

NOT FOR PUBLICATION

NO. 24741

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DIANE MICHIKO SHIRAKI, Plaintiff-Appellant, v.
BRIAN MASAMI SHIRAKI, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 95-4407)

SUMMARY DISPOSITION ORDER

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

In this appeal, Plaintiff-Appellant Diane Michiko Shiraki (Diane or Plaintiff) challenges the following post-divorce decree orders that were entered by the Family Court of the First Circuit (the family court) and related to the legal and physical custody and care and support of the three special-needs children¹ of Diane and Defendant-Appellee Brian Masami Shiraki (Brian or Defendant); namely, Son 1, Daughter, and Son 2 (collectively, the Children):

(1) The First Order Regarding Temporary Physical Custody, and Related Issues filed on January 17, 2001;

(2) The "Order Re: Plaintiff's Motion and Affidavit for Post-Decree Relief Filed Feb[ruary] 27, 2001[,]" entered on March 21, 2001;

^{1/} The oldest child, a son, has been diagnosed with autism. The second child, a daughter, has achondroplasia, commonly known as dwarfism. The third child, a son, has been diagnosed with attention deficit disorder.

(3) The "Order . . . Denying . . . Motion and Affidavit for Post Decree Relief" entered on August 6, 2001;

(4) The Order Denying Motion for Reconsideration of Oral Denial of Plaintiff's Motion and Affidavit for Post Decree Relief filed July 30, 2001, entered on September 20, 2001;

(5) The Order Regarding Child Custody and Other Issues entered on September 25, 2001;

(6) The Amended Order/Notice to Withhold Income for Child Support entered on September 25, 2001; and

(7) The Order Granting in Part and Denying in Part Defendant's Motion for Reconsideration or for New Trial or for Clarification filed October 5, 2001 as well as Plaintiff's Motion for Reconsideration of Order Regarding Child Custody and Related Issues filed October 3, 2001, entered on November 5, 2001.

Diane raises the following points of error:

(A) The family court erred in admitting hearsay evidence of alleged abuse; specifically, the testimony of a Department of Human Services (DHS) caseworker, as well as various DHS records, concerning allegations by Daughter of "physical abuse" committed against Sons 1 and 2 by Diane and Diane's boyfriend;

(B) The family court erred when it excluded from evidence Honolulu Police Department records of prior "false or unsubstantiated child abuse reports" that were lodged against Diane regarding the Children;

(C) The family court erred in changing physical custody of the Children to Brian, based upon evidence of alleged incidents that do not fall within the definition of abuse under Hawai'i law.

(D) The family court erred in excluding evidence of Brian's extreme religious beliefs, which would have shown that Brian was not fit to be the custodial parent of the Children;

(E) The family court abused its discretion in denying Diane's request that an independent psychological examination of Brian be conducted; and

(F) The family court abused its discretion by deferring its responsibility to decide temporary custody and visitation issues to DHS's judgment.

After a careful review of the record and the briefs submitted by the parties, and having duly considered the case law and statutes relevant to the arguments advanced by the parties, we disagree with Diane's assertions.

Accordingly, we affirm the orders being challenged in this appeal.

DATED: Honolulu, Hawai'i, November 12, 2003.

On the briefs:

Steven J. Kim (Lynch Ichida
Thompson Kim & Hirota) for
plaintiff-appellant.

Michael H. Tsuchida (Miyagi,
Nohr & Myhre, of counsel)
for defendant-appellee.