

NO. 27787

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE INTEREST OF L-K CHILDREN:
R.L-K. (1) AND R.L-K. (2)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 04-09841)

K. HANAKAOGI
CLERK, APPEALS STATE COURTS
STATE OF HAWAII

2007 JAN 22 AM 9:57

FILED

SUMMARY DISPOSITION ORDER

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

The mother (Mother) and father (Father) of the L-K Children appeal from (1) the January 5, 2006 Order Awarding Permanent Custody and (2) the February 14, 2006 Orders Concerning Child Protective Act that denied Mother's and Father's motions for reconsideration. Both orders were entered in the Family Court of the First Circuit.¹

Mother was born on October 17, 1980. Father was born on January 3, 1983. Their son, R.L-K. (1), was born on September 18, 2002. Finding of Fact no. 59 entered on April 19, 2006, which is not clearly erroneous, states:

59. [The State of Hawai'i Department of Human Services (DHS)] did not remove [R.L-K. (1)] from the family home in 2003 because parents admitted to their problems, agreed to do services, and because Maternal Grandmother, who was living in the family home, was regarded as a protective support, due to her willingness to report to the police and DHS any further drug use or domestic violence or other threatened harm to the child.

Mother's and Father's son, R.L-K. (2), was born on January 8, 2004.

¹ Judge Michael Broderick presided.

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On July 9, 2004, DHS assumed placement responsibility of the L-K Children. Unchallenged Finding of Fact no. 10 entered on April 19, 2006 states:

10. DHS filed a petition [for temporary foster custody] under Chapter 587, HRS, on July 14, 2004, alleging that parents' unresolved domestic violence problems pose threatened harm to the children after Mother stabbed Father again on or about May 4, 2004.

On July 19, 2004, after a hearing on July 16, 2004, the court entered Orders Concerning Child Protective Act granting the petition. On September 7, 2004, after a hearing, the court entered Orders Concerning Child Protective Act in which it awarded foster custody of the L-K Children to DHS.

On February 4, 2005, DHS proposed a permanent plan, the goal of which is the award of permanent custody of the L-K Children to DHS, with a subsequent goal of adoption.

On March 4, 2005, DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan. The trial was held on June 8, August 17, and November 28, 2005, and January 5, 2006. On January 5, 2006, the court entered the Order Awarding Permanent Custody which terminated Father's and Mother's parental and custodial duties and rights to the L-K Children, appointed the State of Hawai'i Director of Human Services as the permanent custodian of the L-K Children, and ordered the February 4, 2005 Permanent Plan into effect. The goal of that permanent plan is adoption within one year of the award of permanent custody.

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On January 23, 2006, Mother filed a motion for reconsideration. On January 30, 2006, Father filed a motion for reconsideration. On February 2, 2006, DHS filed a Motion for Immediate Review "for the purpose of obtaining permission to place the children out of state in June of 2006 when their prospective adoptive parents permanently relocate to California[.]" On February 14, 2006, after a hearing, the court entered (1) Orders Concerning Child Protective Act approving the February 2, 2006 request and setting a review hearing on May 30, 2006, and (2) Orders Concerning Child Protective Act denying both motions for reconsideration and Mother's request for an evidentiary hearing.

On February 24, 2006, Father filed a Notice of Appeal. On March 2, 2006, Mother filed a Notice of Appeal. On April 19, 2006, the court entered Findings of Fact and Conclusions of Law. Three unchallenged findings of fact state:

27. At the conclusion of the trial, the children's guardian ad litem, Byron K.H. Hu, recommended that permanent custody of the children be awarded to DHS.
136. As of the conclusion of the trial, Mother was expecting another child with Father in March of 2006.
152. As of the conclusion of the trial, Mother and Father have been in a relationship for about eight years.

Mother contends:

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

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2. The evidence was not clear and convincing that Mother was unwilling or unable to provide a safe home for her children, even with the assistance of a service plan, within a reasonable period of time. Mother has engaged in services.

3. The children are just 3 and 2 years old, and 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 children.

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 the home for fifteen of the last twenty-two months. The children have [sic] been in court ordered foster custody for just 6 months when DHS filed its motion to terminate the parental rights, and the children have [sic] been out of the family home for just 9 months when the Family Court started the trial on DHS' motion to terminate the parental rights.

Father contends:

1. The family court erred and abused its discretion in finding and concluding that it was not reasonably foreseeable that Father will become willing and able to provide the Children with a safe family home, even with the assistance of a service plan, within a reasonable period of time.

2. The court erred in not giving Father enough time from the court hearing on September 7, 2004, where the parties stipulated that there was an adequate basis to sustain the petition and where foster custody was awarded to DHS[,] to the filing of the Permanent Custody motion on March 4, 2005. This was only six months.

(Record citations omitted.)

The following findings of fact are not clearly
erroneous:

138. Mother presently continues to pose threatened harm to the children because her extremely serious unresolved substance abuse, domestic violence and co-dependency problems, inappropriate support system and impaired judgment have not been resolved despite appropriate services and referrals by DHS over a period of more than two and one half years.

188. Father presently continues to pose threatened harm to the children because of his extremely serious substance abuse, domestic violence and co-dependency problems, inappropriate support system and impaired judgment, which have not been resolved despite appropriate services and referrals by DHS over a period of more than two and one half years.

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In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs, and duly considering and applying the law relevant to the issues raised and arguments presented, we affirm (1) the January 5, 2006 Order Awarding Permanent Custody and (2) the February 14, 2006 Orders Concerning Child Protective Act that denied Mother's and Father's motions for reconsideration.

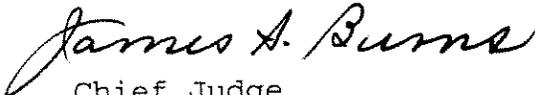
DATED: Honolulu, Hawai'i, January 22, 2007.

On the briefs:

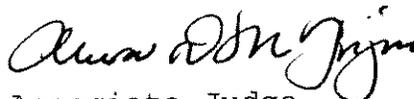
Tae W. Kim
for Mother-Appellant.

Joseph Dubiel
for Father-Appellant.

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


Chief Judge


Associate Judge


Associate Judge