NO. 25523

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

IN THE INTEREST OF DOE MINOR, BORN ON AUGUST 20, 1990

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-S NO. 97-042K)

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

Mother appeals the September 26, 2001 order of the family court of the third circuit[1] that terminated her parental rights and awarded permanent custody of her eleven-year-old son Doe to the Director of the Department of Human Services (DHS). Mother also appeals the family court's November 18, 2002 order that denied her October 15, 2001 motion for reconsideration of the September 26, 2001 order.[2]

Upon a painstaking review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve Mother's points of error on appeal as follows:

---

[1] The Honorable William S. Chillingworth, judge presiding.

[2] Mother does not specify or argue error with particular respect to the family court of the third circuit's November 18, 2002 order that denied her October 15, 2001 motion for reconsideration. Hence, we will not review and thus affirm the family court's November 18, 2002 order. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2002); Wright v. Chatman, 2 Haw. App. 74, 76-77, 625 P.2d 1060, 1062 (1981); HRAP Rule 28(b)(7) (2002); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 438 n.33, 83 P.3d 664, 701 n.33 (2004).

1. Mother first argues that "mere child antipathy, and the passage of time alone, should not serve as a basis to terminate parental rights[.]" Opening Brief at 18 (formatting omitted). This argument rests upon a faulty premise. The record clearly shows that Doe's "antipathy" towards Mother -- variously described by various sources as fear or anxiety, and reportedly resulting in Doe's impression of Mother as a "monster" -- whether it arose out of Mother's admitted physical abuse or alleged sexual abuse of Doe -- was by no means the only basis for the family court's termination of Mother's parental rights after four years of foster custody. This first point of error lacks merit.

2. Mother next asserts that Doe's allegations of sexual abuse were suspect because they were first reported by Doe's foster father "at a time when [Doe] might otherwise have been being prepared [sic] for a possible transition back to the family home." Opening Brief at 21. Mother also points to the fact that a trauma assessment of Doe was not performed. We disagree. Doe presented and argued both points to the family court, and the family court's assessment of credibility and weight of the evidence will not be disturbed on appeal. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001).

3. Mother contends DHS violated Hawaii Revised Statutes (HRS) § 587-1 (Supp. 2003)[3] because,

[3] Hawaii Revised Statutes (HRS) § 587-1 (Supp. 2003) provides in pertinent part that, "Each appropriate resource, public and private, family

(continued...)

> [DHS] never inquired into or, apparently, even considered, the possibility of a relative caretaker placement. [Mother's] sister, who is of the same religious, cultural, and ethnic background as the child, and who demonstrated a willingness and ability to work with [DHS], was never considered as a foster care possibility.

Opening Brief at 23. This point is devoid of merit. First, Mother's sister testified that a DHS social worker spoke with her at length about a guardianship of Doe, and even had her commence the paperwork necessary for foster care licensing. Mother's sister also described the visits with Doe that DHS had arranged for her. However, by the time Mother proffered her sister as an alternative placement, just before the permanency hearing was to take place, Doe had been living with the same foster family for nearly four years. Although Mother explained that she had theretofore not been informed of the possibility of family placement, the record shows and Mother notes on appeal that she in fact attempted to have a family member take the initial foster placement of Doe.

4. Mother argues that, under certain circumstances, the mere passage of time does not mandate permanency planning.[4]

---

[3](...continued)
and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration should be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated."

[4] See HRS § 587-73(a) (Supp. 2003), which now provides in relevant part that the family court may award permanent custody of a protected child and adopt a permanent plan for the child if, after a permanent plan hearing, the family court finds by clear and convincing evidence that, *inter alia*,

> It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father

(continued...)

We agree with Mother on general principle. However, as noted above, the mere passage of time was not the only basis for the family court's termination of Mother's parental rights. In this regard, Mother faults DHS for not investigating or addressing the possibility of parental alienation. But Mother presented and argued this issue to the family court, apparently to no avail. Doe, 95 Hawai'i at 190, 20 P.3d at 623. In the same connection, Mother complains that DHS unilaterally abandoned the process leading up to conjoint therapy for Mother and Doe. In fact, it was Mother who wrote to the family court, "I am no longer interested in the pursuit of con-joint therapy under the circumstances[,]" the circumstances being the family court's order for siblings-only visitations with Doe, even though the order also provided that such visitations "may later include the presence of the mother, under the supervision of DHS."

5. Mother urges us to stiffen the standard of proof for terminating parental rights, from "clear and convincing" to "beyond a reasonable doubt." We cannot. HRS §§ 587-41(d) (1993) & 587-73(a) (Supp. 2003); Woodruff v. Keale, 64 Haw. 85, 100-101, 637 P.2d 760, 770 (1981).

6. In the statement of her points of error on appeal,

---

[4](...continued)

> as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed two years from the date upon which the child was first placed under foster custody by the court[.]

HRS § 587-73(a)(2) (enumeration omitted; format modified).

Mother faults, with only summary argument, several of the family court's findings of facts.

a. First, Mother avers that the family court's findings of fact 4 and 6 are misleading and misconstrue the evidence. Specifically, Mother asserts that the family court's description of a psychological evaluation of Doe, along with the order of the two findings, contribute to the erroneous impression that the evaluation identified Mother as the sexual abuser. Our impression is to the contrary. At any rate, Mother neglects to mention the intervening finding of fact 5, in which the family court observed that DHS did not confirm sexual abuse by Mother.

b. Next, Mother faults the family court's finding of fact 7, to the effect that Mother "was to maintain contact with the child by letter, [but] mother refused to do so," because DHS reported that Doe's sister read him a card from Mother during one sibling visit, and that Mother sent Doe a birthday card and a couple of gifts for the next. The variance is *de minimis* and ultimately inconsequential. More to the point is the balance of the finding, to the effect that Mother "demand[ed] instead face-to-face visits, which the child refused to participate in."

c. Last,[5] Mother maintains that the family court's finding of fact 15, to the effect that Mother's therapist

[5] In her statement of the points of error on appeal, Mother challenges several other of the family court's findings of fact. These challenges are, however, all subsumed in the general points of error disposed of above and hence, also unavailing.

testified at the permanency hearing that she was unable to provide the child with a safe family home, is misleading by omission of the therapist's qualification that family reunification remains as a goal in this case. In the context of the therapist's testimony as a whole, that qualification is both obvious and understood, and in the context of the issues on appeal, begs the ultimate question.

Therefore,

IT IS HEREBY ORDERED that the family court's September 26, 2001 order, and its November 18, 2002 order denying Mother's October 15, 2001 motion for reconsideration of the September 26, 2001 order, are affirmed.

DATED: Honolulu, Hawai‘i, July 29, 2004.

On the briefs:

Julie Kai Barreto,
for mother-appellant.

John P. Powell,
Jay K. Goss and
Mary A. Magnier,
Deputy Attorneys General,
State of Hawai‘i, for appellee.

Chief Judge

Associate Judge

Associate Judge