

NOT FOR PUBLICATION

NO. 25514, 25515, 25516, AND 25529
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

NO. 25514
IN THE INTEREST OF DOE CHILDREN:
JANE, Born on October 21, 1994 and
JANE, Born on February 17, 1999
(FC-S No. 99-05847)

AND

NO. 25515
IN THE INTEREST OF JOHN DOE, Born on August 24, 1988
(FC-S No. 99-05849)

AND

NO. 25516
IN THE INTEREST OF JOHN DOE, Born on April 12, 2000
(FC-S No. 00-06919)

AND

NO. 25529
IN THE INTEREST OF JANE DOE, Born on December 13, 2001
(FC-S No. 01-07938)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

The mother (Mother) of the five children involved in these four cases appeals from the January 24, 2002 Orders Concerning Child Protective Act and the October 17, 2002 Order Awarding Permanent Custody and Letters of Permanent Custody entered in each case in the Family Court of the First Circuit.¹ The four cases are as follows:

FC-S 99-05849 was commenced on March 2, 1999, and

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Judge Kenneth E. Enright presiding.

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involves Mother's first son, who was born on August 24, 1988. The appeal in this case is no. 25515.

FC-S 99-05847 was commenced on March 2, 1999, and involves Mother's first daughter, who was born on October 21, 1994, and Mother's second daughter, who was born on February 17, 1999. Wendall Omura was the social worker in this case when it was closed on July 19, 2000 by the State of Hawai'i, Department of Human Services (DHS), and again when it was re-opened on August 24, 2000. The appeal in this case is no. 25514.

FC-S 00-06919 was commenced on September 15, 2000, and involves Mother's second son, who was born on April 12, 2000. The appeal in this case is no. 25516.

FC-S 01-07938 was commenced on December 21, 2001, and involves Mother's third daughter, who was born on December 13, 2001. The appeal in this case is no. 25529.

The father (Father) of Mother's three daughters and second son is not the same man as the father of Mother's first son.

On January 9, 2002, in each case, Mother and Father filed a "Motion for Immediate Review for an Order to Disqualify Wendall Omura as Social Worker in this Case, or in the Alternative for the Issuance of a Temporary Restraining Order Against Wendall Omura" (January 9, 2002 Motion). Their counsel, Terrance W.H. Tom, declared, in relevant part, that "[w]hen the case was re-opened, [Mother] wrote a number of letters to the

media even to President William Clinton, which greatly annoyed Mr. Omura because he might have to respond to questions regarding his role in this case." Their motion sought (1) an order disqualifying Wendall Omura as the DHS social worker, or (2) for a temporary restraining order requiring Wendall Omura to cease "harassing, annoying and/or psychologically abusing the parties under the guise of his title as social worker." On January 24, 2002, in each case, the court heard and denied the January 9, 2002 Motion.

On October 17, 2002, in each case, after five days of trial, the court entered an Order Awarding Permanent Custody to the Director of Human Services with the subsequent goal of adoption, and Letters of Permanent Custody. On November 12, 2002, in each case, the court denied Mother's November 1, 2002 motion for reconsideration.

Mother filed notices of appeal on December 5, 2002. On March 11, 2003, the appeals were consolidated into appeal no. 25514 and assigned to this court on December 9, 2003.

On January 23, 2003, the family court entered Findings of Fact and Conclusions of Law. The findings state, in relevant part, as follows:

48. Despite having extensively participated in domestic violence victim services and therapy, Mother continues to lack insight and continues to exercise poor judgment with respect to her relationship with Father and continues to deny and minimize the very substantial potential for domestic violence.

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- 50. Throughout the DHS and court intervention, Mother admitted violating the TRO prohibiting her from having contact with Father, as further evidenced by the birth of [Second Son] and [Third Daughter].
- 51. Mother admitted at the conclusion of the trial to recently violating the TRO on a number of occasions while fully knowing that to do so could cause her to lose permanent custody of her children.
- 52. By the conclusion of the trial, Mother had not begun to achieve emotional separation from Father or his family.
- 53. At the conclusion of trial, Dr. Stamper was unable to say with any certainty how long it would take before Mother would become able to protect herself or the children.
- 54. Consistent with the Kapiolani Child Protection Center Multidisciplinary Team's conclusion, Mother and Father's prognosis for change through utilization of services is very poor.
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- 73. All of the children need a stablehome that is safe from exposure to domestic violence, substance abuse and further psychological harm.
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- 77. In light of the children's very real need for stability, and the parents['] virtually total lack of progress in services, further delay in determining whether Mother can regain custody of the children is not in the children's best interest.
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- 85. The investigative reports and assessments of the children's guardian ad litem, Thomas A.K. Haia, that permanent custody is in the children's best interest, were credible and helpful to the court.

Mother does not challenge any Findings of Fact or Conclusions of Law. She challenges (1) the January 24, 2002 orders denying the January 9, 2002 Motion seeking removal of Wendall Omura from the case, and (2) the October 17, 2002 orders awarding permanent custody. The opening brief states, in relevant part, as follows:

Mother filed her TRO against Wendall Omura on November 9, 2001. DHS, acting through Wendall Omura, filed its foster custody

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petition against Mother on December 2001. Less than a month later, Mother filed a motion to disqualify Wendall Omura as the social worker administering her FC-S case. . . .

. . . In this case, Wendall Omura continued to engage in misconduct arising to the level of unclean hands when he claimed he could act as a disinterested professional despite the existence of the above-noted TRO petition and/or public complaint letters, which showed a substantial basis for the existence of personal animus on his part towards Mother.

. . . .

. . . DHS did not have clean hands for another reason. DHS allowed Wendall Omura to file a Motion for Permanent Custody against Mother despite substantial evidence that Wendall Omura was doing so on a personal and not professional basis as the grounds for such a motion did not exist.

. . . Having heard all of this testimony, the Family Court granted the DHS's Motion for Permanent Custody. When it did grant the motion for permanent custody, it committed reversible error as Wendall Omura did not have clean hands in asserting the DHS's position.

. . . .

In conclusion, the trial court committed reversible error in three specific ways.

First, the Court committed reversible error and violated Mother's Due Process rights when it allowed Wendall Omura, whose personal animus against Mother was significantly and amply demonstrated by circumstantial evidence, to remain as the DHS social worker administering her FC-S case. Wendall Omura's personal bias against Mother was readily apparent as he filed the foster custody petition against her after she had filed a TRO petition against him, as well as had written public letters of complaint against him to, among others, the President of the United States. In addition, the trial court also violated Mother's Due Process rights when it ruled in favor of DHS's permanent custody motion, presented by Wendall Omura, despite substantial evidence to the contrary.

Secondly, the Court committed reversible error when it allowed Wendall Omura to remain as the DHS social worker administering Mother's FC-S cases despite clear evidence of his lack of clean hands. He had unclean hands when he filed the foster custody petition against Mother, very early in the case, but right after she had filed a TRO petition against him, as well as had written public letters of complaint. The DHS also exhibited unclean hands when, after Wendall Omura remained as the social worker on Mother's case, he filed a motion for permanent custody despite substantial evidence to the contrary.

Lastly, the Court committed reversible error and abused its discretion when it: (1) ruled that Wendall Omura was able to professionally subdue any personal animus that would otherwise be created by Mother's public actions against him and allowed him to

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remain as the DHS social worker on Mother's FC-S cases, and/or (2) granted DHS's motion for permanent custody, filed by Wendall Omura, against Mother, despite substantial evidence to the contrary.

The family court, after hearing the evidence and considering the arguments, disagreed with Mother.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that, in each case, the family court's January 24, 2002 Orders Concerning Child Protective Act denying the motion seeking the removal of Wendall Omura from the case, and the October 17, 2002 Order Awarding Permanent Custody and Letters of Permanent Custody are affirmed.

DATED: Honolulu, Hawai'i, September 20, 2004.

On the briefs:

Katherine Puana Kealoha for Mother-Appellant	Chief Judge
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Susan Barr Brandon and Angela-Jo Correa-Pei, Deputy Attorneys General, for Petitioner-Appellee	Associate Judge
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Thomas A.K. Haia Guardian Ad Litem for Children	Associate Judge
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