

NOT FOR PUBLICATION

NO. 25789

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

IN THE INTEREST OF DOE CHILDREN:
JANE, Born on December 18, 1995,
JANE, Born on March 14, 1999, and
JOHN, Born on February 19, 2002

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-S NO. 01-0511)

SUMMARY DISPOSITION ORDER

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

The Mother of the three minor children involved in this case appeals from the Order Awarding Permanent Custody and Establishing a Permanent Plan signed by Judge Calvin K. Murashige and filed on November 6, 2002¹ in the Family Court of the Fifth Circuit.

The Permanent Goal of the October 1, 2002 Permanent Plan #1 was the adoption of: Jane Doe (Jane 1), born on December 18, 1995, by paternal grandmother and her husband; Jane Doe (Jane 2), born on March 14, 1999, by the same couple adopting Jane 1; and John Doe by an appropriate person(s).

The court's findings of fact state, in relevant part, as follows:

¹ The motion for reconsideration was filed on November 26, 2002 and denied on January 24, 2003. A February 24, 2003 order granting a motion for extension of time to appeal extended the time for appeal to March 27, 2003. The notice of appeal was filed on March 27, 2003. This appeal was assigned to this court on September 20, 2004.

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49) [Jane 1 and Jane 2] have suffered severe emotional trauma because of sexual abuse, emotional abuse and neglect while in the care and custody of [Mother];

50) [John Doe] is highly vulnerable to neglect and abuse because of his young age and total dependency on his caretaker/s;

52) [John Doe] would be at high risk for abuse and neglect if returned to the care and custody of [Mother][.]

Of the three findings quoted above, Mother challenges only finding of fact no. 52.

Mother contends:

1. "It was an abuse of discretion for the family court to grant a motion that was not before it";

2. "The granting of permanent custody was premature";

3. "The service plans offered by DHS [Department of Human Services, State of Hawai'i] and ordered by the court were not timely and comprehensive under the circumstances";

4. "Mother had been incarcerated since March 2, 2002. She had not been given an opportunity to demonstrate that she was willing and able to provide a safe home for the children"; and

5. "The DHS did not exert reasonable efforts to reunite Mother with her children. Mother was eligible for release from prison into a drug treatment program on September 1, 2002.² Mother had been trying to get into a substance abuse

² At the October 29, 2002 permanent plan hearing, Mother advised the court that, on August 8, 2002:

I got sentenced [to] a year minimum. I have to do 180 days. After 180 days, I can be released into [a] drug treatment program. And after I complete the drug treatment program, I can come back to Court and see if I can, you know, tell them I finished it, and I can go home and start my five years probation.

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assessment in order to be released into a drug treatment program since August 2002. She requested the DHS social worker's help in getting the assessment. As of October 29, 2002, the date permanent custody was [orally] granted, Mother still had not had the assessment." (Footnote added.)

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2005), and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the issues raised, and arguments presented by the parties,

IT IS HEREBY ORDERED that the Order Awarding Permanent Custody and Establishing a Permanent Plan, filed on November 6, 2002, is affirmed.

DATED: Honolulu, Hawai'i, February 14, 2005.

On the briefs:

Jeffrey R. Buchli
for Mother-Appellant

Chief Judge

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

Associate Judge

Associate Judge