

NO. 27663

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I
IN THE INTEREST OF K.D.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 01-07576)

SUMMARY DISPOSITION ORDER

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

The November 1, 2005 Order Awarding Permanent Custody entered in the Family Court of the First Circuit¹ terminated the parental rights of the father (Father) and the mother (Mother) of K.D. The court's November 22, 2005 Orders Concerning Child Protective Act denied Father's motion for reconsideration. Father appeals from both of these orders.

Father and Mother were married on August 19, 1999. K.D. was born on July 18, 2001. The next day, K.D. was taken into protective police custody and placed in the temporary foster custody of the State of Hawai'i Department of Human Services (DHS). On November 27, 2001, the family court terminated its jurisdiction over K.D.

In April 2004, Father moved to Nevada. Mother and K.D. remained in Hawai'i. On August 17, 2004, K.D. was taken into police protective custody. Temporary foster custody of K.D. was transferred to DHS, and DHS placed K.D. with his maternal

¹ Judge William Nagle III presided.

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grandmother (Maternal Grandmother). On October 21, 2004, the court awarded foster custody of K.D. to DHS. On December 3, 2004, K.D. was removed from Maternal Grandmother and placed in a DHS foster home. In January 2005, Father returned to Hawai'i. On April 7, 2005, DHS moved for permanent custody. In May 2005, Father returned to Nevada where he presently resides. On November 1, 2005, after a trial on October 31, 2005, the court entered the order awarding permanent custody of K.D. to DHS. Adoption is the ultimate goal. On November 22, 2005, the court entered an order denying Father's November 17, 2005 motion for reconsideration. On December 13, 2005, Father filed a notice of appeal. On January 13, 2006, the court entered Findings of Fact and Conclusions of Law (FsOF and CsOL).

Father contends:

1. DHS has not exerted reasonable and active efforts to reunify [K.D.] with Father. DHS provided little assistance to Father. The service plans offered by the DHS and ordered by the court were not timely and comprehensive. Father was not afforded enough time to complete the service plan ordered by the Family Court.

2. The evidence was not clear and convincing that Father was unwilling or unable to provide a safe home for [K.D.], even with the assistance of a service plan, within a reasonable period of time. Father ended his relationship with Mother, who's in total non-compliance and defaulted by the court. Father engaged in services on his own in the State of Nevada before returning to Hawaii. Father was available by telephone when he was not in Hawaii. Father also sought out and enrolled himself into various services to address the safety concerns without any assistance from the DHS.

3. The evidence was not clear and convincing upon which the court could find that the proposed permanent plan assisted in meeting the goal of adoption, which the DHS identified as being in the best interests of the child. It's unclear that [K.D.'s] foster parents are committed to adopting him.

4. The termination of parental rights and granting of permanent custody to the DHS was premature. A Permanent Plan hearing is not required until children have been residing out of

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the home for fifteen of the last twenty-two months. [K.D.] has been in court ordered foster custody for a year and out of the family home for just 14 months when the court held the trial granting the Motion for Permanent Custody.

The Fsof and CsOL state in part:

89. However, in the March 11, 2005 psychological evaluation of Father by Dr. John L. Wingert, Ph.D., Dr. Wingert opined that Father's leaving the State of Hawaii in April 2004, raised concerns about Father's psychological immaturity, Father's lack of commitment to [K.D.], By moving to the State of Nevada in April 2004, Father could not visit with [K.D.] to strengthen his bond with [K.D.], which hampered his ability to actively work for reunification with [K.D.].

90. Against the advice of DHS, Father returned to the State of Hawaii and reconciled with Mother in January 2005, after Mother obtained a court order dissolving the Family Court Restraining Order against Father. . . .

91. Dr. Wingert's March 11, 2005 psychological evaluation of Father raised significant concerns about Father's mental health that negatively impacted his ability to provide a safe family home for [K.D.]. According to Dr. Wingert, Father's psychological functioning deteriorated since Dr. Wingert's June 2000 psychological evaluation of Father. During the intervening five-year period, Father developed a Personality Disorder, that would require long-term therapy to address. Father, according to Dr. Wingert, minimized his own problems, and Father did not believe that Mother, despite being an untreated child sex offender, posed a threat to her children. As a result, Father, according to Dr. Wingert, was a more emotionally needy and dependent individual who was quick to overlook past concerns.

93. Father left the State of Hawaii in May 2005, and presently resides in the State of Nevada. According to Father he separated from Mother due to Mother's manipulative behavior and extra-marital affairs.

95. The KPC MDT [Kapiolani Child Protection Center Multidisciplinary Team] has conducted numerous MDT Conferences regarding Father. The KPC MDT based on the documented history of family dysfunction and the amount of treatment services offered and utilized by the family, assessed that Father would not be able to provide [K.D.] with a safe family home in the reasonably foreseeable future. This is in accord with DHS' assessment regarding Father.

96. [K.D.'s] VGAL [Volunteer Guardian Ad Litem] is in accord with DHS' assessment regarding Father.

97. Under the circumstances presented by the case, Father was given every reasonable opportunity to effect positive changes to provide a safe family home and to reunify with [K.D.].

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98. Father is not presently willing and able to provide [K.D.] with a safe family home, even with the assistance of a service plan because his foregoing problems continue to exist and he has refused, frustrated, and failed to benefit from the services which have been provided to him.

99. It is not reasonably foreseeable that Father will become willing and able to provide [K.D.] with a safe family home, even with the assistance of a service plan because even if Father were to suddenly change her [sic] long standing pattern of behavior, there is no likelihood that he would sufficiently resolve his problems at any identifiable point in the future.

The FsOF challenged by Father are not clearly erroneous. The CsOL challenged by Father are right. Therefore, 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,

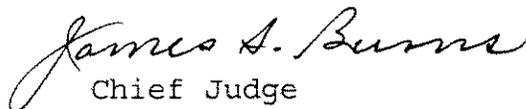
IT IS HEREBY ORDERED that the November 1, 2005 Order Awarding Permanent Custody and November 22, 2005 Orders Concerning Child Protective Act are affirmed.

DATED: Honolulu, Hawai'i, November 1, 2006.

On the briefs:

Tae Won Kim
for Father-Appellant.

Patrick A. Pascual and
Mary Anne Magnier,
Deputy Attorneys General
for Petitioner-Appellee.


Chief Judge


Associate Judge


Associate Judge