

NO. 23858

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

IN THE INTEREST OF DOE CHILDREN:
JANE DOE, Born on May 24, 1984, and
JANE DOE, Born on February 11, 1989

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 99-05907)

SUMMARY DISPOSITION ORDER

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

Upon a review of the record, we summarily vacate the family court's October 17, 2000 "Orders Concerning Child Protective Act," which terminated the parental rights of Mother-Appellant (Mother).

Mother's first daughter was born on May 25, 1984. Mother's second daughter was born on February 11, 1989. The family court first asserted its jurisdiction in this case on April 9, 1999. On August 21, 2000, the State of Hawai'i, Department of Human Services (DHS), moved for permanent custody. The trial and oral decision terminating Mother's parental rights occurred on October 2, 2000. The trial regarding the parental rights of the father (Father) was continued. On October 9, 2000, Mother moved for reconsideration. On October 17, 2000, District Family Judge R. Mark Browning entered an order terminating Mother's parental rights. On October 18, 2000, Judge Browning entered an order denying Mother's motion for reconsideration. On

December 19, 2000, Judge Browning entered Findings of Fact and Conclusions of Law.

On February 20, 2001, District Family Judge Kenneth E. Enright entered an order terminating Father's parental rights. On March 9, 2001, Father filed a motion for reconsideration. On March 9, 2001, Judge Enright entered an order granting Father's motion for reconsideration and instructed the DHS to prepare a service plan for Father and to "use its discretion with respect to offering services for [M]other[.]"

In its answering brief, the DHS notes that although it has long been willing for the family court to vacate the order appealed by Mother, this could not happen as long as Mother's appeal continued, and Mother refused to withdraw her appeal.

Mother's opening brief states that the reasons Mother refused to withdraw her appeal are because (a) Mother wants an appellate court to conclude, pursuant to Hawaii Revised Statutes (HRS) Chapter 587 (the Child Protective Act), and HRS Chapter 571, that the family court is not authorized to terminate a mother's parental rights when (i) the father's parental rights have not been terminated, (ii) the DHS is working with the father toward reunification, and (iii) the father and the mother live together; and (b) Mother is not convinced that the DHS is willing for the family court to vacate its October 2, 2000 decision and

October 17, 2000 order terminating Mother's parental rights and to work with Father and Mother toward reunification.

With respect to "(b)" above, we quote the answering brief filed by the DHS as follows: "At this time, DHS is willing to reinstate Mother's parental rights and has continued to offer Mother a service plan with a goal of reunification."

With respect to "(a)" above, it is not necessary for us to answer the question presented, and we decline to do so.

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 "Orders Concerning Child Protective Act," from which the appeal is taken, filed on October 17, 2000, is vacated and this case is remanded to the family court for further proceedings.

DATED: Honolulu, Hawai'i, November 1, 2002.

On the briefs:

Wilfred Tangonan
for Mother-Appellant.

Chief Judge

Eric J. Alabanza and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-Appellee.

Associate Judge

Associate Judge