

NO. 27618

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I
IN THE INTEREST OF A.G.

CLERK OF APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 03-08731)

SUMMARY DISPOSITION ORDER

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

A.G. is a male child born on October 23, 1997. The mother (Mother) of A.G. appeals from the September 30, 2005 (a) Order Awarding Permanent Custody and (b) Letters of Permanent Custody entered in the Family Court of the First Circuit. The order terminated Mother's parental and custodial duties and rights with respect to A.G. and ordered a permanent plan into effect. The goal of the permanent plan was the adoption of A.G. Mother also appeals from the part of the family court's November 3, 2005 Orders Concerning Child Protective Act that denied her motion for reconsideration.

On January 2, 2003, A.G. was taken into protective custody by the police. On January 3, 2003, Mother was convicted of the offense of Assault in the Third Degree. She was sentenced to probation with conditions including domestic violence intervention and parenting classes.

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The State of Hawai'i Department of Human Services (DHS) commenced this case on January 7, 2003. Two days later, the court entered a stipulated order awarding DHS foster custody of A.G.

On March 19, 2004, Mother was convicted of the offense of Harassment and sentenced to probation with conditions including anger management treatment.

It appears that prior to June 6, 2004 to beyond November 26, 2004, Mother was detained at the Federal Detention Center (FDC) and that this detention was related to a domestic violence criminal conviction stemming from an incident in March of 2004.

On November 5, 2004, DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan. On January 12, 2005, Judge Kenneth E. Enright presided over a partial trial and scheduled a further trial to occur on April 29, 2005. Subsequently, Judge Enright's physical disability prevented him from further involvement in the case.

On July 20, 2005, after an evidentiary hearing on April 29, 2005, Judge William K. Wallace entered Findings of Fact and Conclusions of Law (FsOF and CsOL). The following are relevant FsOF:

56. At the April 29, 2005 hearing, the court ordered, on DHS oral request, that Mother and Stepfather have no contact with [A.G.'s] therapist and that all information about [A.G.] shall be sought from the DHS social worker and the GAL.

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57. At the April 29, 2005 hearing, the DHS represented that, after a recent telephone call from Stepfather, [A.G.'s] therapist, Dr. Chee, contacted social worker Patricia Dougherty and asked her to stop any further phone calls from parents.
65. Although the court order did not explicitly state, Mother and Stepfather were and are not precluded from submitting written information to the therapist through DHS, should they choose to do so.

The following is a relevant COL:

7. As of April 29, 2005 and May 11, 2005, the no-contact order regarding [A.G.'s] therapist is in the best interest of [A.G.]

On September 29 and 30, 2005, Judge Wallace presided over a trial. On September 30, 2005, Judge Wallace entered the Order Awarding Permanent Custody and Letters of Permanent Custody. On November 3, 2005, Judge Wallace entered the order denying Mother's motion for reconsideration. On November 22, 2005, Mother filed a notice of appeal. On December 28, 2005, Judge Wallace entered FsOF and CsOL. This panel of appellate judges was assigned to this case on August 3, 2006.

The following December 28, 2005 FsOF are unchallenged:

46. Dr. Roth's July 15, 2005 opinion that [A.G.] is not autistic but suffers from: Axis I - psychotic disorder in early remission, post-traumatic stress disorder from extreme neglect and possible abuse, witness of domestic violence, disorganized attachment behaviors and poor object constancy, speech delay secondary to poor language instruction and bilingual language delay; Axis II - learning disorder not otherwise specified, bilingual language delay, Axis IV - Poor social skills, language skill, speech, and fine motor skills instruction and thus delayed development, is credible.
52. [A.G.'s] current symptoms show that he suffered significant trauma and deprivation prior to coming into foster care.
59. At the time of trial, [A.G.] continues to be emotionally fragile to the point that he has difficulty containing and regulating his negative emotions.

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68. All of the professionals treating [A.G.] as of the time of trial are in agreement, and the court finds, that contact of any kind with Mother would not be in [A.G.'s] best interest and would be very harmful to him.
77. Further delay in giving [A.G.] a permanent home is detrimental to him.
78. [A.G.] will require mental health services for a long period of time.
141. Mother has no insight into [A.G.'s] emotional and mental health problems and special needs.
146. Mother presently poses a risk of threatened harm to [A.G.] because she has not seen [A.G.] and he has not seen her for two years.

The following December 28, 2005 FsOF are challenged,
but none are clearly erroneous:

132. Although Mother completed anger management counseling in the early part of 2005, she continues to struggle to control her emotions as evidenced by her demeanor in court on September 29 and 30, 2005 and November 3, 2005 and other hearings before the presiding judge.
133. Mother has not completed treatment of her mental health problems, particularly her personality disorder.
148. Mother presently poses a threatened harm to [A.G.] because she has not adequately addressed and resolved her very serious mental health, anger and domestic violence problems and is not able to meet [A.G.'s] special needs.
152. Even in the absence of a statutory limit on the time within which to look forward, it is not reasonable to give Mother more time within which to attempt to address and resolve her problems or try to become able to meet [A.G.'s] special needs, because improvement in the near future is unlikely, and it is not in [A.G.'s] best interest to wait any longer for a permanent safe home.

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 applying the law relevant to the issues raised and arguments presented,

IT IS HEREBY ORDERED that the following are affirmed:
the September 30, 2005 Order Awarding Permanent Custody, the

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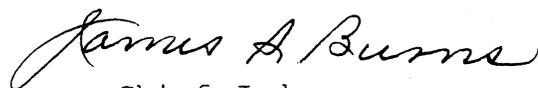
September 30, 2005 Letters of Permanent Custody, and the
November 3, 2005 Orders Concerning Child Protective Act.

DATED: Honolulu, Hawai'i, October 23, 2006.

On the briefs:

Randal I. Shintani
for Mother-Appellant.

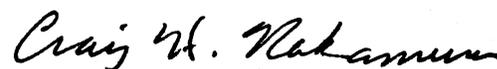
Susan Barr Brandon and
Mary Anne Magnier,
Deputy Attorneys General
for Petitioner-Appellee.



Chief Judge



Associate Judge



Associate Judge