

NO. 23698

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

IN THE INTEREST OF DOE CHILDREN:  
JANE DOE, Born on February 15, 1985;  
JOHN DOE, Born on April 13, 1986;  
JANE DOE, Born on May 11, 1987; and  
JOHN DOE, Born on August 16, 1988

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NO. 89-01310)

SUMMARY DISPOSITION ORDER

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

Based on allegations of sexual abuse by Father, Appellee State of Hawaii, Department of Human Services (DHS), filed a petition on August 3, 1994, in FC-S No. 89-01310, asserting that "Father's alcohol abuse, sexual harm of a half-sibling and resistance to participating in appropriate therapeutic services constitutes threatened harm to the [Doe] children and their half-siblings."

At the August 8, 1994 hearing, the family court<sup>1</sup> awarded the Director of DHS temporary family supervision over Jane Doe 2, born on February 15, 1985, John Doe 1, born on April 13, 1986, Jane Doe 3, born on May 11, 1987, and John Doe 2,

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<sup>1</sup> District Family Judge Karen Radius presided in this matter.

born on August 16, 1988 (collectively, the Doe Children).<sup>2</sup> At the August 26, 1994 hearing, the court asserted jurisdiction pursuant to Hawaii Revised Statutes (HRS) §§ 571-11(9) and 587-11 (1993), sustained the petition, and awarded DHS family supervision over the Doe Children.

On July 14, 2000, after DHS involvement of close to six years did not solve the myriad problems, the family court entered its Order Awarding Permanent Custody of the Doe Children to DHS. The parents of these minor children (Father and Mother<sup>3</sup>) were thereby divested of their parental and custodial duties and rights, pursuant to HRS §§ 587-2 and 587-73 (Supp. 1999).

Father appeals from the Order Awarding Permanent Custody entered on July 14, 2000. Father also appeals from the Orders Concerning Child Protective Act entered on July 28, 2000, which denied Father's Motion for Reconsideration of Order Granting the Department of Human Services' Motion for Permanent Custody Filed on January 21, 2000.

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<sup>2</sup> Jane Doe 1 is now an adult and is not a part of this appeal.

<sup>3</sup> The mother of Jane Doe 2, born on February 15, 1985, John Doel , born on April 13, 1986, Jane Doe 3, born on May 11, 1987, and John Doe 2, born on August 16, 1988 (Mother), filed a motion for reconsideration, untimely pursuant to Hawaii Revised Statutes (HRS) § 571-54 (1993). The family court waived the procedural defect of untimeliness and denied the motion on its merits. HRS § 571-54 does not authorize the family court to waive a procedural defect. Therefore, although Mother subsequently filed a notice of appeal, this court lacks jurisdiction to hear her appeal because a judgment in a HRS § 571-11(a)(2),(6) or (9) (1993) case is appealable only after compliance with the HRS § 571-54 requirement. Furthermore, Mother did not file a statement of jurisdiction or an opening brief.

Father asserts the following points of error: (1) the findings that Father continued to drink, engaged in violent behavior, violated the restraining order, or otherwise refused to comply with the service plan were not supported by substantial evidence; (2) DHS did not exert reasonable and active efforts to reunify the children with Mother and Father; (3) Mother and Father demonstrated that they were willing and able to provide the children with a safe family home in the reasonably foreseeable future; (4) the permanent plan is not in the best interests of the children; (5) the family court abused its discretion when it granted permanent custody and terminated parental rights; and (6) the family court abused its discretion when it denied Father's Motion for Reconsideration.

Upon a thorough review of the record, we disagree with each and all of Father's contentions. The record clearly supports the family court's finding that "[i]t is against the children's best interests to wait any longer for the parents to try to become willing and able to provide a safe family home."

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the family court's  
(1) July 14, 2000 Order Awarding Permanent Custody and  
(2) July 28, 2000 Orders Concerning Child Protective Act, denying  
Father's Motion for Reconsideration, from which the appeal is  
taken are affirmed.

DATED: Honolulu, Hawai'i, June 28, 2002.

On the briefs:

Dwight C. H. Lum  
for Father-Appellant. Chief Judge

Jill T. Nagamine,  
Mary Anne Magnier, and  
Jay K. Goss, Associate Judge  
Deputy Attorneys General,  
for Department of Human  
Services-Appellee. Associate Judge