

NOT FOR PUBLICATION

NO. 26276

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

IN THE INTEREST OF JANE DOE,
Born on July 30, 2001, a Minor.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08445)

SUMMARY DISPOSITION ORDER

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

Jane Doe (Jane) was born on July 30, 2001. On August 4, 2002, Jane Doe was taken into police protective custody due to neglect by her mother (Mother) and physical harm by Mother's then boyfriend who is not Jane's father. On August 5, 2002, Mother agreed to Jane's placement in foster care. On September 3, 2002, the family court¹ awarded foster custody of Jane to the State of Hawai'i Department of Human Services (DHS).

On June 10, 2003, Mother gave birth to June Doe (June). The father of June is neither Mother's former boyfriend nor the father of Jane.

On October 17, 2003, after a contested hearing, the family court² entered an Order Awarding Permanent Custody, divesting Mother of her parental and custodial rights and duties regarding Jane, awarding permanent custody of Jane to the DHS, and ordering the June 27, 2003 Permanent Plan into effect.

¹ The Honorable John C. Bryant, Jr. presided.

² The Honorable Gale L.F. Ching presided.

On November 13, 2003, the family court entered an order denying Mother's motion for reconsideration. On December 12, 2003, Mother filed a notice of appeal. On January 5, 2004, the family court entered its Amended Findings of Fact and Conclusions of Law. This appeal was assigned to this court on July 30, 2004.

Mother contends that the finding that the criteria specified in Hawaii Revised Statutes § 571-61(b)(1)(E) (1993)³ was proven by clear and convincing evidence is clearly erroneous. More specifically, Mother notes that she has been caring for June since birth and argues that if she "is able to provide a safe home for [June], she is also able to provide a safe home for [Jane]."

Our first response is the fact that a parent is willing and able to provide one child with a safe family home is not proof that the parent is willing and able to provide another child with a safe family home.

Our second response is that Mother's contention and argument is contradicted by unchallenged findings of fact. Some of the more relevant of those findings state as follows:

³ Hawaii Revised Statutes § 571-61 (1993) states, in relevant part, as follows:

- (b) Involuntary termination.
- (1) The family courts may terminate the parental rights in respect to any child as to any legal parent:
 - . . . ;
 - (E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under section 571-11(9), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child[.]

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30. [June] was born . . . to Mother and her first cousin, the son of paternal aunt with whom they reside.

31. Mother and [June's] father have a voluntary family supervision agreement with DHS for [June] because they are living with the paternal grandparents.

. . . .

33. Mother is not very attentive to [June], but [June's] other immediate family members in the household care for her and prompt Mother to breast feed her.

. . . .

39. During the period prior to trial, Mother had the opportunity for frequent and lengthy visits with [Jane] because foster mother frequently brought [Jane] to her mother's home, where Mother lives (foster mother's mother is Mother's paternal aunt).

40. According to concerned members of Mother's household, Mother tended to sleep until late in the afternoon and rarely interacted with [Jane] when she was in the home for visits.

. . . .

53. Mother showed minimal improvement in her parenting skills after appropriate services.

54. Mother did not demonstrate protective behavior toward [Jane] even after appropriate services were provided by DHS.

. . . .

56. [Jane] is not bonded to Mother and looks to foster mother as her maternal figure.

. . . .

58. Mother has not shown any effort to interact with [Jane] as a parental figure even after this expectation by DHS was clearly explained to her.

. . . .

60. Even after the Ohana conference and appropriate services, Mother has not demonstrated any initiative or responsibility to meet [Jane]'s physical and emotional needs without existence support and assistance.

. . . .

62. Mother completed all of the services listed in the service plan, but did not improve her parenting skills, judgment, or motivation to protect or nurture [Jane].

63. Mother has never given DHS any reason to believe that she will ever be able to meet [Jane]'s needs independently.

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64. If returned to Mother's care, [Jane] would be at very significant risk of neglect, or emotional abuse, and of serious harm from Mother's poor judgment including a significant risk of harm from being left with inappropriate caretakers.

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, and recognizing that Hawaii Revised Statutes § 587-41(d) (1993) specifies that "[i]n a permanent plan hearing, a determination that a permanent plan shall be ordered [shall be] based upon clear and convincing evidence[,]"

IT IS HEREBY ORDERED that the October 17, 2003 Order Awarding Permanent Custody and the October 17, 2003 Letters of Permanent Custody are affirmed.

DATED: Honolulu, Hawai'i, March 9, 2005.

On the briefs:

Herbert Y. Hamada,
for Mother-Appellant

Chief Judge

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

Associate Judge

Associate Judge