

NOT FOR PUBLICATION

NO. 25997

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

IN THE INTEREST OF JOHN DOE,
Born on February 5, 2001

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-S NO. 01-076)

SUMMARY DISPOSITION ORDER

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

The Mother of John Doe (Doe), born on February 5, 2001, appeals from (1) the May 12, 2003 Order Revoking Foster Custody, Granting Permanent Custody, and Ordering Permanent Plan Dated April 30, 2003 and (2) the June 25, 2003 Order Denying Motion for Reconsideration Filed May 20, 2003 entered in the Family Court of the Second Circuit.^{1/} The April 30, 2003 Permanent Plan stated a goal of Doe's adoption by Doe's foster parents.

BACKGROUND

The August 14, 2001 Safe Family Home Report that was filed on August 15, 2001 states, in relevant part, as follows:

On 04/14/01, the DHS [State of Hawai'i, Department of Human Services] received a report alleging Threat of Abuse of [Doe], then age two months, by [Mother]. The reporter indicated that Mother was homeless, actively abusing substances (methamphetamine) and was unable to provide for [Doe]. [Doe's] father, [Father], was caring for [Doe] but he had not establish[ed] any legal custody/paternity over [Doe], he was unable to enlist the police cooperation to prevent Mother from taking [Doe] away from him Mother and Father subsequently agreed to participate in diversion services and Father would care for [Doe]. Approximately two months later (06/01), Father was unable to assume full parenting responsibilities of [Doe] and turned the infant over to his maternal grandmother's . . . care.

^{1/} Judge Geronimo Valdriz, Jr., presiding.

NOT FOR PUBLICATION

On 08/09/01, the DHS received a report alleging Threat of Harm (physical abuse) and Neglect of [Doe], age six months, by Mother due to Mother's active substance abuse (ice). Mother, allegedly while coming off the influence of ice, attempted to retrieve [Doe] from maternal grandmother's care. At the time, maternal grandmother was not home and Mother's thirteen-year-old sister was caring for [Doe]. The family called the police for assistance. The officer was reluctant to take the infant into police protective custody and instead arrested Mother for disorderly conduct. Mother was subsequently incarcerated and was released on 08/10/01. Maternal grandmother did not have any legal standing to prevent a substance impaired Mother from grabbing [Doe]. The DHS is confirming Threat of Harm (physical abuse) and Neglect of [Doe] by Mother.

On August 15, 2001, the DHS filed a petition for temporary foster custody of Doe. Subsequently, in an August 22, 2001 stipulated order, Mother stipulated to her "failure to provide food, clothing and shelter, and supervision due to [her] substance abuse[,]" and the court awarded foster custody of Doe to DHS.

On May 12, 2003, after a hearing, the court entered the "Order Revoking Foster Custody, Granting Permanent Custody, and Ordering the Permanent Plan Dated April 30, 2003."

On May 20, 2003, Mother filed a motion for reconsideration. In the accompanying memorandum in support of the motion, counsel for Mother alleged the following:

Mother offered evidence of her prospective ability to provide a safe family home: She (1) obtained release from incarceration; (2) remained clean for 14 months; (3) continued to pursue substance abuse treatment; (4) demonstrated appropriate parenting skills; (5) has adequate shelter; and (6) has the support of family to assist in providing a safe family home for [Doe].

On June 25, 2003, the court entered the "Order Denying Motion to Reconsider Filed May 20, 2003," stating, in relevant part, as follows:

NOT FOR PUBLICATION

The Father . . . was Defaulted from this case on March 3, 2002.

The initial Service Plan in this case identified two areas of concern. They include [Mother's] substance abuse, and [Mother's] lack of parenting skills.

The Court finds that [Mother] is unable to provide a safe family home^{2/} because she continues to have issues relating to

^{2/} 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;
 - (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;

NOT FOR PUBLICATION

substance abuse. Mother is in non compliance of the current service plan for the following reasons:

1. Mother was discharged from Maui Drug Court.
2. There is no current substance abuse evaluation for [Mother].
3. Mother is not currently admitted to the Malama Recovery Program and it is unknown whether or not she has been accepted and if so, when she would be discharged.
4. Mother has done no urinalysis examinations.
5. Mother is still in the intensive outpatient level of care.

The Court finds that [Mother] is unable to provide a safe family home because she continues to lack the parenting skills needed to raise [Doe]. The testimony of the expert witness Satyo Dosland and parenting counselor Trina [Shepherd] is credible and is as follows:

1. Despite parenting counseling [Mother] is still at the "directive stage" of counseling.
2. Mother cannot parent [Doe] on her own and lacks the most basic interactive skills with [Doe].
3. Mother is not committed to parenting [Doe].
4. Mother is unable to stimulate [Doe] at visits.
5. The last visit with [Doe] was in November, 2002. Mother has not called CWS to make arrangements for visitation with [Doe].

The Court further finds the following:

1. During the course of this case [Mother] has been incarcerated and released a number of times, going in and out of jail.
2. [Mother] was Defaulted twice from this case.

-
- (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.

3. The Court set two Show Cause Hearings in this matter.

4. [Mother] is currently unemployed.

5. [Mother] has had no consistent contact with the CWS social worker regarding [Doe] during the course of this case.

The Court finds that although [Mother] may be willing to provide [Doe] with a safe family home, she is unable to do so presently or in the foreseeable future.

The Court finds that the proposed Permanent Plan dated April 30, 2003 is in the best interest of [Doe]. The expert testimony of CWS social worker Satyo Dosland is that [Doe] has remained in the current foster home and is bonded to the foster parents.

(Footnote added.)

Mother filed a notice of appeal on July 25, 2003, and the case was assigned to this court on February 27, 2004.

ISSUES

1.

Mother challenges the findings that state:

[Mother] is unable to provide a safe family home because she continues to have issues relating to substance abuse. Mother is in non compliance of the current service plan for the following reasons:

1. Mother was discharged from Maui Drug Court.

2. There is no current substance abuse evaluation for [Mother].

3. Mother is not currently admitted to the Malama Recovery Program and it is unknown whether or not she has been accepted and if so, when she would be discharged.

4. Mother has done no urinalysis examinations.

5. Mother is still in the intensive outpatient level of care.

Mother contends that these findings failed to state with specificity what issues relating to substance abuse have resulted in Mother's inability to provide a safe family home and show that

NOT FOR PUBLICATION

DHS failed to satisfy its burden of proof by clear and convincing evidence. She further contends that no. 5 is clearly erroneous.

We disagree with Mother and conclude that the Supplemental Safe Family Home Report submitted by DHS Social Worker Satyo Dosland and filed on January 22, 2003, provides, with sufficient specificity, the required substantial evidence.

It states, in relevant part, as follows:

[Mother] is now incarcerated at MCCC. She was recommended to be terminated from the drug court program when she forged a signature on her AA meeting attendance forms and was caught. According to her drug court counselor, [Mother's] friends reported to drug court that [Mother] had been drinking alcohol with them all along. [Mother] denies this and said that she only drank after she had been caught with the forgery and knew she was going back to jail. Regardless of when she started, [Mother] admits that she used alcohol. When she appeared before the judge at Drug Court, [Mother] decided not to fight the charges and told the judge to just go ahead and terminate her from the program

[Mother] has now lost the support of Drug Court and her placement at the homeless shelter. She will have to be placed in the dormitory upon her release from MCCC, if there is an opening at the time and work her way back up the list to an apartment status. Whatever ground she had gained towards providing a safe family home for [Doe] has now been lost and she must start over. This includes her relationship with [Doe] with whom she had just begun to establish a fragile bond. [Doe] has now been i[n] foster care for nearly 18 months and according to Personal Parenting worker Trina Shepherd^{3/}, [Mother] still needs to improve her parenting skills from the basics up before she will be considered a safe and capable parent. At this time she still displays behavior that indicates thinking errors and an inability to make choices to live a substance free lifestyle. She does not appear to be sincere in her efforts to lead a drug free life as evidenced by her signing fallacious reports as to her presence at support meetings that she did not attend. Trina [Shepherd] reports that [Mother] needs to place less attention on her social life and more attention on developing a home for [Doe], learning her parenting skills and how to support herself and her son in a legal, acceptable, drug free lifestyle. She has shown some effort in this direction but not enough to make rapid progress as needed by the timelines operating in this court case.

^{3/} Trina Shepherd is "a parenting educator" for "Personal Parenting and Assessment Services".

2.

Mother challenges the findings that she

is unable to provide a safe family home because she continues to lack the parenting skills needed to raise [Doe]. The testimony of the expert witness Satyo Dosland and parenting counselor Trina [Shepherd] is credible and is as follows:

1. Despite parenting counseling [Mother] is still at the "directive stage" of counseling.

2. Mother cannot parent [Doe] on her own and lacks the most basic interactive skills with [Doe].

3. Mother is not committed to parenting [Doe].

4. Mother is unable to stimulate [Doe] at visits.

5. The last visit with [Doe] was in November, 2002. Mother has not called CWS to make arrangements for visitation with [Doe].

Mother notes that, over her objection, Satyo Dosland testified that Trina Shepherd reported to her

that [Mother] is still very young and immature and that she tends to focus more on her social life with men

And that she -- just really the very basic stuff that comes with parenting. She still was at the very directive stage, like she'd have to tell her to do this and tell her to do that. And she would do that. She would comply with what she was told to do. But she was not at the point where she was making these moves herself. It's like she had to be pointed out all the time what to do, what not to do, how to talk to her son, how to interact, how to play with him. You know, every step of parenting needed instruction.

And so when I asked Trina [Shepherd], I said well, are we anywhere near close to being close to unsupervised visits. And she goes no, I wouldn't feel comfortable with that yet.

In response to Mother's objection, the court ruled that Satyo Dosland "can tell us what she bases her opinion on

I'm not using that as substantive evidence." Mother contends that, absent this hearsay evidence, there is no evidence to support the challenged findings. She further contends that this hearsay evidence is "inconsistent with the live sworn testimony given previously by [Trina Shepherd]."

NOT FOR PUBLICATION

Trina Shepherd testified that she worked with Mother from May 14, 2002 to the middle or last part of November. The following relevant testimony of Trina Shepherd shows that both of Mother's contentions lack merit:

[Mother] would respond to directives. . . .

. . . .

. . . I think it was difficult for [Mother] to know exactly what to do with [Doe] at times.

. . . .

. . . I think [Mother] tried to do her best with [Doe]. I'm not sure if [Doe] ever got comfortable because it was just kind of awkward

. . . .

. . . [I]t seemed like it was important for me to show [Mother] the details of parenting from stimulating, how to get his attention, and what to do to help him respond; what to read; to wait a little bit longer before she would feed him.

. . . .

. . . I'm not sure [Mother] made the transition from being a single social person to being . . . in a mother role. I think . . . she seemed awkward to know what to do with him.

So hence all the detailing out, the pep talks to stimulate him, wait to feed him, don't lay on the bed, don't smoke, go out and play with him, throw the ball to him, let him catch it, run around the yard with him, kind of like the most basic things, to say . . . how you would interact with a child.

. . . .

Well, I think it's an intrinsic, in a sense, commitment to put off your social life, put off your sleeping schedule, put off your extracurricular activities to focus on the development of your child and all of his needs. And I'm not sure that -- she would have to, you know, become really, really attuned to what the developmental needs are and to change some behaviors to have that actually happen. And I think that would be . . . a decision she would have to make.

. . . .

. . . [I]t seemed like she was at a loss about how to work with him. There was an awkwardness that stimulated me to step in and tell her what to do.

. . . .

. . . My observation is that . . . [Doe's] pretty far behind on his speaking. And I'm not sure where that came from. It can be from the earliest interactions where he wasn't stimulated. I don't know where that came from.

The following examination of Trina Shepherd by counsel for Mother suggests that Mother's position is that she is not responsible for any deficiencies of care suffered by Doe while Doe was in the custody of Father.

Q. Are you aware that [Doe] was in the care of [Father] in the earliest months?

. . . .

Q. What effect does that knowledge have on any opinion you may have regarding [Doe's] early developmental delay?

A. Well, I'm looking at his verbal delays. And I'm looking at what I observed in the stimulation that [Mother] gave [Doe] when I was there, which necessitated . . . the amount of detail in instruction in parenting.

We conclude that Mother is responsible for all deficiencies of care suffered by Doe while Doe was in the custody of Father.

This conclusion is based on the fact that (1) all those deficiencies of care were reasonably predictable, and (2) the reason Doe was in the custody of Father was the fact that Mother's active substance (methamphetamine) abuse caused her to be homeless and unable to provide for Doe.

ORDER

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 having given due consideration and analysis to the laws relevant to the issues raised and arguments

NOT FOR PUBLICATION

made, we agree with the family court that on May 12, 2003, it was "not reasonably foreseeable that [Mother] will become willing and able to provide [Doe] 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 August 22, 2001 date upon which Doe was first placed under foster custody by the court.

Therefore, IT IS HEREBY ORDERED that the following family court orders from which the appeal is taken are affirmed: (1) the May 12, 2003 Order Revoking Foster Custody, Granting Permanent Custody, and Ordering Permanent Plan Dated April 30, 2003, and (2) the June 25, 2003 Order Denying Motion to Reconsider Filed May 20, 2003.

DATED: Honolulu, Hawai'i, October 12, 2004.

On the briefs:

Kelsey T. Kawano,
for Respondent-Appellant

Chief Judge

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

Associate Judge

Associate Judge