

NOT FOR PUBLICATION

NO. 27302

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

IN THE INTEREST OF E.D.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 99-05853)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Nakamura, JJ.)

Mother and Father appeal the orders awarding permanent custody of their minor son (the Child) filed in the Family Court of the First Circuit (family court)¹ on March 21, 2005 and April 6, 2005, and the April 28, 2005 and May 13, 2005 orders denying their respective motions for reconsideration.

Upon a diligent review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error raised by Mother and Father on appeal as follows:

Father's Appeal.

1. The family court did not err in treating the prior, adjudication ruling that was affirmed by this court on appeal -- "that Father sexually, physically, and psychologically harmed Child[,]" In re Doe, No. 26021, 106 Hawai'i 135, 102 P.3d 379 (Haw. App. filed December 21, 2004) (SDO) -- as the law of the

¹ The Honorable Gale L.F. Ching presided.

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case. Ditto v. McCurdy, 98 Hawai'i 123, 128, 44 P.3d 274, 279 (2002).

2. There was substantial evidence before the family court to support its conclusion that it is not reasonably foreseeable that Father 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; and we are not left with a definite and firm conviction that the family court made a mistake in this regard. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001).

3. There was substantial evidence before the family court to support its conclusion that the permanent plan was in the best interests of the Child, and we are not left with a definite and firm conviction that the family court made a mistake in this regard. Id. at 195, 20 P.3d at 628.

Mother's Appeal.

1. As a principle applicable to all of Mother's points of error on appeal, we will not pass upon the family court's determinations of the credibility of the witnesses and the weight of the evidence. Id. at 190, 20 P.3d at 623.

2. There was substantial evidence before the family court to support its conclusions that Mother posed a threat of sexual and physical harm to the Child, and we are not left with a definite and firm conviction that the family court made a mistake in this regard. Id.

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3. The family court did not err in admitting evidence of what Mother calls her "prior bad acts," because her character was directly at issue. Id. at 191, 20 P.3d at 624.

4. By not objecting below -- indeed, stipulating -- to the admission of the out-of-court statements of her probation officer, Mother waived any due process rights to confrontation and cross-examination. In Interest of Doe, 77 Hawai'i 109, 116, 883 P.2d 30, 37 (1994).

5. Mother's arguments about the time the Child spent in continuous foster custody are immaterial under the circumstances of this case. In re Doe, 89 Hawai'i 477, 491-92, 974 P.2d 1067, 1081-82 (App. 1999) (statutory time periods are maxima for reunification efforts, not minima).

6. In sum, there was substantial evidence before the family court to support its conclusion that it is not reasonably foreseeable that Mother 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; and we are not left with a definite and firm conviction that the family court made a mistake in this regard. Doe, 95 Hawai'i at 190, 20 P.3d at 623.

Therefore,

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IT IS HEREBY ORDERED that the family court's March 21, 2005 and April 6, 2005 permanency orders and its April 28, 2005 and May 13, 2005 orders denying reconsideration are affirmed.

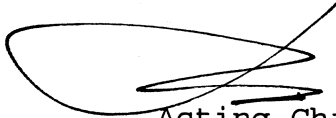
DATED: Honolulu, Hawai'i, June 7, 2006

On the briefs:

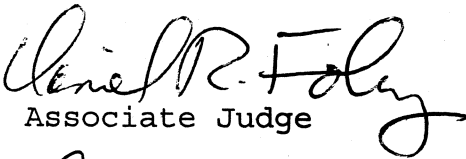
Marrionnette L.S. Andrews,
Cheryl Y. Arakaki, and
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for Mother-Appellant.

Leland B.T. Look,
for Father-Appellant.

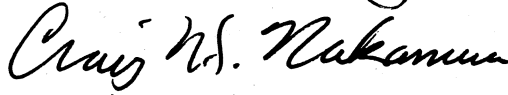
Patrick A. Pascual and
Mary Anne Magnier,
Deputy Attorneys General,
State of Hawai'i,
for Petitioner-Appellee
Department of Human Services.



Acting Chief Judge



Associate Judge



Associate Judge