

NOT FOR PUBLICATION

NO. 25505

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE INTEREST OF JOHN DOE, Born on
August 6, 1987, A Minor

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08238)

SUMMARY DISPOSITION ORDER

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

This is an appeal by Parent-Appellants (Parents) from "Orders Concerning Child Protective Act" filed October 8, 2002 (October 8 Order) and "Orders concerning Child Protective Act" filed October 28, 2002 (denying Parents' motion for reconsideration of the October 8 Order) in the Family Court of the First Circuit¹ (family court). The October 8 Order asserted jurisdiction over the Doe children pursuant to Hawaii Revised Statutes (HRS) §§ 571-11(9) and 587-11, awarded foster custody of John Doe (John Doe) to the Department of Human Services (DHS), and awarded DHS family supervision over his sister, Jane Doe (Jane Doe), and other siblings (Child 3, Child 4, and Child 5).

On appeal, Parents contend the family court (1) erred when it held Parents responsible for threatened harm to Jane Doe by her failure to disclose John Doe's sexual abuse of her to

¹ The Honorable Linda K.C. Luke presided.

Parents; (2) erred when it held Parents responsible for threatened harm to John Doe, Jane Doe, and Children 3 through 5 by Parents failure to participate in therapeutic services; (3) clearly erred in finding that the record contained a preponderance of evidence that Jane Doe was harmed by the acts or omissions of her family; and (4) erred by not requiring DHS to resolve this matter without the filing of a petition because Parents were cooperating.²

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we hold that:

(1) The record contains substantial evidence to support the family court's finding that Parents were responsible for threatened harm to Jane Doe as evidenced by her failure to disclose John Doe's sexual abuse of her to Parents. In re Doe, 89 Hawai'i 477, 487, 974 P.2d 1067, 1077 (App. 1999);

(2) The record contains substantial evidence to support the family court's finding that Parents were responsible

² Parents' Opening Brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rules 28(b)(4)(ii), (iii), and (C) as it fails to set forth in the statement of the points of error where in the record the error occurred, where the error was objected to, and a quotation of the finding or conclusion. Additionally, Parents' Opening Brief does not comply with HRAP Rule 28(b)(7) in that Parents' argument does not contain citations to the record relied upon. Counsel for Parents is warned that future non-compliance with HRAP Rule 28 may result in sanctions against him.

for threatened harm to John Doe, Jane Doe, and Children 3 through 5 by Parents' failure to participate in therapeutic services.

Id.;

(3) The record contained a preponderance of evidence, as required by HRS § 587-41(b) (1993) that Jane Doe was harmed by the acts or omissions of her family; and

(4) The plain language of HRS § 587-21(b) (Supp. 2003) does not mandate that DHS first attempt to resolve the matter informally, and the record indicates that DHS was correct in its choice to file a petition.

Therefore,

The "Orders Concerning Child Protective Act" filed October 8, 2002 and the "Orders Concerning Child Protective Act" filed October 28, 2002 in the Family Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, April 23, 2004.

On the briefs:

Herbert Y. Hamada
for parents-appellants.

Associate Judge

David McCormick and
Mary Anne Magnier,
Deputies Attorney General,
for Department of Human
Services.

Associate Judge