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NO. 25926

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE INTEREST OF JOHN DOE,
Born on December 29, 1996

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08017)

SUMMARY DISPOSITION ORDER

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

The biological father (Father) of John Doe (Son) born on December 29, 1996, appeals from (1) the April 17, 2003 Order Awarding Permanent Custody that appointed the Director of Human Services as permanent custodian of Son, (2) the April 17, 2003 Letters of Permanent Custody, and (3) the May 29, 2003 Orders Concerning Child Protective Act that denied Father's May 7, 2003 motion for reconsideration, entered in the Family Court of the First Circuit.

Father filed a notice of appeal on June 26, 2003. On July 17, 2003, the family court, via Judge Kenneth E. Enright, entered its Findings of Fact and Conclusions of Law. This appeal was assigned to this court on February 9, 2004.

Father contends that (1) the record does not contain clear and convincing evidence that he is unwilling and unable to provide a safe home for Son, (2) he has not been allowed a reasonable period of time to provide a safe home for Son, and (3) "[t]his matter should be remanded to the Family Court of the

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First Circuit to allow [Father] a reasonable period of time to provide a safe home for [Son] with the assistance of a service plan." In essence, Father challenges the following conclusion of law:

4. It is not reasonably foreseeable that [Father] will become willing and able to provide [Son] 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 [February 4, 2002,] date upon which [Son] was first placed under foster custody by the court.

The following findings of fact outline the parental deficiencies:

21. Mother has a very serious and chronic substance abuse problem dating back to when she was in high school.

. . . .

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

. . . .

40. In 1997, Father was incarcerated for the offense of Promoting a Dangerous Drug in the Third Degree for which he was subsequently convicted and sentenced to probation.

41. In 1999, Father's probation was revoked and he was sentenced to serve a term of imprisonment not to exceed five years due to continued drug use and other infractions.

42. Father was released on parole in the year 2000 but his parole was revoked later that year due to his continued drug use.

On November 8, 2001, Mother signed an agreement giving the State of Hawai'i Department of Human Services (DHS) temporary foster custody of Son. On January 25, 2002, the DHS petitioned the court for foster custody of Son. After a February 4, 2002 hearing revealed Mother's drug relapse, attempted suicide, domestic violence, and homelessness, as well as Father's incarceration, the court, in the February 5, 2002 Orders

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Concerning Child Protective Act, granted the petition and ordered compliance with a January 10, 2002 service plan.

At the July 23, 2002 review hearing, the court ordered compliance with a July 9, 2002 service plan. This service plan identified Father as the "alleged father" of Son and obligated Father to undergo substance abuse assessment and treatment, random urine screens, and parenting education, and to cooperate with the DHS social worker.

On December 31, 2002, the DHS filed a motion for permanent custody of Son. At the January 6, 2003 review hearing, the court continued the hearing.

On January 17, 2003, in a paternity case, it was finally decided that Father is Son's biological father.

Father was released from incarceration on April 1, 2003.

At the April 17, 2003, contested hearing, Father testified, in relevant part, as follows:

Q [Father], are you asking this court to -- for custody of your [Son]?

A Yes. Uh-huh.

Q Why?

A Because he's my son, and I -- that's my son.

Q When was the last time you saw [Son]?

A The last time I saw [Son] was . . . year 2000. I got to see him when I was out on parole.

Q Do you think he knows you?

A Yeah, he does. Thanks to his mom.

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. . . .

Q Do you believe you can provide a safe home for [Son]?

A Definitely.

Q Where would this home be?

A With me.

Q And your girlfriend and two-year-old boy?

A Yes.

On April 17, 2003, after the contested hearing, the court entered an order that terminated Mother's and Father's parental rights, awarded permanent custody of Son to DHS, and ordered compliance with the December 9, 2002 permanent plan. The goal of that plan is adoption.

On May 29, 2003, the court denied the May 7, 2003 motion for reconsideration filed by Father. The findings of fact further state, in relevant part, as follows:

43. Father was released from incarceration on April 1, 2003 at the expiration of his maximum term of imprisonment.

44. During his incarceration, Father participated in substance abuse treatment as well as other classes and obtained his high school diploma.

45. Father's present job, which he obtained through the prison work furlough program on or about September of 2001, is his first long-term employment.

46. Throughout [Son's] life, Father has been very minimally involved with [Son].

47. Father has not seen [Son] since the year 2000.

48. Since his release from incarceration, Father simply has not focused on how he would ever be able to provide [Son] with a safe home as a single parent.

49. Rather, as of the date of trial, Father was working ten hours a day, six days a week.

50. As of the date of trial, Father had failed to engage in the services he was referred to by DHS upon his release from incarceration.

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51. Father stated at the May 29, 2003 reconsideration hearing that he was now ready to begin services and work toward reunification with [Son].

52. Father's testimony and demeanor at trial was consistent with the DHS' assessment that he is completely unprepared to assume the role of a single parent.

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54. It is clear that Father lacks the maturity necessary to provide for [Son's] ordinary and special needs on a daily basis.

55. Father has no insight into the challenges he would face to remain drug-free, maintain employment without external constraints, meet [Son's] ordinary and special needs, and provide [Son] with stability, while at the same time, meeting his own interests such as living with his girlfriend and her child.

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67. The child has an Adjustment Disorder with Disturbance of Conduct,

68. In addition to his ordinary needs as a young child and the ordinary need of a child to bond with a stable family, [Son] needs extra physical and emotional stability to feel safe and secure, because of the past psychological harm and multiple removals from the family home.

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73. The goal of the permanent plan, which is for the adoption of [Son] by his current care-givers, is in [Son's] best interest due to his need for a permanent, safe and secure home with responsible and competent substitute parents and family.

Father states that "[b]ecause of his incarceration, [Father] had little contact with [Son]. Therefore, there is no basis upon which the DHS could establish that [Father] is unable to be an appropriate parent to [Son]." In other words, Father does not recognize (1) what "a safe family home"¹ is, (2) that

¹ Hawaii Revised Statutes § 587-25 (1993) states as follows:

Safe family home guidelines. (a) The following guidelines shall be fully considered when determining whether the child's family is willing and able to provide the child with a safe family home:

- (1) The current facts relating to the child which include:
 - (A) Age and vulnerability;
 - (B) Psychological, medical and dental needs;

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his incarceration, which he caused to himself, evidenced his

- (C) Peer and family relationships and bonding abilities;
 - (D) Developmental growth and schooling;
 - (E) Current living situation;
 - (F) Fear of being in the family home; and
 - (G) Services provided the child;
- (2) The initial and any subsequent reports of harm and/or threatened harm suffered by the child;
 - (3) Date(s) and reason for child's placement out of the home, description, appropriateness, and location of the placement and who has placement responsibility;
 - (4) Historical facts relating to the alleged perpetrator and other appropriate family members who are parties which include:
 - (A) Birthplace and family of origin;
 - (B) How they were parented;
 - (C) Marital/relationship history; and
 - (D) Prior involvement in services;
 - (5) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;
 - (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
 - (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
 - (8) Whether the alleged perpetrator(s) has acknowledged and apologized for the harm;
 - (9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to insure that any current protective orders are enforced;
 - (10) Whether there is a support system of extended family and/or friends available to the child's family;
 - (11) Whether the child's family has demonstrated an understanding and utilization of the recommended/court ordered services designated to effectuate a safe home for the child;
 - (12) Whether the child's family has resolved or can resolve the identified safety issues in the family home within a reasonable period of time;
 - (13) Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and
 - (14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation.

(b) The court shall consider the likelihood that the current situation presented by the guidelines set forth in subsection (a) will continue in the reasonably foreseeable future and the likelihood that the court will receive timely notice of any change or changes in the family's willingness and ability to provide the child with a safe family home.

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unwillingness and inability to provide Son with a safe family home, (3) that the facts that Son was six years old by the time Father was released from incarceration on April 1, 2003, and that Father has not seen Son since the year 2000, makes it tremendously difficult for Father to provide Son with a safe family home, and (4) that finding of fact no. 55 is not clearly erroneous.

Upon a review of the record, and the briefs submitted by the parties, and having given due consideration to the issues raised and arguments made, we agree with the family court that, on April 17, 2003, it was

not reasonably foreseeable that [Father] will become willing and able to provide [Son] 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 [February 4, 2002] date upon which [Son] was first placed under foster custody by the court.

Therefore, IT IS HEREBY ORDERED that the following family court orders are affirmed: (1) the April 17, 2003 Order Awarding Permanent Custody; (2) the April 17, 2003 Letters of Permanent Custody; and (3) the May 29, 2003 Orders Concerning Child Protective Act.

DATED: Honolulu, Hawaii, October 14, 2004.

On the briefs:

Herbert Y. Hamada
for Father-Appellant

Chief Judge

Susan Barr Brandon and
Mary Anne Magnier,
Deputy Attorneys General,
State of Hawaii,
for Petitioner-Appellee

Associate Judge

Associate Judge