be an explosive situation for Mother.

112. Dr. Bell recommended that Mother be referred for marriage counseling and parent education classes.

113. Dr. Bell's prognosis for Mother is poor.

114. Mother will need years of therapy to address her mental health needs.

115. Mother has made poor choices for the children.

116. Mother failed to enroll [Jane Doe] in the Head Start Program.

117. Mother has failed to demonstrate any ability to parent the children on a day to day basis.

118. Although Mother was offered extensive services and has participated in various parenting classes, she was unable to internalize what was being taught and continued to interact inappropriately with her children.

119. Mother made only minimal progress in her parenting ability in the current case.

120. Mother has failed to demonstrate an ability to appropriately parent the children during the unsupervised visits with her children.

121. Mother put her own needs before the needs of her children.

122. No professional providing services to Mother has recommended that the children be returned to her.

123. Mother saw the visitations with the children as "her time" with the children and was unable to comply with set return times and activities (such as homework at the library).

124. Mother is unable to demonstrate sufficient skills or protective behaviors that she has learned to ensure a safe family home.

125. Mother and father did obtain housing; however, given Mother's mental health problems and her inability to provide consistent care for the children, she will not be able to provide a safe family home even with the assistance of a service plan.

126. Mother failed to demonstrate an ability to resolve the issues and behaviors in order to effectuate a safe family home for her children.

127. Mother is not presently willing and able to provide the children with a safe family home, even with the assistance of a service plan because her foregoing problems continue to exist and she has refused, frustrated, and failed to benefit from the services which have been provided to her over the last twenty-four months.

128. 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 because even if Mother were to suddenly change her long standing pattern of behavior, there is no likelihood that she would sufficiently resolve her problems at any identifiable point in the future.

FATHER

. . . .
131. Father still does not understand how the abusive relationship between himself and Mother has a detrimental effect on the children's physical and psychological well-being.

132. Throughout this case, Father has exhibited a pattern of alternating between insight and denial, compliance and non-compliance, participation and non-participation, improvement and regression, and insight and lack of insight into his children's needs.

133. Service providers have reported that Father is only "going through the motions" when participating in services.

134. Father has a history of unstable employment and is frequently unemployed.

135. Father has a limited support system.

136. Father has been evasive with information concerning himself and Mother.

137. Father has been untruthful regarding information about his mother.

138. Father failed to ensure that the children receive the appropriate medical care.

139. Father failed to ensure that the children attend school.

140. Father failed to comply with the visitation schedules arranged and agreed to by the parties.

141. Father failed to comply with the visitation schedule that was ordered by the court.

142. Father failed to comply with the terms and conditions of the Family Court Restraining Orders issued August 13, 1998 and December 3, 1998.

143. Father failed to attend and/or participate in the children's extra-curricular and sporting activities on his own.

144. Father failed to comply with the court's order regarding attending and supporting the children's extra-curricular and sporting activities.

145. Father is not compliant with his probation.

146. Father failed to provide proof of Alcoholic Anonymous meetings to DHS, but did bring some to court on the day of trial.

147. Father has no insight into the children's ordinary and special needs.

148. Father failed to return the children from visitation in a timely manner so as to ensure that they have sufficient rest and that their homework is completed.

149. Father has a history of domestic violence with Mother.

150. Father was arrested for Abuse of a Household Member on December 19, 1998, in the presence of the children.

151. Father fails to understand the impact that the domestic violence and loud arguments have on the physical and emotional health of the children.

152. In a psychological evaluation administered by Charlene Bell, Psy.D., Father was diagnosed as suffering from an adjustment disorder with disturbance of emotions and conduct and as having an antisocial personality disorder.

153. The psychological evaluation conducted by Dr. Bell was an adequate representation of Father's functioning and abilities, based on the information provided to Dr. Bell at the time the evaluation was conducted.

154. Father was initially angry, difficult to engage and uncooperative during the evaluation.

155. Father's ability to learn and make judgments is compromised by his misperceptions and personality disorder.

156. A person with an antisocial personality disorder has a disregard for the rights of others.

157. A person with an antisocial personality disorder has a disregard for social mores.

158. A person with an antisocial personality disorder would be impulsive, irresponsible, act before thinking, disregard his own safety and the safety of others and would have a lack of remorse for his actions.

159. Father's diagnosis impairs his cognitive ability.

160. It is difficult to therapeutically treat a patient diagnosed with a personality disorder.

161. Father would have to be willing to change in order for therapy to be helpful.

162. Dr. Bell's prognosis for Father is very guarded. Father would have to demonstrate a desire to change which is unlikely to occur, given his diagnosis. Father would need weekly therapy for years.

163. Although Father has been able to state appropriate parenting skills he has failed to demonstrate those skills during the unsupervised visits with his children.

164. Father is unwilling and unable to recognize the special needs of [John Doe 1]. Father is unwilling and unable to demonstrate proper parenting techniques for a child with special educational needs.

165. Visits have been consistently problematic and Father was unable and unwilling to demonstrate his ability to perform the parental functions needed on a day to day basis.

166. Father made minimal progress in his visitations with the children.

167. Although Father was offered extensive services, he was unable to demonstrate an adequate understanding of the children's physical and emotional needs.

168. Father did secure employment, although there is a dispute as to his employment record and hours worked.

169. Father has consistently refused to take responsibility for the problems in the present case.

170. Father has failed to make significant progress in addressing the issues sufficiently so as to provide a safe family home for his children.

171. Father and mother did obtain housing; however, given Father's mental health problems and his inability to provide consistent care for the children, he will not be able to provide a safe family home even with the assistance of a service plan.

172. Father is not presently willing and able to provide the children with a safe family home, even with the assistance of a service plan because his foregoing problems continue to exist and he has refused, frustrated, and failed to benefit from the services which have been provided to him over the last twenty-four months.

173. It is not reasonably foreseeable that Father will become willing and able to provide the children with a safe family home, even with the assistance of a service plan because even if Father were to suddenly change his long standing pattern of behavior, there is no likelihood that he would sufficiently resolve his problems at any identifiable point in the future.

DHS

174. DHS has exerted reasonable efforts to avoid foster placement of the children by assessing whether services could be provided in the home prior to removal of the children from the family home.

175. DHS has exerted reasonable efforts to reunify the children with Mother and Father by providing visitation with parents to promote bonding while the children were in foster care and by providing services to address the risks parents pose to the children to ensure a safe family home.

176. Each of the four service plans offered by DHS in the immediate proceedings and ordered by the court and was agreed to by Mother, Father, their respective counsel and the GAL, was fair, appropriate, and comprehensive.

177. Pursuant to HRS §587-27, the permanent plan for the children dated January 10, 2000, is appropriate in that the plan addresses the goal of adoption, the objectives concerning the children and the methods for achieving the goal.

178. The permanent plan proposed by the DHS which recommends adoption is in the best interests of the children because it would ensure their safety, protection and allow them to develop a sense of family, trust and acceptance in a home that will be theirs forever.

179. Charlene Bell, Psy.D., who testified as an expert witness in clinical psychology is found by the court to be a credible witness.

180. Linda Laughinghouse is found by the court to be a credible witness.

181. Barbara Service, who testified as an expert in social work and child abuse and neglect if [sic] found by the court to be a credible witness.

182. To the extent that some of the Conclusions of Law noted below can be construed to be Findings of Fact, said Conclusions are incorporated herein.

CONCLUSIONS OF LAW

. . . .
2. Charlene Bell, Psy.D., Linda Laughinghouse, Barbara Service, and Barbara Mullen are all qualified experts in their fields.

3. The 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[ren] with a safe family home, even with the assistance of a service plan.

4. It is not reasonably foreseeable that the legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child[ren] with a safe family home, even with the assistance of a service plan, within a reasonable period of time[.]

5. That the permanent plan dated January 10, 2000 is in the best interests of the children.

Mother contends the Findings of Fact are in error because they "were unsupported by the evidence, or were clearly erroneous." Mother contends the Conclusions of Law are in error "based upon the facts and evidence adduced, and the orders of the trial court were clearly wrong because of their foundation upon erroneous conclusions."¹⁶

II. STANDARDS OF REVIEW

A. Family Court Decisions

Generally, the family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion. Thus, we will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

In re Jane Doe, 95 Hawai'i 183, 189-90, 20 P.3d 616, 622-23 (2001) (internal quotation marks, citations, brackets, and ellipsis omitted).

¹⁶Mother's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) as to its statement of the points of error. Mother's brief also omits a table of contents, table of authorities, page numbers, and appendices as required by HRAP Rule 28(b). Counsel for Mother is warned that failure to comply with HRAP Rule 28 in the future may result in sanctions against him.

B. Family Court's Findings Of Fact And Conclusions Of Law

The family court's [Findings of Fact] are reviewed on appeal under the "clearly erroneous" standard. A [Finding of Fact] is clearly erroneous when (1) the record lacks substantial evidence to support 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. "Substantial evidence" is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

In re Jane Doe, 95 Hawai'i at 190, 20 P.3d at 623 (internal quotation marks, citations, and ellipsis omitted).

"If a finding is not properly attacked, it is binding; and any conclusion which follows from it and is a correct statement of law is valid." Wisdom v. Pflueger, 4 Haw. App. 455, 459, 667 P.2d 844, 848 (1983).

The family court's Conclusions of Law

pursuant to HRS § 587-73(a) with respect to (1) whether a child's parent is willing and able to provide a safe family home for the child and (2) whether it is reasonably foreseeable that a child's parent will become willing and able to provide a safe family home within a reasonable period of time present mixed questions of law and fact; thus, inasmuch as the family court's determinations in this regard are dependant upon the facts and circumstances of each case, they are reviewed on appeal under the "clearly erroneous" standard. Likewise, the family court's determination of what is or is not in a child's best interests is reviewed on appeal for clear error.

Moreover, the family court is given much leeway in its examination of the reports concerning a child's care, custody, and welfare, and its conclusions in this regard, if supported by the record and not clearly erroneous, must stand on appeal.

In re Jane Doe, 95 Hawai'i at 190, 20 P.3d at 623 (internal quotation marks, citations, and brackets omitted).

C. Credibility Of Witnesses

"It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." Id. (internal quotation brackets, and ellipsis omitted).

III. DISCUSSION

On appeal, Mother argues that she and Father are now or within the foreseeable future will be willing and able to provide a safe family home for the children and that the family court's permanent custody order was not supported by clear and convincing evidence.

At the May 2, 2000 hearing, Dr. Bell, an expert in clinical psychology, testified about her evaluation of each parent. Mother was diagnosed as having dysthymia (long-standing depression lasting more than two years) and adjustment disorder with mixed disturbance of emotions and conduct, antisocial personality disorder, asthma and diabetes. Given Mother's diagnosis, Dr. Bell projected that Mother would need weekly therapy for years and, even then, therapy might not help. Without weekly therapy, Mother's behavior would not change and she would not be able to provide a safe family home for the children because the potential for abuse of the children would still be present.

Dr. Bell testified that Father was diagnosed as having an adjustment disorder with disturbance of emotions and conduct and an antisocial personality disorder, which related to a disregard of others' rights. The adjustment disorder, coupled with the personality disorder, would impinge upon Father's parenting because he would see things his way rather than the way that CPS or society would like him to see things. If Father were not engaged in weekly therapy, he would not be able to provide a safe family home for the children.

Dr. Bell further testified that with Parents' personality disorders, Parents could believe that they were right and not realize that the children needed an education or medical or psychological treatment. According to Dr. Bell, personality disorders are extremely difficult to change because the person must reformulate their entire belief system. Personality disorders could worsen if not treated. Dr. Bell testified that Parents' lack of parenting skills and their anger, combined with unruly children, could put the children at risk for abuse.

A CPS Supervisor (Supervisor), the family's social worker, testified regarding Parents' compliance with their various service plans. The Supervisor testified there had been some compliance, but not all requirements had been met. According to the Supervisor, Parents had a history of not keeping appointments (including children's medical appointments, Parents'

therapy appointments, court dates, and social service counseling) and of not sending the children to school.

The Supervisor testified that services had been offered to the family for three years and that during the course of the case, Parents had not demonstrated a realistic understanding of the demands on a parent to care for four children for twenty-four hours a day. The Supervisor also testified she did not believe that Parents (1) would follow through by making the children go to school or taking the children to medical appointments; (2) could provide a consistent environment for the children; (3) could provide a safe family home without a service plan because Parents had not improved with a service plan and because these were special needs children; (4) could provide a safe family home in the reasonably foreseeable future even with a service plan; (5) would follow through with necessary services; and (6) would accept help to make the necessary changes to provide a safe home.

The family court found Dr. Bell and the Supervisor to be credible. There was substantial evidence to show that although Parents had made improvements in their housing situation and loved and wanted their children, Parents lacked the necessary parenting skills to provide a safe and stable home for the children then or in the foreseeable future. Parents had also demonstrated a continued lack of compliance with ordered services

and visitation requirements. The family court's findings of fact were not clearly erroneous.

[T]he question on appeal is whether the record contains "substantial evidence" supporting the family court's determinations, and appellate review is thereby limited to assessing whether those determinations are supported by credible evidence of sufficient quality and probative value. In this regard, the testimony of a single witness, if found by the trier of fact to have been credible, will suffice. Because it is not the province of the appellate court to reassess the credibility of the witnesses or the weight of the evidence, as determined by the family court, the family court is given much leeway in its examinations of the reports concerning a child's care, custody, and welfare.

In re Jane Doe, 95 Hawai'i at 196-97, 20 P.3d at 629-30 (internal quotation marks, citations, and brackets omitted).

IV. CONCLUSION

We affirm the Order Awarding Permanent Custody filed on May 26, 2000 and the Orders Concerning Child Protective Act filed on June 28, 2000 in the Family Court of the First Circuit.

DATED: Honolulu, Hawai'i, April 15, 2002.

On the briefs:

Edward J.S.F. Smith
for appellant.

Chief Judge

David McCormick,
Deputy Attorney General,
for Department of Human
Services, appellee.

Associate Judge

Associate Judge