NOS. 24054, 24055, and 24062

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI‘I

NO. 24054
IN RE JANE DOE, BORN ON AUGUST 17, 1998, MINOR.

AND

NO. 24055
IN THE INTEREST OF DOE CHILDREN: JOHN, BORN ON SEPTEMBER 16, 1993, AND JANE, BORN ON APRIL 14, 1997, MINORS.

AND

NO. 24062
IN THE INTEREST OF JOHN DOE, BORN ON JANUARY 18, 2000, MINOR.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(NOS. 24054, 24055, AND 24062)

(NO. 24054, FC-S NO. 00-05855)
(NO. 24055, FC-S NO. 99-05854)
(NO. 24062, FC-S NO. 00-06449)

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

In each of these three consolidated appeals, Mother-Appellant (Mother) appeals[1] (1) the family court of the first circuit’s November 27, 2000 order in the underlying proceeding that terminated her parental rights, awarded permanent custody to the Department of Human Services, State of Hawai‘i (DHS), and adopted the DHS’s permanent plan, all pursuant to Hawaii Revised

[1] Father voluntarily surrendered his parental rights in the three subject children at the November 27, 2000 trial and is not a party to these appeals.

Statutes (HRS) chapter 587 (1993 & Supp. 2001) (the "Child Protective Act");[2] and (2) the family court's December 28, 2000

---

[2] "[Hawaii Revised Statutes (HRS)] § 587-27 is entitled "Permanent plan," and specifies the required contents of a permanent plan which results in the termination of the natural parents' parental rights, and placement of the child with a third party.

HRS § 587-73, entitled "Permanent plan hearing," sets forth the court's obligations at such a hearing, and describes the "criteria" which must be demonstrated by "clear and convincing evidence" in order for the court to adopt a permanent plan as delineated in HRS § 587-27." In re Doe, 89 Hawai'i 477, 482 n.16, 974 P.2d 1067, 1072 n.16 (App. 1999).

At the time Mother's children were first placed under temporary custody by the family court, HRS §§ 587-73(a)(1), (2) and (3) (1993) provided, in pertinent part:

> (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and 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 three years from the date upon which the child was first placed under foster custody by the court; [and]
>
> (3) The proposed permanent plan will assist in achieving the goal which is in the best interest of the child[.]

HRS § 587-73(a)(2) was amended, effective July 1, 1999, to shorten the "reasonable period of time" to two years. 1999 Haw. Sess. L. Act 153, § 5 & 7 at 496.

order in the underlying proceeding denying her motion for reconsideration of the November 27, 2000 order.[3] The November 27, 2000 orders together awarded permanent custody of three of Mother's children -- Jane 1, born April 14, 1997; Jane 2, born August 17, 1998; and John 2, born January 18, 2000.[4]

Upon a painstaking review of the records and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Mother's points of error as follows:

Mother advances the following points of error on appeal:

1. Mother avers that the family court erred in concluding that Mother could not provide a safe family home at the time of trial or in the reasonably foreseeable future, because she was not the perpetrator of any known harm to the children, had made sufficient efforts to comply with the terms of

---

"[T]he focus of a permanent plan hearing conducted pursuant to HRS § 587-73(a) is whether the child's "mother" or "father" can provide a safe family home. See HRS § 587-73(a)(1). If not, the focus shifts to whether it is reasonably foreseeable that the child's "mother" or "father" will become willing and able to provide a safe family home within a reasonable period of time. See HRS § 587-73(a)(2). Only after the family court has found, by clear and convincing evidence, that neither criteria has been established, does the court then consider whether the proposed goal of the permanent plan is in the best interests of the child. See HRS § 587-73(a)(3)." In re Doe, 95 Hawaiʻi 183, 194, 20 P.3d 616, 627 (2001).

[3] The Honorable Paul T. Murakami, judge presiding.

[4] John 1, born September 16, 1993, is another child of Mother's but not a subject of this appeal. On July 3, 2000, Mother and Father stipulated to the family court's award of permanent custody of John 1 to the Department of Human Services, State of Hawaiʻi.

the service plan, and would be able to protect the children from harm should Father try to contact them.

2. Mother also argues that the family court erred in concluding that the permanent plan for adoption of the children was in their best interests, because no evidence was adduced which suggested that the children's reunification with Mother alone would not be in their best interests, or which showed that Mother would be unable to protect the children or herself constitute a danger to them.

We disagree with Mother's contentions. In framing, by clear and convincing evidence, the findings of fact and conclusions of law supporting its November 27, 2000 orders, the family court relied upon, and thus found credible, the following evidence:

A. The testimonies of four expert witnesses concluding or tending to show that Mother was unable or unwilling to provide a safe family home for the children at the time of trial, and would remain so for the reasonably foreseeable future, even with the assistance of a service plan; based upon, *inter alia*, the following observations:

1. Mother is aligned with and unable to break away from Father, who had an unresolved substance abuse problem (including daily use of crystal methamphetamine) despite the offer of a service plan,

and was a suspect in the infliction of cigarette burns on two of Mother's four children and a perpetrator of abuse upon Mother in the presence of the children.

2. Although Mother did complete some tasks specified in the service plan, she did not follow through with individual therapy, which was the most important provision of the plan because of her physically violent relationship with Father.

3. Despite Mother's participation in the service plan, she minimized the safety risks to the children, and did not fully understand and internalize crucial concepts or appreciate the seriousness of the domestic violence and its real impact upon the children.

4. Mother was diagnosed with several psychological conditions that have a retrograde effect upon her ability to prevent further abuse of the children.

B. Mother's admissions that she is afraid of Father and believes him to be a threat to their children, but still loves him in a way and is unable -- indeed, does not know how -- to break away from him.

C. The testimonies of the DHS social worker and the children's guardian ad litem and their shared opinion that the DHS permanent plan of adoption was in the children's best interests, coupled with the fact there were prospective adoptive

parents for all of the children.

Appellate review of the family court's findings of fact and ultimate determinations arising out of a permanent plan hearing proceeds as follows:

> The family court's [findings of fact], as well as its determinations pursuant to HRS § 587-73(a),[5] are reviewed under the clearly erroneous standard, . . . Thus, the 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.[6] 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 Doe, 95 Hawai‘i 183, 196-97, 20 P.3d 616, 629-30 (2001) (citations, internal quotation marks and original brackets omitted; footnotes supplied).

Clearly, the family court's findings of fact and ultimate determinations pursuant to HRS § 587-73(a) were "supported by credible evidence of sufficient quality and probative value" to be deemed "substantial evidence[.]" Such findings and determinations were therefore not "clearly

---

[5] See also Doe, 89 Hawai‘i at 487, 974 P.2d at 1077 ("the decision as to what custodial arrangements are in the best interest of a child is a matter or question of ultimate fact reviewable under the clearly erroneous standard of review" (citation and internal quotation marks omitted)).

[6] See also Doe, 89 Hawai‘i at 487, 974 P.2d at 1077 ("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 left with a definite and firm conviction that a mistake has been made." (Citation and internal quotation marks omitted.)).

erroneous" and will not be overturned on appeal. Id.

We also note that In re Doe, supra, in which the Hawaiʻi Supreme Court affirmed the family court's termination of the appellant's parental rights and awarded permanent custody to DHS pursuant to a permanent plan, is a case that is, in all important particulars, on point with this one.

Therefore,

IT IS HEREBY ORDERED that the November 27, 2000 orders and the December 28, 2000 orders of the family court are affirmed.

DATED: Honolulu, Hawaiʻi, July 12, 2002.

On the briefs:

Leslie C. Maharaj,
for plaintiff-appellant.

David McCormick,
Jay K. Goss,
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services, appellee.

Chief Judge

Associate Judge

Associate Judge