

NOT FOR PUBLICATION

NO. 27113

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

IN THE INTEREST OF A.B., a Minor

K. HAMAKA'DO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 03-09211)

SUMMARY DISPOSITION ORDER

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

The mother (Mother) of AB, born on April 6, 1999, appeals from the family court's^{1/} November 15, 2004 Order Awarding Permanent Custody, November 15, 2004 Letters of Permanent Custody, and January 12, 2005 order denying Mother's motion for reconsideration.

When AB was born, Mother was approximately seventeen years old. AB is Mother's first child. Mother's second child was born on May 21, 2000. Mother's third child was born on September 1, 2001. Mother's fourth child (Fourth Child) was born on April 17, 2003.

On April 22, 2003, after the State of Hawai'i Department of Human Services (DHS) confirmed a report of the abuse and neglect of AB and Fourth Child, the DHS and Mother entered into a voluntary family supervision agreement and service plan.

^{1/} Judge Linda K.C. Luke presided.

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On August 23, 2003, while in the care of maternal grandmother, Fourth Child died. Two of the findings of fact entered on December 29, 2004, state, in relevant part:

60. Based on the credible evidence, at the time of [Fourth Child's] death on August 23, 2004 [sic], Mother had left [AB] and [Fourth Child] in the care of Maternal Grandmother, and Mother's whereabouts were unknown. . . .

61. In the autopsy of [Fourth Child], the Honolulu Medical Examiner found the immediate cause of [Fourth Child's] death to be sudden death with the cause unknown, and the contributing cause of death was [Fourth Child's] sleeping in a prone position. According to the September 25, 2003 autopsy report, the Honolulu Medical Examiner stated that due to [Fourth Child] being found unresponsive in a prone position, suffocation by bedding could not be excluded.

On August 24, 2003, AB was taken into protective custody by the Honolulu Police Department and transferred into the temporary foster custody of the DHS.

On September 23, 2003, the court awarded foster custody of AB to the DHS. Although Mother was not served notice of and did not appear at the September 23, 2003 hearing, the court concluded that a reasonable effort had been made to locate Mother. Later, on January 15, 2004, Mother stipulated to the award of foster custody of AB to the DHS.

On August 3, 2004, the DHS moved for an order awarding it permanent custody of AB. On November 15, 2004, after a trial, the court entered the Order Awarding Permanent Custody which terminated Mother's parental rights and duties relating to AB and ordered the July 21, 2004 Permanent Plan into effect. The goal of that Permanent Plan is adoption. The November 15, 2004 Letters of Permanent Custody appointed the State of Hawai'i Director of Human Services as the permanent custodian of AB.

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Mother filed a motion for reconsideration on December 6, 2004. The court filed the Findings of Fact and Conclusions of Law on December 29, 2004. The order denying Mother's motion for reconsideration was entered on January 12, 2005.

Mother filed a notice of appeal on February 9, 2005. This case was assigned to this court on September 15, 2005.

In the opening brief, Mother challenges numerous findings of fact on the following grounds:

The evidence was not clear and convincing that Mother was unwilling and unable to provide a safe home for [AB]. There was no evidence that Mother had actually harmed [AB]. [AB] was healthy and well cared for at the time she was removed from the family home. Even after a year in foster custody and multiple foster placements [AB] did not have any emotional or behavioral problems. [Mother] had participated in services and was willing to continue to participate in services. She was never given an opportunity to demonstrate that she could provide a safe home for [AB].

The DHS did not exert reasonable efforts to reunite Mother with [AB]. The DHS did not allow Mother to have any visits with [AB] after she was taken into police custody and turned over to the DHS on August 24, 2003.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2006), 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 considering the following findings of fact:

35. Mother subjected [AB] to physical neglect, abandonment, and threatened harm. . . .

36. . . . [AB] had a history of wandering from the family home

. . . .

56. . . . At the time of trial, Mother was pregnant and scheduled to give birth in December 2004 Mother testified that she planned to give her fifth child up for adoption. When Mother's latest child is born, Mother would have given birth to five children from four different men.

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IT IS HEREBY ORDERED that the following are affirmed:

(1) the November 15, 2004 Order Awarding Permanent Custody; (2) the November 15, 2004 Letters of Permanent Custody; and (3) the January 12, 2005 Orders Concerning Child Protective Act.


DATED: Honolulu, Hawai'i, May 16, 2006.

On the briefs:

Jeffry R. Buchli
for Mother-Appellant.

Patrick A. Pascual and
Mary Anne Magnier,
Deputy Attorneys General
for Department of Human
Services-Appellee.


Chief Judge


Associate Judge


Associate Judge