

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27698

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

IN THE INTEREST OF N. CHILDREN:
S.S.N., S.P.N., M.N., K.N., and T.N.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 94-03342)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Foley and Fujise, JJ.)

Father appeals the November 1, 2005 order of the Family Court of the First Circuit (family court)¹ that awarded permanent custody of one of his sons (Son) to the Department of Human Services (DHS). Father also appeals the family court's December 6, 2005 denial of his motion for reconsideration of the permanent custody order.²

To the DHS's threshold demurrer that Father's appeal is moot due to Son's interim attainment of the age of majority, see McCabe Hamilton & Renny Co., Ltd. v. Chung, 98 Hawai'i 107, 116-17, 43 P.3d 244, 253-54 (App. 2002), we reply that it is not given the circumstances of this case, which include the circumstance that several of Father's children remain under

¹ The Honorable Paul T. Murakami presided.

² Father does not specify or argue error with particular respect to the Family Court of the First Circuit's (family court) December 6, 2005 denial of his motion for reconsideration of the permanent custody order. Hence, we will not review and thus affirm the family court's December 6, 2005 order. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2005); Wright v. Chatman, 2 Haw. App. 74, 76-77, 625 P.2d 1060, 1062 (1981); HRAP Rule 28(b)(7) (2005); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 438 n.33, 83 P.3d 664, 701 n.33 (2004).

family court supervision. See, e.g., Hawaii Revised Statutes (HRS) § 587-25(a)(4)(D) (1993); HRS § 587-2 (Supp. 2005) (definition of "aggravated circumstances," subsection (3)); HRS § 587-71(j) (Supp. 2005); HRS § 587-72(c)(7) (Supp. 2005).

After a meticulous 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 dispose of Father's points of error on appeal as follows:

1. Leaving undisturbed the family court's determinations regarding the credibility of the witnesses and the weight of the evidence, In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001), we decide that the family court did not clearly err in its conclusions that Father is not presently willing and able to provide Son with a safe family home, even with the assistance of a service plan, and that it is not reasonably foreseeable that Father will become so within a reasonable period of time, even with the assistance of a service plan, because there was substantial evidence before the family court to support its conclusions. Id. The family court did not come to its conclusions "because it is in the best interest for [Son,]" Opening Brief at 16, as Father maintains.

2. Leaving undisturbed the family court's determinations regarding the credibility of the witnesses and the weight of the evidence, id., we decide that the family court did not clearly err in its conclusion that the permanent plan is in

the best interests of Son, because there was substantial evidence before the family court to support its conclusion. Id. The family court did not base its conclusion solely, or even primarily, on a finding that "the foster home is better than the parent's home[,] " Opening Brief at 17, as Father avers.

4. Even if it was error -- and we do not decide that it was -- the guardian ad litem's *ex parte* communication with the family court regarding what one of Son's siblings told the guardian ad litem was undoubtedly harmless here, because the communication had only a very remote connection, if any, with Father's appeal vis-à-vis Son.

Therefore,

IT IS HEREBY ORDERED that the November 1, 2005 order awarding permanent custody and the December 6, 2005 denial of reconsideration are affirmed.

DATED: Honolulu, Hawai'i, December 15, 2006.

On the briefs:

Herbert Y. Hamada,
for Father-Appellant.

Susan Barr Brandon and
Mary Anne Magnier,
Deputy Attorneys General,
State of Hawai'i,
for Petitioner-Appellee.



Presiding Judge


Associate Judge


Associate Judge