NO. 25942

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF JOHN DOE,
Born on December 1, 1998
(FC-S No. 99-0007)

AND

IN THE INTEREST OF JOHN DOE,
Born on April 24, 2000
(FC-S No. 00-1-0043)

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT

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

The Mother of a male child (First Son) born on December 1, 1998 (FC-S No. 99-007), and a male child (Second Son) born on April 24, 2000 (FC-S No. 00-1-043), appeals from the family court's[1] December 7, 2002 Order Awarding Permanent Custody and Establishing a Permanent Plan that stated, in relevant part, as follows:

> [T]he Court finds by clear and convincing evidence that:
>
> A Under the circumstances that are presented in this case, DHS [Department of Human Services, State of Hawaiʻi] has made reasonable efforts to finalize the permanency plan which in this case is permanent out of home placement;
>
> B The children's family is not presently willing and able to provide the children with a safe family home even with the assistance of a service plan;
>
> C It is not reasonably foreseeable that the children's family will become willing and able to provide the children with a safe family home even with the assistance of a service plan within a reasonable period of time;

[1] Judge Terence T. Yoshioka presiding.

> D The proposed permanent plans dated 12/29/99 for [First Son] and 06/09/00 for [Second Son] are in the best interests of the children;
>
> E That the three year time period that [First Son] has been in foster custody with DHS expired on March 11, 2002 and the two year time period for [Second Son] expired on May 15, 2002[.]

The mention of "the three year time period" and "the two year time period" in "E" above pertains to the relevant statute, namely Hawaii Revised Statutes (HRS) § 587-73. Prior to July 1, 1999, HRS § 587-73 stated, in relevant part, as follows:

> **Permanent plan hearing.** (a) At the permanent plan hearing, the court shall . . . determine whether there exists clear and convincing evidence that:
>
> (1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;
>
> (2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father 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 three years from the date upon which the child was first placed under foster custody by the court;
>
> (3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; provided that the court shall presume that:
>
> (A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and
> (B) The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court[.]

Section 5 of Act 153, Regular Session of 1999, effective July 1, 1999, reduced the three year time period in § 587-73(a)(2) to two years.

In essence, Mother contends as follows:

> A mistake has been made by the Family Court in this case. In its laudable efforts to protect children it ignored overwhelming evidence that [Mother] was able to provide a safe family home for her children with an appropriate service plan. [Mother] may need these services for years to come in order to maintain a safe family home for her children. But even if that is true, nothing in Chapter 587 permits the Family Court to terminate the rights of a parent on account of her need for services.

The ultimate dispute pertains to the question as to whether it was reasonably forseeable that Mother would become willing and able to provide the children with a safe family home, even with the assistance of a service plan, within the maximum time limitation specified in HRS § 587-73(a)(2). Upon a review of the record, we affirm the family court's negative answer to that question. The possibility that Mother, sometime in the future, but well beyond the maximum time limitation specified in HRS § 587-73(a)(2), might have become willing and able to provide the children with a safe family home, with the assistance of a service plan, is not a basis for disturbing the family court's decision.

Therefore, 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 the December 7, 2002 Order Awarding Permanent Custody and Establishing a Permanent Plan is affirmed.

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

On the briefs:

Lloyd Van De Car
for Mother-Appellant — Chief Judge

Jay K. Goss and
Mary Anne Magnier,
Deputy Attorneys General,
State of Hawai‘i,
for the Department of Human
Services-Appellee — Associate Judge

Associate Judge