

NOT FOR PUBLICATION

NOS. 25299 AND 25300

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

IN THE INTEREST OF JANE DOE,
Born on February 6, 1991, Minor

(FC-S NO. 00-07064)

AND

IN THE INTEREST OF DOE CHILDREN:
JANE DOE, Born on June 24, 1997, and
JOHN DOE, Born on July 29, 1999, Minors

(FC-S NO. 00-07065)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

MEMORANDUM OPINION

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

The appellant in this case is the mother (Mother) of six children. This appeal concerns three of the six children. They are: In FC-S No. 00-07064, Jane Doe, born on February 6, 1991 (Doe I); and in FC-S No. 00-07065, Jane Doe, born on June 24, 1997 (Doe II), and John Doe, born on July 29, 1999 (Doe III). The other three children who are not a part of this appeal are: John Doe, born on September 3, 1992 (Doe IV); Jane Doe, born on August 11, 1993 (Doe V); and John Doe, born on January 20, 1995 (Doe VI).

Does I, II, and III will be referred to collectively as "Group A". The father of Group A is Mother's boyfriend, and he will be referred to as "Father Group A".

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Doe IV, V, and VI will be referred to collectively as "Group B". The father of Group B is Mother's former husband, and he will be referred to as "Father Group B". Group B lives with Father Group B in California.

In FC-S No. 00-07064, Mother appeals from the July 24, 2002 Order Awarding Permanent Custody that terminated Mother's and Father Group A's parental rights to, and appointed the State of Hawai'i Director of Human Services (Director) as permanent custodian of, Doe I.

In FC-S No. 00-07065, Mother appeals from the July 24, 2002 Order Awarding Permanent Custody that terminated Mother's and Father Group A's parental rights to, and appointed Director as permanent custodian of, Doe II and Doe III.

The orders appealed from pertain only to Group A, and were entered in the Family Court of the First Circuit by Judge John C. Bryant, Jr. We affirm.

BACKGROUND

The trial in both cases was held on July 24, 2002. The Findings of Fact and Conclusions of Law (FsOF and CsOL) were filed on October 24, 2002. They state, in relevant part, as follows:

Historical Background

1. [In January of 1993], DHS [(Department of Human Services, State of Hawai'i)] received a report of alleged threat of harm to [Doe I] (then two years old) and [Doe I's] half-sibling [Doe IV] (then one year old) by Mother. The report of alleged threat of harm to [Doe I] was not confirmed by DHS.

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2. On January [sic] 27, 1997, DHS received a report of alleged threat of harm to [Doe II] by Mother because Mother had tested positive for methamphetamines in a test administered to Mother after [Doe II's] birth. DHS confirmed the report of threatened harm to [Doe II] but did not accept the case for investigation because Mother agreed to participate in DHS recommended services and maternal grandmother (Grandmother) agreed to monitor Mother.

3. On August 12, 1998, DHS received a report [of] alleged physical abuse, neglect and psychological neglect to [Doe I] and [Doe II] and their half-siblings [Doe IV], [Doe V, and Doe VI] by Mother and Father. DHS confirmed the report of physical neglect (lack of supervision and educational neglect) because of Mother's use of methamphetamine and marijuana, and did not confirm the report for physical abuse and psychological abuse. At an Ohana Conference in November 1998, Mother agreed to participate in services as recommended by DHS.

4. On November 21, 2000, DHS received a report of threat of abuse to [Group A] and [Group B] by Mother and [Father Group A]. According to the report, [Father Group A] allegedly sexually abused the Ch[il]dren's maternal cousin [(Cousin)] in the home of Mother and [Father Group A], starting around Thanksgiving 1999 to approximately October 2000, and that [Father Group A] threatened [Cousin] not to report the sexual abuse. [Cousin] told Mother of the sexual abuse by [Father Group A]. Mother told [Cousin] that she would "take care of it." [Cousin's mother] ([Group A's and Group B's] maternal aunt and Mother's half-sister) did not call the police after being confronted by Mother not to call the police. [Cousin] reported the sexual abuse to school officials after no action was taken by her mother and aunt (Mother).

Procedural History

5. On November 21, 2002 [sic], protective custody of [Group A] and [Group B] was assumed by the Honolulu Police Department and immediately thereafter temporary foster custody of [Group A] and [Group B] was assumed by DHS pursuant to HRS § 587-22(c).

On November 27, 2000, in FC-S No. 00-07064 for Doe I, and in FC-S No. 00-07065 for Doe II and Doe III, DHS filed Petitions for Temporary Foster Custody. The content of the petitions are identical except for the subject child or children.

A temporary foster custody hearing occurred on November 29, 2000. The family court granted DHS temporary foster custody and filed a "family court restraining order." Father

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Group A was "enjoined and restrained from personally contacting [Group A] and [Cousin] which includes telephoning, visiting, and/or remaining within three (3) blocks of the place of residence, school, and/or employment of the other party." In a November 28, 2000 Safe Family Home Report, DHS social worker Asiana Dela Cruz described Mother's background:

[Mother] was born on November 9, 1974 in Honolulu, Hawaii. . . . She is the second oldest of her parent's three children. [Mother] has four older maternal half-siblings. Her parents were never married, and at age three, her parents separated. She has rare contacts with her father. Around age seven to eight, her mother had a relationship with [Grandmother's Boyfriend] who lived with the family until [Mother] was [a] twelve-year-old. Although her mother was the disciplinarian who usually grounded for misbehaviors, [Mother] described years of abuse by [Grandmother's Boyfriend] to herself and siblings and included physical and sexual abuse. Despite a troubled childhood, she reported a close relationship with her mother and siblings.

. . . In 1991, [Mother] dropped out of the tenth grade at . . . [h]igh [s]chool on the Big Island. In 1994, she participated in a program at a California school to obtain her G.E.D. but after three months, she dropped out as she returned to Hawaii.

At age 16 and her oldest child, [Doe I], then eight months old, [Mother] met her first and only husband [Father Group B]. After a couple of months, their relationship became serious, and less than a year later, they lived as a couple. On November 9, 1995 and after the births of their three children, [Doe IV], [Doe V], and [Doe VI], they were married. Shortly thereafter, the family moved to California for a better life. They lived with [Father Group B's] parents in . . . California. On June 6, 1996, [Mother] and her four oldest children returned to Hawaii because her marriage was failing. [Father Group B] followed the family to Hawaii as he was having problems with his own family in California. The couple remained in contact briefly, and [Mother] reported her last contact with [Father Group B] was in December 1996. . . .

[Mother] has known [Father Group A] since Intermediate School age as he was a friend of her older half-sisters. Around age 14 to 15 years old, their relationship became serious, and she became pregnant with their oldest child, [Doe I]. Prior to [Doe I's] birth, their relationship ended. In early October 1996, [Mother] and [Father Group A] resumed their relationship, and they have been living together since then. Subsequently, two children were born, [Doe II] and [Doe III]. Because of their living arrangement as a family, [all of the] children know [Father Group A] as their "dad."

During her years of marriage, [Mother] described [Father Group B] as an alcoholic who drank daily and had physically assaulted her. Although she initially denied any form of domestic violence in her relationship with [Father Group A], [Mother] reported it was a mutual exchange of physical assaults to each other during their arguments.

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[Mother] is identified as the perpetrator for threat of harm to her children in failing to take protective action when she learned of [Cousin's] sexual victimization, and for directing her sister {Cousin's Mother} . . . not to get the police involved with [Cousin's] allegation of sexual abuse by [Father Group A].

On December 1, 2000, another temporary foster custody hearing was held. Father Group A failed to attend the hearing and a default was entered against him. The court awarded foster custody of Doe I to DHS. The court ordered the November 28, 2000 Family Service Plan into effect, and it required Mother and Father Group A to participate in a psychological evaluation, sexual abuse counseling, a substance abuse assessment, and random urinalysis (UA) tests^{1/}.

A review hearing was held on May 16, 2001. The court ordered the May 11, 2001 Family Service Plan into effect, and it added the following requirements: Mother will participate in domestic violence counseling; Father Group A will "participate in a drug assessment," "follow all the recommendations," and "[c]omplete anger management classes"; and Mother and Father Group A will complete a parenting class and participate in "all treatment services as recommended from the psychological

^{1/} The Appellant-Mother (Mother) was ordered to "[c]all Hina Mauka daily and go for urinalysis when the color she is assigned is indicated as the color to do a random UA."

evaluation and DHS in consultation with the GAL [(Guardian Ad Litem)]."

In the May 11, 2001 Supplemental Safe Family Home Report, DHS reported that

[w]hile [Mother] is in partial compliance with the service plan; she has been slow to follow through. . . .

This worker believes that [Mother] and [Father Group A] have no boundaries as evidenced by their taking [Cousin] with them to the psychological evaluation despite a TRO against [Father Group A] from having contact with [Cousin]. . . . Her children are doing the caretaking of [Mother] (when they feel like it) and the role-reversal in this home is very apparent. Also they yell at her and make outrageous demands of her even during the visits. The presents she has given the girls also show her complete lack of understanding her parenting role. The presents at Christmas was a high-cut panty and bra set for [Doe I] and [Doe V]. This worker has watched several visits and feels that [Mother] treats her children as peers. This worker also believes [Mother] has unresolved sex abuse issues due to her own childhood experiences. This is confirmed by her total lack of social boundaries.

A psychological evaluation of Mother and Father Group A by Dr. John L. Wingert was received into evidence on May 15, 2001 and filed on June 2, 2001. It noted that Mother and Father Group A "apparently had arrived together and were accompanied by a 14-year-old female that [Mother] identified as a niece." It further stated, in relevant part, as follows:

[Mother] characterized her childhood as "alright" although she went on to talk about how there were problems with [Grandmother's Boyfriend] at that time as he was described as being violent towards [Grandmother] and the children. She stated that [Grandmother's Boyfriend] would have [Grandmother] drink until she passed out and he would then attempt to sexually molest [Mother] and her two siblings. She stated that he had also sexually molested one of his own daughters and that [Grandmother] discouraged her from reporting the molestation by informing her that she would have to go to court and describe what had happened to her in detail. . . .

. . . .

. . . [Mother] presently does not have any means of financial support. She stated that her housing is paid for under Section 8 but her public assistance had been terminated when the children were removed from the home. She reported that [Father Group A] sometimes provides her with money and one of her sisters also helps her out.

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Neither [Mother] nor [Father] presented with features of any pronounced psychopathology or emotional disturbance although there was insufficient information to make a determination regarding the possibility of underlying personality disorder. . [sic] Their personality development is reflective of general psychological immaturity in terms of lacking personal responsibility, being primarily self-focused, having minimal appreciation of their impact on others, and lacking well developed judgment and problem-solving skills. While they did report being upset at the separation from the children, neither individual comes across as being disturbed to the point where there is a need for personal change. It is noted that [Mother] has a history of untreated sexual molestation and this may well negatively impact on her protective capacity.

On August 9, 2001, Judge Marilyn Carlsmith presided over a review hearing and filed Orders Concerning Child Protective Act that ordered the August 6, 2001 Service Plan #3 into effect. FOF no. 11 reports that "[a]t this hearing, the court ordered, in FC-S No. 00-07066, that [Group B] be reunified with their legal father, [Father Group B], and authorized [Father Group B] to take [Group B] to reside with him in the State of California."

On January 23, 2002, Judge Bryant presided over a review hearing and filed Orders Concerning Child Protective Act. Mother was not present, and a default was entered against her.^{2/} The court ordered that the case involving Group B be closed on March 1, 2002. The court ordered DHS to file a motion for permanent custody in cases FC-S No. 00-07064 (Doe I) and FC-S No. 00-07065 (Doe II and Doe III) by May 15, 2002.

^{2/} This default against Mother was set aside at the May 15, 2002 hearing.

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In the January 17, 2002 Supplemental Safe Family Home Report filed on January 28, 2002 by DHS, the social worker gave the following updates:

[Doe I] is in therapy for her many inappropriate [sic] behaviors. The behaviors that are worrisome tend to isolate her socially. [Doe I] has difficulty understanding social boundaries and is often "out of bounds" with peers and adults.

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[Father Group A] has not been in touch with this worker. On three occasions [sic], [Doe I] has reported to her foster parent that [Mother] and [Father Group A] have driven by the foster home.

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This worker has not been able to assess the home where [Mother] is living due to [Mother's] lack of candor and deliberate misinformation. This worker believes that [Mother] is living in Ewa Beach with [Father Group A]. [Mother] has a difficult time understanding how her issues of drug abuse and sex abuse have impacted her children. [Mother] refuses to believe that [Father Group A] is a danger to her children and particularly to her niece. [Mother] has not addressed the issue of sex abuse and the harm to the children.

On May 8, 2002, DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan. Attached to the motion is an April 29, 2002 Safe Family Home Report. In it, social worker Joann Cross (Cross) stated that

[Mother] is in partial compliance with the service plan. She has completed a psychological evaluation and she has completed a parenting class. [Mother] has a weekly visit at the PACT [Parents and Children Together] office in Waipahu and a weekly visit at the Kapolei office. [Mother] has been fairly regular in keeping her visits. However, she has missed some visits with no excuses offered. The Kapolei record shows only that they were canceled due to [Mother] not making timely calls to confirm. [Mother] has been referred for services by a homebased worker and for individual and group therapy for issues relating to sex abuse. She has also been referred to [t]he Family Peace Center. [Mother] went to the Family Peace Center on March 3, 2002. This worker does not have a current report on her attendance there. [Mother] has not complied with the homebased services nor has she . . . been faithful in her treatment with Wayne Hough Ph.D. [Mother] dropped out of treatment entirely at one point but asked to be reinstated at a later date. She has again not complied with individual or group therapy. In addition, [Mother] has not complied with random UAs. [Mother] was dropped from the Hina Mauka program on March 21, 2002 due to noncompliance.

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[Mother] continues to live with [Father Group A]. [Father Group A] is an untreated sex offender and this worker believes that [Father Group A] has continued his relationship with [Cousin] with the full knowledge of [Mother]. This worker believes that both [Mother] and [Father Group A] are allowing [Cousin] to continue to "hide out" and continue to NOT go to school. [Mother] has a very difficult time understanding how her issues of drug abuse and sex abuse have impacted [Group A]. [Mother] refuses to believe that [Father Group A] is a danger to [Group A] and particularly to [Cousin]. [Mother] has not addressed the issue of sex abuse and the harm to [Group A]. This worker also believes that [Father Group A] and [Mother] can no[t] now or in the foreseeable future parent [Group A]. [Group A is] in the need of a permanent home where they can grow into productive citizens.

(Emphasis in original.)

At the July 24, 2002 trial, Dr. Wingert testified that although Mother and Father Group A "did report being upset at the separation from [Group A], neither individual comes across as being disturbed to the point where they feel there's a need for personal change." He stated that when there is "a very casual attitude towards service involvement[,] . . . if individuals did not see themselves in need of treatment, there may be very minimal follow-through[.]" Dr. Wingert further testified as follows:

Q. Dr. Wingert, based on your expertise, what are the issues involved when you have a person with untreated sexual molestation in terms of their parenting?

A. Okay. Oftentimes I think you see the individual responding in -- in one of two extremes. One, they become extremely protective of children not wanting to let out of sight, extremely anxious about any harm coming to the child. On the other hand . . . you'll see individuals who become very casual

Kind of like a lack of impact, like awareness concern regarding safety of the children. Essentially, that this is something that has happened with me and I've lived through it. Those protective feelers, concerns are not as pronounced at all. And that's not an uncommon situation to find clinically.

Q. Okay. And how is this unprotectiveness treated? Is it dealing with the past issues and moving forward to working on their ability to protect the children?

A. Yeah, I think you do it through a combination of both individual psychotherapy as well as actually some parenting too. Again, focusing upon -- taking, again, look at what has happened to one['s] self, how that has shaped, you know, the person's views, their perceptions.

And then taking a look at how their own behavior perceptions impact upon the child in setting up models in terms of what is the (inaudible) more appropriate types of behavior. It's a combination of parenting counselling services.

Q. Okay. And Doctor, if a person has untreated sexual molestation and doesn't see a need to address past issues dealing with the sexual molestation and also the parenting, what is the likelihood of change so that the person will be able to address these issues and become able . . . to provide a safe home for their children in terms of the protective capacity.

A. Oftentimes it's very difficult because I think the individual does not want to go back and confront -- you know, in terms of reality the emotional impact, psychological impact of them of their own molestation. So they tend to shy away from those areas.

And service involvement may then, again, be at a very superficial level, surface level just because they do not want to get in, take a close look at themselves, get involved in deeper issues. And I think that prevents any, you know, personal growth, personal positive change.

Q. And Doctor, hypothetically, if a person doesn't treat these -- the past sexual molestation but does other services with -- and there's some major concern regarding the protectivability (sic), would there still be a risk of harm to the children?

. . . .

A. Okay. I believe that the . . . protective capacity is an area of concern. And you do ancillary aside services that really focus upon that. I think one of the core problems will, you know, still potentially remain and that can cause a potential for risk to the children.

(Sic in original.)

On cross-examination, Dr. Wingert elaborated on the issue of "protective capacity."

Q. . . . [T]here was some concern on your part whether or not [Cousin] could be protected. Is that what your statement was?

A. Well, I guess I had concerns just that . . . in terms of [M]other, there's a question regarding her ability to be protective of children; [Father Group A] had been accused, and there are concerns regarding his sexual behavior, that she would allow a 14-year-old --

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She knows that her own children are not allowed with this individual.

-- that she would bring, you know, another 14-year-old child along in the evaluation process. And part of the time she is going to be in the session with me, and there's not going to be a level of supervision for this 14-year-old.

. . . .

Q. What did you mean by [the term protective capacity]?

A. Okay. I guess by that I mean a parent's ability to on one level recognize at a -- perhaps a more intellectual cognitive level any possible threats of harm either psychological, physical, whatever, to a child; the ability to then take steps to minimize these types of concerns to -- to act upon these, to do whatever they can to realistically lessen -- to better concerns to the child.

. . . .

Q. . . . And you're talking about [M]other's ability to -- to recognize harm or threatened harm to her children of sexual abuse?

A. Yes.

Q. And [Mother's] capacity to take steps to minimize or to protect her children?

A. Yes.

. . . .

Q. And the instance of bringing the 14-year-old child, a niece, to the -- to the therapy session in which one part of the session she would be in session with you and the child and [Father Group A] who has a -- you know, again, allegations about sexual abuse to him -- being left alone in your office, would that be a concern to you?

A. Yeah. That further supports my theory of the concerns regarding protective capacity.

Q. And that would be an indication of [Mother] being less protective in terms of sexual abuse?

A. Yes.

Q. In other words, not -- not apprehending that there was a sexual issue here and not taking steps to minimize it?

A. Yeah. No concern of any possible threat or harm, yes.

Q. And if [Mother] continues not to be -- not to address these issues in therapy, would this inability to protect children from sexual abuse issues continue?

A. Yeah, I think it places the children at increased risk.

Q. And if [Mother] takes some other types of services such as anger management, would that in any way help her to be more protective towards these sexual issues?

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A. I would not believe so I guess in terms of the general anger management course.

Q. And if [Mother] generally addresses her substance abuse issues, would that in any way help her regarding these -- the issue about not being protective on the sexual issues?

A. It would be a step in the right direction. But again, it's not going to fully address these issues.

Cross testified that Doe I currently is in therapy for her "sexualized behavior". When Cross was asked to explain what she meant by "sexualization," she testified, in relevant part, as follows:

Q. What do you mean by sexualization of [Doe I]?

A. [Doe I] has -- she's only ten -- eleven now, I think. She has very sexualized behaviors.

Q. Such as? Can you just give examples.

A. One example was, um, a picture and a card that she made up that a foster mother found on the ground when she dropped it. She was very provocative in licking a lollipop. And she wrote under the picture - she wrote it to an Uncle Nima, who she would not disclose who that was. And she wrote under it: This is me loving you.

I have no idea where she gets those ideas.

Q. Do you have other examples of sexualized behavior?

A. Um, she -- she does deny sex abuse, but she is very, very knowledgeable in many areas of sexual activity that really no ten year old should -- should have.

Q. Such as?

A. Fallacio [sic] for one.

Q. Okay. And does DHS have an assessment of what the cause of the sexualized behavior is on the part of [Doe I]?

Cross also testified, when questioned by the court, as follows:

THE COURT: Were there some presents at Christmas that concerned you?

THE WITNESS: Yes.

THE COURT: What were the presents?

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THE WITNESS: They were - for the ten year old and the seven year old, there was a pair of high cut panties and a bra set that I thought was very inappropriate as a Christmas gift for children that age.

In terms of Mother's therapy, Cross stated that although Mother started sex abuse therapy with Dr. Katherine Garrett in April, Mother had missed two visits. Cross noted that usually Dr. Garrett "terminated a client that missed two visits." Mother had a total of three visits with Dr. Garrett. According to Cross, this was an insufficient number of visits for effective treatment.

Cross testified that Mother's family had too many "family secrets." She stated that "when we ask [Doe I] about the Uncle Nima, she absolutely refused. There's many, many instances when [Doe I] refuses to answer even simple questions. . . . It's difficult because we know that she's literally told family secrets. And that's very -- that tears a child apart." With regard to Mother's protective capacity, Cross testified that she truly believes Mother "doesn't see the harm." Finally, Cross testified that Mother failed to take her "UA's" between "August of '01 to March of [2002]."

Grandmother testified that Mother dropped out of services right after Group B went to live with Father Group B in California. She stated that "it was like a surprise because we didn't see it coming. There was no communication between her and the CPS worker. They -- they never had a chance to sit down and

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talk things out and, you know, kind of see where she was at. It just -- like it just came right out of the blue, you know?"

Grandmother stated that she could not remember when Mother was able to "get back on track" but that "[Mother] was calling [Cross] and asking to set up her services again. And then it -- it just kept being delayed." Grandmother stated that Mother tried to talk to Cross at the CPS building in Kapolei, but Cross merely "threw her hands up in the air and didn't want to listen to [Mother] and . . . walked away."

Regarding Cousin, Grandmother testified as follows:

Q. [D]o you know where [Cousin] is?

A. No, I don't.

Q. Have you ever heard from her?

A. You know, that's a funny thing because from the beginning when everything happened, [Cousin] has been going from foster home to foster home to foster home. She ran away several times, now. And she always would come to my house, and we would call her -- her worker. I forget her name.

But anyway we'd call her and we'd tell her that [Cousin] came back to the house. And then they would send the police or we would call the police. They told us to call the police so we would call the police. And it was like four or five times that she ran away from the foster home, and we'd always send her back.

And then one day she ran away from a group home which was in Ewa Beach somewhere, and she was walking the backroads. And she called from somebody's house over there, and she called her mom. And [Cousin's Mother] went to get her and took her.

They met the police from Kapolei But she was calling constantly crying and begging us to -- to do something. She wanted to come home.

She was doing fine. She was with me. She was going to school every day. She's a great student. She -- she did her homework. She loves to read. And she was coming home doing everything. And then all of a sudden one day, she wasn't there.

And I asked [Cousin's Mother], What happened?

And she said, I don't know. They said she wrote a note and passed it to a friend. The teacher got ahold of it. They gave it

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to the worker, and they interpret as something sexual so they just grabbed her and took her.

And that was the last I saw of her. I haven't seen her since.

Regarding Mother's allegedly inappropriate gifts to her daughters, Grandmother stated that it was Grandmother's third daughter and not Mother who gave Doe I and Doe V the underwear. Grandmother testified that she helped to pick out the underwear and that it was "just like plain underwear. . . you know those you slip over the head? I call it a bra, but a lot of people say it's not a bra. And, you know it's matching. And it's like Fruit of the Loom type of stuff. Because she was . . . saying that she didn't have any underclothes that fit her."

Grandmother stated that she was interested in adopting Group A.

The court questioned Grandmother and she responded, in relevant part, as follows:

THE COURT: I seem to be the only one who is worried that [Cousin's] dead. Cause I'm not getting that from the family. . . . I'm not getting any -- any -- any vibration from any of you that you're worried about [Cousin] which leads me to suspect that, one, people are hiding her and they know where she's at or -- because of the CPS involvement or they don't care about her. Each one of those options is very uncomfortable to me.

So how do you respond -- do you know where [Cousin] is?

[GRANDMOTHER]: No, I don't.

THE COURT: Do you think she's alive?

[GRANDMOTHER]: Yeah, she's alive cause she was seen by her friends. They said, Oh, I saw [Cousin] . . .

THE COURT: I heard she's pregnant. Is she pregnant?

[GRANDMOTHER]: I don't know. I haven't seen her. But you know what, she was seen in Wahiawa. She was seen in Haleiwa by some of her foster kids, you know, the kids that she was living with. Not Wahiawa, Whitmore.

. . . .

THE COURT: Have you made any efforts to find [Cousin]?

[GRANDMOTHER]: I've -- I've asked around. I've called her friends that she was hanging around with in school.

THE COURT: Well, how about [Cousin's Mother]? What's [Cousin's Mother] say?

[GRANDMOTHER]: [Cousin's Mother] said she don't know where [Cousin] [is]. And she would always call her.

THE COURT: Why . . . didn't she take the polygraph then, [Cousin's Mother]?

. . . .

THE COURT: She missed like three appointments for a polygraph. I[ve] got a \$20,000 bench warrant out for her cause she missed the polygraphs.

[GRANDMOTHER]: I wasn't aware of that.

THE COURT: And the only reason I can think she missed three polygraphs is because she's afraid she's going to flunk them.

. . . .

THE COURT: See, this goes to the placement issue.

[GRANDMOTHER]: Uh-huh.

THE COURT: You know if I've got a family that's hiding a child, they're not going to get any more kids placed with them.

[GRANDMOTHER]: I understand. But I . . . like I told you from the beginning, she ran away several times. And it breaks my heart when I have to -- I have to take her -- take her back to CPS or call the police on her.

Under further cross-examination, Grandmother testified, in relevant part, as follows:

Q. [Grandmother], do you believe that [Father Group A] sexually abused [Cousin]?

A. I really -- honestly, I really don't know.

Q. And this is not the first time a member of your family has been sexually abused by a -- as a child, isn't it true?

A. I -- I don't understand.

. . . .

Q. Isn't it true that your daughter [Cousin's Mother] was

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sexually abused by your partner [Grandmother's Boyfriend] starting when [Cousin's Mother] was in about fourth to fifth grade . . . ?

A. It wasn't -- I -- I didn't -- they never came and told me this. The only reason I found out that he was abusing children is when his wife came to me and told me that he was -- he was arrested for sexual abusing his daughter.

Q. And when was this?

A. Oh, that was many years ago.

. . . .

Q. Was this after you broke up with him or while you were still going with him?

A. No, it was way before.

Q. Way before what?

A. We broke up. And then after -- I'm thinking because see, right when I found out about him being arrested . . . then he went to jail. . . . I think he got ten years. But before that, I picked up all my children, and we moved to the Big Island and we were there for eight years.

Q. Okay.

A. But there was no discussion about them being abused. I just -- I just had a feeling maybe they were.

Q. Okay. So it's your testimony that none of your children told you about being sexually --

A. None of them told me.

Q. - abused by [Grandmother's Boyfriend]?

Would you be surprised if you were told that [Mother] stated in the psychological evaluation that . . . [Grandmother's Boyfriend] would have [Grandmother] drink until she passed out and he would then attempt to sexually molest [Mother] and her two siblings].

. . . .

Is [Mother] making a true statement or is she lying when she said that to the . . . psychologist?

A. I don't know. [Mother] never came to me and told me anything about that.

. . . .

REDIRECT EXAMINATION

Q. If any of your children came and told you that, what would you have done?

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A. I would have that person arrested.

. . . .

THE COURT: Ma'am, thank you very much. You know I've got [Cousin's] case too, right?

[GRANDMOTHER]: Uh-huh.

THE COURT: Let me tell you what I want for [Cousin]. I want her in a safe place where she's not using drugs. I want her in a safe place where she's not having unprotected sex or sex for that matter. I want her in a safe place where she is going to school.

[GRANDMOTHER]: Uh-huh.

THE COURT: . . . So whatever efforts you can make to locate her and get her back --

[GRANDMOTHER]: Uh-huh.

THE COURT: -- would be much appreciated.

[GRANDMOTHER]: You know what her -- her CPS worker told me that they were going to take [Cousin] to Arizona. . . .

THE COURT: I'm not sending [Cousin] to Arizona.

[GRANDMOTHER]: No, but that's what they were setting up for her.

THE COURT: Well, they don't get to do it unless I order it, and I'm not sending her to Arizona.

[GRANDMOTHER]: Okay.

THE COURT: But I do need her in a safe place.

Mother testified, in relevant part, as follows:

Q. . . . [W]hen you first were told or ordered to do the service plan, did you comply with the service plan?

A. Yes, I did.

. . . .

Q. Who did you see?

A. Dr. Wayne [Hough].

Q. Okay. Do you recall how many visits you had with him?

A. Maybe four.

Q. Four?

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A. Three or four, yeah.

Q. Okay. And apparently at some point you -- you had dropped from the counselling?

A. Yeah.

Q. Okay. Could you explain to the Court -- and the reason you dropped is -- could you explain to the Court why you -- was it because you --

A. Cause I had missed like two appointments --

Q. Yeah.

A. -- with him.

Q. Okay. Can you tell the Court what -- what your reasoning was because that was kind of important.

A. Well, in -- for one reason, it was because I kind of didn't feel comfortable with a guy.

Q. Therapist?

A. Therapist.

Q. And --

A. So I guess I was kind of like making excuses and I would miss that appointment because I didn't know how to face talking to a guy --

Q. Okay.

A. -- therapist about what -- the things that he wanted to ask.

Q. And did you tell either your caseworker or DHS or anyone that you wanted to change therapist?

A. No, cause I didn't think it was gonna make a difference, I guess, cause it was something that I guess I had to do.

Q. Okay. Was there anything else with -- with Dr. [Hough] that -- was there anything else about his counselling?

A. Just that -- I mean that couple sessions that I had with him, we hardly got to kind of like talk about our past.

Q. Your -- your past?

A. Yeah, because -- I mean, he was doing sessions with my sister . . . also. And when I would go to see him, it would kind of like start off with situations or whatever the conversations that he had with her. And I didn't think that was appropriate for him to talk about whatever they discuss. It should be, I guess, about me.

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Q. Yeah. Okay, there's also a time later on when you stopped doing UA's and stopped all -- doing the services. About when was this? Do you remember?

A. After August. About August -- after August 9th --

Q. Okay.

A. -- when [Group B] had got sent to the mainland. I don't -- because I had been -- from the beginning I was doing what I was told to do on the service plan and things that was told to me and my kids about for them to be coming home. And it seemed like all that I done didn't make a difference so I -- honestly I can say that I was about to give up.

Q. All right. So what brought you back?

A. Well, [Grandmother] and the advocate that I had was talking to me and telling me I still got [Group A] to think about and to fight for so that's what made me go back into doing my UA's and trying to get therapy.

Q. So once you started back on your -- getting back on track, you did the UA's.

A. And I guess on the -- the -- that other, that new service plan was to do domestic violence, either that or it was -- I had a choice with either or. So I had called and scheduled for the domestic violence.

Q. Did you finish that?

A. Yeah, I completed that as of last week Monday.

Q. Okay. What else did you complete?

A. I completed my parenting classes which -- that was last year I had completed. And the only other thing was the therapy and UA's. And I was going back to my UA's.

Q. Have you missed any UA's since you got back on the UA's?

A. No, I didn't.

Q. Except for the one incident?

A. When I went, and she said I couldn't take it.

Q. Okay. Let me ask you this -- this one thing: Of all those things that you've been ordered to do . . . what was or is the most important thing that you had to do?

A. I'd say the -- I guess the sexually [sic] abuse therapy.

Q. Okay. You met with Dr. Garrett?

A. Yeah.

. . . .

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Q. And you wanted a female therapist?

A. Yeah.

Q. Okay. Now you heard testimony that you had missed two appointments with Dr. Garrett already.

A. Uh-huh.

Q. Why did you miss those appointments?

A. Well, one appointment was because my brother had got into a car accident and he was in the hospital. So that was one of the reasons why I had missed that one appointment. That was which was that second one.

Q. Did you call?

A. I called, but then you're supposed to call within a 24-hour notice to cancel it. And I guess that the time that my brother got into an accident was the day that I was supposed to go to therapy.

Q. Okay. And the second time?

A. And second time was -- I guess it was because on Fridays I have therapy with her on Fridays. And Fridays is my visiting with my kids. And I guess I was more too worried about getting to my kids' visiting, and I totally forgot about that I had that appointment with Dr. Garrett.

. . . .

Q. Okay. Now, how many visits did you have with her actually, did you sit down and talk with her?

A. At least about five times.

Q. How long . . . was each visit?

A. About an hour. An hour.

. . . .

Q. What did you talk about?

A. My past.

Q. What do you mean by your past?

A. The sexual abuse that was done to me.

Q. Okay. So you had at least over five hours of that?

A. Yeah, I -- I can say about three to four hours, maybe.

. . . .

Q. . . . Do you think you need to go longer?

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A. I don't -- really, I don't know how to answer that question because I don't know how long it takes.

Q. How long would you go?

A. As long as it takes.

Q. Okay. . . . [I]n talking to her for the amount of time, . . . do you feel like there was anything inside of you that felt like it was helping you or anything?

A. Yeah, understanding about that kind of situation that happened to me. And --

Q. Yes.

A. And I was being aware of what -- what had happened and how to get help for it.

Q. How would you get help for it?

A. Well, she said by coming to counselling and stuff it helps with the situation that happened to me.

Q. Now, just a few minutes ago [Grandmother] was in here and she found out about what happened to you. When was it -- when is it -- when did you ever tell her? Did you ever tell her about your experience?

A. (No audible response)

Q. So today was the first time she heard about it?

A. No, today wasn't the first time, but it was like --

Q. Was this the first time she ever found out or knew about what happened to you?

A. No.

. . . .

Q. When was the first time?

A. Right before we moved to come up to the Big Island.

Q. Okay. And then what happened?

A. [Grandmother] just had all of us packed up. We was already -- before I could even say anything to her, when we got to the Big Island, that's when -- and we moved into a house, that's when everything came out about him.

Q. But you had told her before you guys moved.

A. I knew -- because I mean I had heard about what happened to the daughter, but she didn't know that I knew about it. And so I mentioned -- it's not like I came out directly and told her, but

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I said things I guess to make her realize maybe that she should think that that happened to us. I mean, I don't know how to explain it.

Q. In any case . . . as soon as she found out what happened --

A. We was [sic] already up in the Big Island, moved away. But I was -- I came out and told her about it because I was afraid he was going to move up there with us.

Q. She had already left -- she already took you guys and left the guy, right --

A. Yeah.

. . . .

Q. . . . [W]hat about the . . . thing with [Cousin] at the sex -- psychological assessment.

A. I don't understand about that.

Q. Okay. Who was there?

A. My [niece other than Cousin] cause my sister was working, and my [niece other than Cousin] needed to get her community service papers and see the worker. So my sister asked if she could come with me.

Q. And you and [Father Group A] --

A. And I had told her that I had to go do that first. And she said that was fine as long as I got her to that community service place.

Q. Okay. You heard Ms. Cross say that [Cousin] said she was there with you guys.

A. I can't answer to that question because I wasn't there . . . when she said she was talking to her.

Q. So as far as you're concerned -- and it's your testimony that it was not [Cousin] . . .

A. Yeah.

Q. . . . at the assessment with you and [Father Group A]?

A. Yeah.

Q. Okay. But in any event, weren't you concerned that, you know, the allegations against [Father Group A] that [niece other than Cousin] would be there?

A. Well, I mean, we were at that -- that psychological -- that place, and it was like in public. And I didn't really see that there was going to be any harm to her because there's -- it's two offices like in another office. And you're -- there's a

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waiting room. Got his office and I guess the other person that shares an office right next to him. And his door was always open where you can see where people are in the waiting room.

Q. And was somebody in the other office?

A. Yeah.

Q. Do you know who that was?

A. No, I don't.

. . . .

Q. . . . In any case, did you hear Ms. Cross say that -- at least in her report saying that you and [Father Group A] were hiding out [Cousin]. How do you explain that?

A. I don't know how that can be because for one, the whole situation was on my -- the allegations [Cousin] made. And I know there was a restraining order put on him against all my kids and her and -- but I don't know if there was really one put for me not to be around her or if there was, there was supposed to have supervision around if she was around me. And I didn't want to get into any trouble so I didn't want to be around [Cousin] or [Cousin's Mother].

Q. You also heard Ms. Cross testify that she had received some anonymous calls saying that [Father Group A] had relationships with . . . your sisters. What do you -- what do you make of that one?

A. I don't know how she would be able to say that. But my other three sisters did go to school with him, but they never had no relation -- relationship.

Q. You were the only one?

A. Yeah, it was only me.

. . . .

Q. [Ms. Cross] mentioned [Doe I] having a photograph and writing something on it. Remember --

. . . .

Q. -- about the lollipop and stuff?

A. Yeah.

Q. Did you ever see the photograph?

A. Yeah, I got photographs of that.

Q. And was there anything writing [sic] on that?

A. There was no writing on the pictures. See, I mean, there's doubles. So I gave my daughter the pictures of her and

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whatever friends or whoever those other people was are to her, and I kept the other copy of the pictures of just my daughter.

Q. Do you -- well, [Doe I], would she ever write something like that?

A. No, I would never ever think my daughter would ever write something like that cause she -- I -- it's hard. I mean, she was never a kid like that. She was always like ashamed or shy about the way she looked and stuff.

Q. Could it be possible somebody else wrote on that thing?

A. I really can't answer to that. I mean I could, but I can't say.

. . . .

Q. Is there anything else you want to tell us, tell the Court about . . . why you didn't complete services as you were told to?

A. I mean, I completed what I was supposed to complete. But the whole situation was all pending on sexual abuse, I guess. And you could -- I guess I can honestly say I was trying to avoid that because I didn't want to go through my past. But I know that was one of the most important things. That's why I went back into the therapy on my own.

. . . .

EXAMINATION BY THE COURT

. . . .

THE COURT: All right. Let me ask you: Any idea where [Cousin] is?

[MOTHER]: No, I don't. But if I did, I would tell you because I know that by me hiding information on that would only make it worse for me. And, I mean, I can't -- I mean, I don't want to say anything bad about my sister, but I know my sister is one to -- who tends to, you know, lie.

And I try to stay away from her because she can like say one thing and try to turn around and make it like it was my fault or something. . . .

THE COURT: Okay.

[MOTHER]: -- to -- to get her out of the clear of being in trouble.

The Guardian Ad Litem for Group A testified, in relevant part, as follows:

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[T]he concern I have is not only the parenting but the -- as Dr. Wingert said, the protectiveness, to be able to be aware of harm or risk of threatened harm from sexual abuse because this is involved in this family context.

And at this point [Mother] is not able to address those things. She's not able to recognize it, and she's not able to take action on behalf of the children.

And my -- my basic feeling at this point is that the children need to move on. [Mother] has issues that she needs to work on. Her individual therapy is going to be a long term process. These kids need to move on at this point.

[Doe I] is -- time is running on her. She's getting in the teenage years. She's 12 right now. And she needs to settle down with a family. I think that was the basic goal is to get her in a family and -- for her long-term care. If we can get an adoptive home, that is what we're looking for.

At the conclusion of the trial, the Court stated the following:

All right. This to me is a sad case. You know, [Grandmother] comes in here in many respects, I don't think you were ever given a chance. I mean even from starting little small kid kind.

You're living with a family who has this [Grandmother's Boyfriend] and who gets [Grandmother] drunk, the [Grandmother] who testified here today. And then he tries to sexually molest you and your two sisters. This is a guy who sexually molested his own daughters.

You got to drop out of high school because you're pregnant in the tenth grade. I don't know what kind of family that is. So in a lot of respects, I don't think you were given the skills when you needed them.

. . . .

You tested positive for amphetamines at the birth of [Doe II] back in June of '97. You agreed to do intervention services. [Grandmother] agreed to monitor the situation so nothing -- that report was not accepted for investigation as unusual as that seems.

Back on August 12th of '98, there was another report. And physical neglect, lack of supervision, educational neglect of the children were confirmed due to your use of ice and marijuana. . . .

. . . .

The family participated in ohana conference in November of '98 and remained under voluntary supervision with Ms. Cross until November of 2000. So we've had -- you've had -- your family's had

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not only this case in which to try to get better and provide a safe family home but actually I think years of services.

Now, from November to May of 2000 -- November 2000 to May of 2001, there was some improvement where, you know, I think you were trying to do the best you could in the services. August 9th, 2001, [the court] allowed [Group B] to go to California. . . . I went over the reports. It looked to me like [the court] made a good call. [Group B] got to go with [Father Group B]. It can be the dad; it can be the mom. You weren't ready for it then, according to [the court].

Now, the problem with that decision, though, is you dropped out of the case, right? You dropped out of the case August, September, October, November, December, January, February, March. So you dropped out of the case for eight months, essentially.

And we had the hearing on January 23 and, you know, you didn't show -- you weren't present. Apparently you were running late. But at the same time, we couldn't afford to wait for you. So that's when the Court requested that the permanent custody be filed because you hadn't been doing anything.

You hadn't been going to therapy. You hadn't been doing your UA's. Those are eight wasted months. And the problem with that is . . . that your children are in a foster home and they are bonding with other people.

. . . .

[Grandmother] was unable to protect you from a violent sex abusing boyfriend back when you were little. She -- I frankly don't believe her when she tells me she doesn't know where [Cousin] is.

. . . .

You had problems with the male therapist, should have told somebody. You didn't tell me. You didn't tell [your lawyer] because he didn't tell me, and I don't think you told Ms. Cross either. So now you're looking at a year or two at least of continued sex offender therapy before I think you're going to be able to -- and I hope you do it because you need to. . . .

But I agree with [GAL]. These kids need to move on. They need to have a permanent home. And whether I render that decision today or take a recess and give it in 20 minutes or do it later this week, it's going to be the same decision.

I was also concerned about the issue regarding the medical neglect of the kids when they were placed in the foster custody. They got all kind hearing problems. They got blood in their urine, ear infection.

Based upon all the evidence the Court has received, based upon the reports that have been entered, based upon the careful consideration of the live testimony here today at trial, the Court's going to grant the motion and find under 587-73(a) that the State has met its burden in -- in those findings by clear and convincing evidence.

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Under 587-73(b), the Court will enter those orders. Foster custody is revoked. Permanent custody is granted to the department. Parental rights are terminated.

. . . .

I want to make it clear for the record that while I have considered [Cousin's] case in this matter, those considerations do not go to the termination decision. Those considerations go to the request for placement with [the] maternal side of the family. And I think it's appropriate and proper that I take those into account.

On August 2, 2002, Mother filed a "Motion for Reconsideration of Permanent Custody Orders". In his declaration, Mother's counsel argued, in relevant part, as follows:

3. [Mother] believes this Court erred in grounding its decision partly on an unrelated case involving [Cousin].

4. Further, it is [Mother's] belief that this Court erred in denying her family members to be considered as adoptive parents for [Group A] based upon the aforesaid matter involving [Cousin].

5. [Mother] respectfully moves this Court to reconsider its Order granting permanent custody on July 24, 2002 and to afford her a retrial or, in the alternative, a more reasonable time to complete the aforesaid service plan.

After an August 9, 2002 hearing, the court stated the following:

This family has been subject to CPS referral since January of '93 when mother tested positive and back in '97 when mother tested positive at the birth of [Doe II]. There's been a history -- multi-year history of substance abuse including crystal methamphetamine and marijuana. The family's been subject to both voluntary and involuntary services since January of '93.

This family presents, unfortunately, a cycle of intergenerational sex abuse. Mother herself was sexually abused, and the family did not provide [M]other with any treatment whatsoever. I reiterate my statements from that date in time that [M]other herself is as much a victim in this case as anybody else.

And after [Group B] were allowed to go to the mainland, [M]other got depressed and dropped out of the case for the next eight months.

So the motion is denied. I wish you the best.

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Oh, as to [Cousin's] case - as indicated at trial, I'm very concerned about where [Cousin] is. I'm very concerned about the fact - whether she's alive or not. I believe that the family is hiding [Cousin]. And I am not going to allow a family that's hiding one child to be considered for placement for another.

On August 28, 2002, Mother filed a notice of appeal.

This case was assigned to this court on April 23, 2003.

With the FsOF and CsOL challenged by Mother printed in bold print, the FsOF and CsOL state, in relevant part, as follows:

FINDINGS OF FACT

. . . .

Father

. . . .

59. [Father Group A] is the perpetrator of the sexual harm to [Group A's] maternal cousin [Cousin]. [Cousin] stated that the sexual harm consisted of [Father Group A's] fondling of her vagina, buttocks and breasts, and sexual intercourse. The sexual abuse started around Thanksgiving 1999 when [Cousin] was approximately eleven years old. [Father Group A] threatened [Cousin] not to tell anyone about the sexual abuse. [Cousin] witnessed the physical violence Father perpetrated on Mother.

60. [Father Group A's] sexual abuse of [Cousin] continued until approximately October 2000 when [Cousin] was approximately twelve years old. [Cousin] had disclosed the sexual abuse to Mother and later to [Cousin's Mother], both of whom did not report the sexual abuse. [Cousin] then report[ed] the sexual abuse to school officials. On November 21, 2000, [Cousin] disclosed the nature of the sexual abuse in an interview with a Honolulu Police Department detective.

61. DHS confirmed [Father Group A's] sexual harm to [Cousin].

62. [Father Group A] was arrested for the sexual abuse of [Cousin]. [Father Group A] was later released . . . because [Cousin] recanted the sexual abuse allegations. However, the court has no reason to believe that DHS's confirmation of [Father Group A's] sexual harm to [Cousin] to be erroneous.

63. [Father Group A] has not participated in child sex offender treatment. He is an untreated sex offender and will continue to pose a substantial risk of harm to [Group A] until he successfully completes child sex offender treatment. . . .

64. . . . Mother and [Father Group A] appeared at Dr. Wingert's office on February 23, 2001 with a fourteen year-old girl who Mother told Dr. Wingert was her niece. Mother later admitted to DHS social worker, Joann Cross, that this niece was [Cousin]. At that time, [Cousin] was on runaway status, and the restraining orders prohibiting [Father Group A] from having contact with [Cousin] was in effect.

65. [Father Group A] has engaged in physical abuse of Mother. Based on the credible evidence presented, [Father Group A] has not participated in any services to address his past domestic violence issues.

. . . .

Mother

. . . .

76. Mother's safety issues that prevent her from providing her children with a safe home are substance abuse, domestic violence victimization as a child and as an adult, and childhood sexual abuse victimization. Mother's childhood trauma from her sexual abuse victimization is Mother's major safety issue. Unless Mother's childhood sexual abuse victimization is fully addressed in therapy, she will not be able to provide her children with a safe family home, especially gaining the skills necessary to protect her children from sexual harm.

77. Based on the credible evidence of Mother's childhood trauma of sexual abuse and physical abuse, Mother did not acquire the skills to adequately parent her children and to protect her children from sexual and physical abuse.

78. During her childhood, Mother lived with [Grandmother] . . . until she was approximately twelve to fourteen years old. When Mother was approximately seven years old [Grandmother] began a relationship with [Grandmother's Boyfriend]. [Grandmother's Boyfriend] was physically violent to Mother, her siblings and [Grandmother]. [Grandmother's Boyfriend] (who had sexually abused one of his own daughters) would have [Grandmother] drink until she passed out, and would then attempt to sexually molest Mother and two of her siblings. Mother reported years of physical and sexual abuse by [Grandmother's Boyfriend] to herself and her siblings.

79. [Grandmother] discouraged Mother from reporting [Grandmother's Boyfriend's] sexual abuse.

80. After leaving [Grandmother's] home, Mother went to live with an older sister. At this time Mother began a romantic and sexual relationship with [Father Group A], when she was fourteen which resulted in her becoming pregnant with [Doe I]. Mother left her sister's home to live on her own after becoming pregnant when she was approximately sixteen years old.

81. Mother married [Father Group B] in 1995, after being in a relationship for two years. Mother separated from [Father Group B] after ten months of marriage because [Father Group B] was physically abusive towards her.

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82. Mother reported to DHS of having a history of domestic violence in her relationship with [Father Group A]. However, in her psychological evaluation with Dr. Wingert, Mother denied having a domestic violence history with [Father Group A].

83. [Cousin] was sexually abused by [Father Group A] while living in Mother's and [Father Group A's] home. [Cousin] reported [Father Group A's] sexual abuse to Mother in approximately October 2000. Mother told [Cousin] that "she would take care of it."

84. After two weeks, Mother did not take any action that prompted [Cousin] to disclose [Father Group A's] sexual abuse to [Cousin's Mother]. Mother confronted [Cousin's Mother] not to call the police to report [Father Group A's] sexual abuse. Due to the interaction of [Mother] and [Cousin's Mother], [Cousin] reported [Father Group A's] sexual abuse to school officials.

85. . . . Due to Mother's failure to believe that [Father Group A] sexually abused [Cousin], Mother has no insight on [Father Group A's] threat of harm to her children and does not have the ability to protect her children from the threat of harm posed by [Father Group A].

86. Mother, along with [Father Group A], was present in court during the hearing in both cases on December 1, 2000. At that hearing, the court issued a "Family Court Restraining Order" in both cases, which prohibited [Father Group A] from having any contact with [Cousin] and [Group A], and ordered Mother to report all violations of the restraining order to DHS, the GAL and the Honolulu Police Department. From the record, Mother understood the terms and conditions of the order and the consequences if she violated the order.

87. Mother, along with [Father Group A], participated in a psychological evaluation with Dr. Wingert on February 23, 2001. They were accompanied by a fourteen year-old girl who Mother identified as her niece. After being confronted by DHS, Mother admitted to DHS that this niece was [Cousin]. Mother testified at trial that this teenage girl was her [niece other than Cousin], not [Cousin]. The court does not find Mother's testimony about this teenage girl being [niece other than Cousin] to be credible. Mother's conduct in allowing [Father Group A] to have contact with [Cousin] and her failure to report the conduct constitutes a violation of the December 1, 2000 Family Court Restraining Orders. This also shows Mother's inability to protect [Group A].

88. Assuming that this fourteen year-old girl was not [Cousin], the incident shows Mother's lack of insight of [Father Group A's] threat of sexual harm to minors by allowing a fourteen year-old to have contact with [Father Group A], who is an untreated sex offender of minors.

89. Throughout the case, DHS continued to receive reports of Mother being with [Father Group A]. Despite being told of the threatened risk of harm [Father Group A] posed to [Group A], and that continued contact with [Father Group A] would jeopardize her ability to reunify with [Father Group A], Mother continued to have contacts with [Father Group A]. Although the court heard

testimony from Mother's landlord that he did not see [Father Group A] at the apartment complex where Mother resides, the testimony does not explain or disprove the other reports to DHS of Mother being seen with [Father Group A].

90. Mother was referred for therapy with F. Wayne Hough, Ph.D. of the Parents United Plus Program at Child & Family Service to address her child sexual abuse victimization on August 3, 2001. Mother was slow to start therapy with Dr. Hough. At one point, she completely dropped out of therapy and was dropped from the program. Mother was later reinstated but was terminated due to non-attendance. Mother testified that she did not attend therapy with Dr. Hough because she was uncomfortable with having a male therapist. In cross-examination, Mother admitted that she did not inform the DHS social worker that she was uncomfortable with a male therapist.

91. Mother began individual therapy with Dr. Catherine Garrett, Psy.D. to address her childhood sexual victimization issues. Mother's participation in therapy with Dr. Garrett was sporadic.

92. On February 23, 2001, Mother participated in a psychological evaluation with Dr. Wingert. Mother's personality development presented as being "reflective of general psychological immaturity in terms of lacking personal responsibility, being primarily self-focused, having minimal appreciation of her impact on other[s], and lacking well developed judgment and problem solving skills.["] Mother did not feel a need for personal change, despite having her children in foster custody. Dr. Wingert recommended that Mother participate in individual and family counseling, but cautioned that progress will be slow. Dr. Wingert also recommended appropriate child sex abuse treatment if the sexual molestation allegations were substantiated.

93. In his psychological evaluation of Mother, Dr. Wingert noted that Mother had a history of untreated sexual molestation, and that this may well negatively impact her ability and capacity to protect her children. Mother's protective capacity is also seen by allowing a fourteen-year old girl to have contact with [Father Group A] despite knowing about the concerns regarding [Father Group A]. Mother has a lack [of] concern about the safety issues.

94. Mother has not consistently participated in therapy to address her childhood sexual victimization issues. Based on Mother's history of participation in therapy, Mother will not be able to fully address her childhood sexual victimization issues to develop the skills to be protective of her children and to provide them a safe home in a reasonable period of time.

95. After [Group B was] returned to [Father Group B's] care in August 2001, Mother dropped out of all services for approximately eight months. Mother stated that she was depressed because [Group B] would be living with [Father Group B] in the State of California.

96. Mother began to re-engage in services in approximately March to April 2002. Although Mother has demonstrated progress, such as parenting ability, she still has not addressed her childhood sexual victimization issues. Even if Mother were to participate and complete other services, she will not be able to provide a safe home for her children unless she successfully addresses her childhood sexual abuse victimization in therapy.

97. Mother is reported to have a substance abuse problem. Her latest urinalysis for drugs have been negative.

98. 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 [Group A's] needs.

99. Mother has frustrated DHS's attempts to consistently remain in contact with her and to inform DHS of her whereabouts and her current situation.

100. Under the circumstances presented by this case, Mother was given every reasonable opportunity, with every necessary, appropriate and reasonable services in the community, to effect positive changes to provide a safe family home and to reunify with [Group A].

101. Mother is not presently willing and able to provide [Group A] 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 since November 2000.

102. It is not reasonably foreseeable that Mother will become willing and able to provide [Group A] 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.

Placement

103. DHS made the social work and child protective and welfare services assessment that placement of [Group A] with the maternal family would not be in [Group A's] best interests. DHS's finding (assessment) is based on the following factors.

104. The maternal family has a history of child sexual abuse victimization and the failure of the maternal family to protect children in the maternal family from child abuse victimization. This is seen by Mother's and her female siblings child sexual abuse victimization and Maternal Grandmother's failure to protect them.

105. The child sex abuse victimization has started in another generation of the maternal family as seen by the sexual abuse of [Cousin] by [Father Group A]. [Father Group A] has sexually abused two generations of children (Mother and [Cousin])

in the maternal family. Based on the credible evidence, maternal family members do not believe that [Cousin] was sexually abused by [Father Group A], and/or are minimizing the severity of the sexual abuse of [Cousin] by [Father Group A].

106. At the time of trial, [Cousin] was in the foster custody of DHS but was on runaway status. DHS has strong suspicions that the maternal family is aware of [Cousin's] whereabouts and/or is hiding [Cousin]. This is evidenced by Mother's taking [Cousin] who was on runaway status at that time, with her to the February 23, 2001 psychological evaluation with [Father Group A]. The court finds the testimony of Mother and [Grandmother] that they do not know [Cousin's] whereabouts not to be credible.

107. DHS had concerns about what DHS assessed to be the lack of (sexual) boundaries in the maternal family. This is evidenced by [Doe I's] sexualized behavior, and their giving [Doe I] inappropriate underwear.

108. DHS reported an incident in approximately early 2001 where some of [Group A] and [Group B] "disappeared" from their foster home in Makakilo. DHS found these children at the home of the maternal family in the upper Waimano Home Road area in Pearl City. The maternal family stated that these children caught the bus to Pearl City. Given the ages of these children, the court agrees with DHS that the maternal family's explanation is not credible. The court also finds that [Grandmother's] testimony that these children caught the bus from Makakilo to Pearl City not to be credible.

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CONCLUSIONS OF LAW

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9. There is substantial evidence to support DHS's assessment, decision and finding of fact that placement of [Group A] with the maternal family would not be in [Group A's] best interests. The court does not have a definite and firm conviction that a mistake has been made.

10. The legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide [Group A] with a safe family home, even with the assistance of a service plan.

11. 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 [Group A] with a safe family home, even with the assistance of a service plan, within a reasonable period of time.

NOT FOR PUBLICATION

STANDARDS OF REVIEW

Findings of fact are reviewed under the "clearly erroneous" standard. In re Jane Doe, 84 Hawai'i 41, 46, 928 P.2d 883, 888 (1996) (citations omitted). "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." State v. Balberdi, 90 Hawai'i 16, 20-21, 975 P.2d 773, 777-778 (1999). Substantial evidence is "credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Roxas v. Marcos, 89 Hawai'i 91, 116, 969 P.2d 1209, 1234 (1998) (quoting Kawamata Farms v. United Agri Prods., 86 Hawai'i 214, 253, 948 P.2d 1055, 1094 (1997) (citations, internal quotation marks, and original brackets omitted)).

Conclusions of law are reviewed *de novo* under the right/wrong standard. In re Jane Doe, 84 Hawai'i at 46, 928 P.2d at 888 (citations omitted).

The family court's determinations pursuant to [Hawaii Revised Statutes (HRS)] § 587-73(a) [(1993 & Supp. 2003)] 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."

In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001)

(citations omitted).

ARGUMENT

Overall, Mother contends that her "continued compliance with the service plan demonstrates that she is willing and able to provide a safe family home within a reasonable period of time."

First, Mother argues that she "has fulfilled the child care, and domestic classes recommended by the plan. She also sought therapy for her childhood sexual victimization. Moreover, she has never failed a UA test since the inception of the service plan." Mother ignores the substantial evidence supporting the findings that Mother lacks the protective skills necessary to avert sexual harm to her children and that she will not address her sexual abuse issues in time to develop the skills needed to provide them a safe home. Therefore, we affirm FsOF nos. 76, 77, 94, 96, 101, 102, and the second sentence of FOF no. 97. We vacate the first sentence of FOF no. 97 because it is not a finding of fact.

Mother's second argument is that "given more time she would be successful in recognizing the implications of her childhood sexual victimization." She states that there is no basis for the "Court's determination that Mother would require a year or two at least of continued sex offender therapy."

We agree that there is no evidence indicating how long Mother will take before she will successfully address her

childhood sexual abuse issues. However, the petition for temporary foster custody was filed on November 27, 2000. Mother was referred on August 3, 2001 for therapy with Dr. Hough to address her sexual abuse victimization. Despite the fact that her children were at risk of sexual harm from Father Group A, Mother was not only slow to start her therapy with Dr. Hough, she also completely dropped out of therapy on October 24, 2001. Mother later began individual therapy with Dr. Garrett but continued to miss visits. By the time the trial took place, Mother had almost two years to comply with the service plans and acquire the skills necessary to provide a "safe home" for her children. In addition, based on her inconsistent pattern of visits to her therapists, Mother showed a lack of commitment to sexual abuse therapy. Hawaii Revised Statutes § 587-73(a)(2) (2003) defines a "reasonable period of time" for granting permanent custody as a period "not exceeding two years."^{3/}

^{3/} The Hawaii Revised Statutes (2003) states, in relevant part, as follows:

§ 587-73 Permanent plan hearing.

(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:

. . .

(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

Mother had that reasonable period of time to acquire the skills she needed to demonstrate her ability to provide a "safe home" for the children. Therefore, we affirm CsOL 10 and 11.

Finally, Mother argues that "the court did prejudice Mother's case by engaging in extensive sua sponte questioning of witnesses as to [Cousin's] whereabouts As a result, the court unduly prejudiced the credibility of Mother's witnesses, by inappropriately assuming that Mother's relatives were hiding [Cousin]." ^{4/}

We disagree. It was evident that fourteen-year-old Cousin had a very close relationship with Mother. In addition, Mother's reactions towards Cousin's allegations of sexual abuse by Father Group A prompted concerns over whether Mother's own children would be safe from "sexual harm." When Cousin told Mother what happened, "nothing was done." Mother told Cousin and Cousin's Mother "not to call police." Mother clearly had a history of hiding sexual abuse secrets in the family. While Cousin was on "runaway status," Mother had been seen with Cousin,

which shall not exceed two years from the date upon which the child was first placed under foster custody by the court;

^{4/} We note that when Mother made this third argument, she did not cite any references or "parts of the record relied upon." A blank reference to the Court's "sua sponte questioning" is not sufficient. Mother should "include page citations and the volume number, if applicable." Furthermore, "[r]eferences to transcripts shall include the date of the transcript, the specific page or pages referred to, and the volume number if applicable." The references are not only helpful in terms of locating the relevant testimony but also ensures that Mother's arguments have been fully addressed. See, Hawai'i Rules of Appellate Procedure Rule 28(b)(7) and 28(b)(3).

which naturally prompted the question of whether Mother knew the location of Cousin. Finally, Grandmother was asked whether she knew where Cousin was only after she had expressed interest in adopting the children. The court specifically stated that "[t]his goes to the placement issue[.]"

At the conclusion of the trial, the court reiterated "For the record that while I have considered [Cousin's] case in this matter, those considerations do not go to the termination decision. Those considerations go to the request for placement with [the] maternal side of the family. And I think it's appropriate and proper that I take those into account."

CONCLUSION

Accordingly, we vacate the first sentence of Finding of Fact no. 97 of the Findings of Fact and Conclusions of Law filed on October 24, 2002, and we affirm the July 24, 2002 Order Awarding Permanent Custody in FC-S No. 00-07064 and FC-S No. 00-07065.

DATED: Honolulu, Hawai'i, December 29, 2004.

On the briefs:

Wilfred S. Tangonan
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Chief Judge

David McCormick and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-Appellee.

Associate Judge

Associate Judge