

NOT FOR PUBLICATION

NO. 26698

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

In the Interest of DOE CHILDREN:  
JOHN DOE, Born on May 1, 1997;  
JANE DOE, Born on March 8, 1999;  
JOHN DOE, Born on June 2, 2002, Minors

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STATE OF HAWAI'I

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APPEAL FROM FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NO. 02-08407)

SUMMARY DISPOSITION ORDER

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

The appellant in this case is the biological mother  
(Mother) of the three Doe Children, described as follows:

- A son (First Son) born on May 1, 1997
- A daughter (Daughter) born on March 8, 1999
- A son (Second Son) born on June 2, 2002

Mother appeals from the May 24, 2004 Order Awarding Permanent Custody<sup>1/</sup> that terminated her parental rights to the Doe Children. The alleged natural father (Father) of First Son and Second Son, who is also the adjudicated father of Daughter, was a party whose parental rights were also terminated but he is not an appellant in this case.

On July 19, 2002, the police took the Doe Children into protective custody. On July 24, 2002, the State of Hawai'i, Department of Human Services (DHS) filed a Petition for Temporary Foster Custody. On July 26, 2002, the court entered Orders Concerning Child Protective Act which, among other things, awarded foster custody of the Doe Children to the DHS and ordered

<sup>1/</sup> The Honorable Kenneth E. Enright presided.

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the July 24, 2002 service plan into effect.

On July 8, 2003, the court entered a Family Court Restraining Order that prohibited Father from contacting the Doe Children and from being within three blocks of them except "as arranged and approved by the DHS in consultation with the GAL."

On July 8, 2003, the court entered Orders Concerning Child Protective Act which ordered the June 3, 2003 service plan into effect. One of the "tasks" this service plan imposed upon Mother was the task to **"Abide by the Restraining Order against [Father]"**. (Emphasis in original.)

On January 15, 2004, the court entered Orders Concerning Child Protective Act which ordered the January 9, 2004 service plan into effect. This service plan specified that "[a]ll visits between the [Doe Children] and [Mother] are to be supervised. At this time, there are no visits between the children and [Father]."

On February 10, 2004, the DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan.

The trial occurred on May 12, 2004 and May 24, 2004. At the conclusion of the trial on May 24, 2004, the court entered its Order Awarding Permanent Custody that terminated Mother's and Father's parental rights and ordered the January 27, 2004 Permanent Plan into effect. The goal of that plan was the adoption of the Doe Children.

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On June 9, 2004, Mother filed a Motion for Reconsideration. On June 14, 2004, Father filed a Motion for Reconsideration. On June 23, 2004, the court entered Orders Concerning Child Protective Act which denied Mother's and Father's motions for reconsideration.

On July 19, 2004, Mother filed a notice of appeal. Father did not appeal. This appeal was assigned to this court on February 28, 2005.

On August 16, 2004, the family court entered its Findings of Fact and Conclusions of Law which state, in relevant part, as follows:

82. Despite the instructions and advice from the Court, DHS, and the GAL [Guardian Ad Litem for the Doe Children] that Father posed a substantial risk of harm to the Children as long as he did not participate in services, and her participation in services since the beginning of the case, Mother, through her continued contact with Father, has clearly demonstrated her inability to separate from Father and her inability to protect the Children or herself from the serious risk of harm posed by Father.

83. Mother had a positive urinalysis for methamphetamines during a urinalysis on April 27, 2004.

. . . .

87. Regardless of Mother's participation in services, Mother has not made sufficient progress that would enable her to provide a safe home for the Children.

In essence, Mother appeals on the basis that she "was not given enough time from the taking of her children after she had family supervision to the Permanent Custody trial, to show she could provide a safe home for her children."

In her reply brief, Mother argues:

The main problem Mother had in this case was dealing with the Father. Mother asked the court to help her force Father to do services. In these cases service plans are ordered and the parents who do NOT do what are reasonable orders are essentially

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in contempt of court for not obeying the court order's [sic].

Many of the attorneys who represent parents in these cases have almost wanted the court to order contempt over parents who refuse to do what the court ordered. If that would happen in even a few cases it would have an effect of making parents realize that these are serious cases. If jail were threatened it may have a large effect on making some parents better. What happens in a lot of cases is that Permanent Custody is ordered so quickly that many parents are in shock over how powerful the Court can be. If just a few where [sic] held in contempt of court and even jailed for it we would suddenly get a lot more compliance with service plans. This would help all parties concerned and end up with a lot more cases ending favorably with the children returned.

DHS returned the children to Mother in this case in August and September of 2002. Mother allowed Father to have contact with the children and so DHS assumed foster custody of the children again on May 29, 2003.

DHS realized the problem with Father and asked the Court to issue a Family Court Restraining Order against Father. The Court refused this DHS request. This sent a mixed message to both Father and Mother. In the end Mother lost her right's [sic] to her children over the problem with Father.

(Record citations omitted.)

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, we conclude that Mother's appeal has no merit. Therefore,

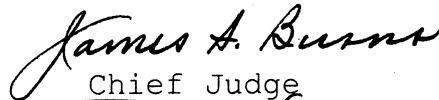
IT IS HEREBY ORDERED that the May 24, 2004 Order Awarding Permanent Custody is affirmed.

DATED: Honolulu, Hawai'i, November 21, 2005.

On the briefs:

Joseph Dubiel,  
for appellant.

Patrick A. Pascual and  
Mary Anne Magnier,  
Deputy Attorneys General,  
for appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge