

NOT FOR PUBLICATION

NO. 25690

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

IN THE INTEREST OF JANE DOE,
Born on April 24, 2002

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08225)

SUMMARY DISPOSITION ORDER

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

The Father of Jane Doe (Daughter), born on April 24, 2002, appeals from the January 24, 2003 Order Awarding Permanent Custody and March 6, 2003 Orders Concerning Child Protective Act entered in the Family Court of the First Circuit.^{1 2}

Father contends:

- A. The state and trial court did not give enough time for father to do a service plan and provide a safe home.
- B. The state failed to provide services, or reasonable efforts, to father even though he was in the state[']s custody at all times through this case.
- C. The state did not as stated in fof [finding of fact] 12, offer and monitor the delivery of services to father since December of 2001. The state could have as father was in the custody of the state but the state did not.
- D. DHS [Department of Human Services, State of Hawai'i], or the state, did not, as stated in fof 49, provide father with every reasonable opportunity to succeed in remedying the problems which place [Daughter] at risk of further harm. The father was in the custody of the state and they do not provide the services necessary for father while he is in their custody.

¹ Judge Kenneth E. Enright presiding.

² The notice of appeal was filed on March 12, 2003. This appeal was assigned to this court on October 3, 2003.

E. The conclusion of law 4, is in error where states that "It is not reasonably foreseeable that [Father] will become willing and able to provide [Daughter] with a safe family home, even with the assistance of a service plan, within a reasonable period of time not to exceed two years from the date upon which [Daughter] was first placed under foster custody by the court" is in error as the time from the date the service plan was ordered, May 31, 2002, to the trial on permanent custody, Jan. 24, 2003, was only EIGHT months.

The court entered the Findings of Fact and Conclusions of Law on April 17, 2003 which state, in relevant part, as follows:

FINDINGS OF FACT

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1. DHS filed a petition under Chapter 587, HRS [Hawaii Revised Statutes], on May 1, 2002 because [Daughter] was placed in foster custody on April 26, 2002 due to imminent harm posed by [Mother's] drug use, her history of DHS involvement, her loss of parental rights to seven older children, and her being homeless, as well as, Father's incarceration, and [Daughter's] vulnerability due to her young age.

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9. At the January 24, 2003 contested permanent plan hearing (trial), Mother failed to appear and was held in default.

10. On January 24, 2003, the court granted the DHS Motion for Permanent Custody and ordered the permanent plan dated October 31, 2002.

11. On March 6, 2003, the court denied Father's Motion for Reconsideration filed on February 3, 2002.

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12. The DHS has been the case manager offering and monitoring the delivery of services to this family since December of 2001.

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35. Father is presently serving a term of incarceration not to exceed five years for the offense of Terroristic Threatening in the First Degree, committed in 1997.

36. Father was resentenced on February 15, 2002 for failing to comply with the terms of his probation including not entering substance abuse treatment and continuing to use crystal methamphetamine.

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NOT FOR PUBLICATION

38. From May of 2002 through the date of trial, Father did not contact DHS to inquire about [Daughter] or to communicate with DHS about doing services while incarcerated.

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41. Father has a chronic substance abuse problem involving crystal methamphetamine dating back to when he was in high school.

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47. Father lacked any real insight into the challenge that he will face in addressing a chronic substance abuse problem involving crystal methamphetamine which started in high school.

48. It was clear that Father lacked the interest and insight necessary to formulate a plan for how he would ever care for [Daughter] by himself.

49. DHS has provided Father with every reasonable opportunity to succeed in remedying the problems which place [Daughter] at risk of further harm.

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52. Independent of the statutory maximum period of time within which Father must become able to provide a safe family home for [Daughter], it would not be reasonable to allow Father any further period of time to attempt to resolve his serious problems which continue to put [Daughter] at risk of serious harm.

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54. [Daughter] tested positive at birth for amphetamines and Mother admitted to using crystal methamphetamine throughout her pregnancy and within days prior to [Daughter's] birth.

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56. [Daughter] has been in foster care with the adoptive parents of her half-sister since May 16, 2002 and has bonded very well with her foster family.

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58. Foster parents, [Daughter's] current caregivers, want to adopt [Daughter].

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,

NOT FOR PUBLICATION

IT IS HEREBY ORDERED that the family court's
January 24, 2003 Order Awarding Permanent Custody and March 6,
2003 Orders Concerning Child Protective Act are affirmed.

DATED: Honolulu, Hawai'i, October 7, 2004.

On the briefs:

Susan Barr Brandon,
Jay K. Goss, and
Mary Anne Magnier,
Deputy Attorneys General,
for Department of Human
Services-Appellee

Chief Judge

Associate Judge

Joseph Dubiel
for Father-Appellant

Associate Judge