

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27918

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

IN THE INTEREST OF K CHILDREN: G.K. and B.K.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S No. 04-09526)

SUMMARY DISPOSITION ORDER

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

Appellant father (Father) is the adjudicated father of G.K., born on March 14, 1997, and the alleged natural father of B.K., born on March 20, 1999. Father appeals the Family Court of the First Circuit's (family court) March 15, 2006 Order Awarding Permanent Custody.

On February 11, 2004, G.K. and B.K. were taken into police protective custody. On February 17, 2004, the State of Hawai'i Department of Human Services (DHS) petitioned for temporary foster custody of G.K. and B.K. On February 19, 2004, with the support of Father's stipulation, Judge Linda K.C. Luke granted the petition as to Father. On March 19, 2004, after a contested hearing, Judge Luke granted the petition as to appellee mother (Mother) of G.K. and B.K.

On September 24, 2004, the DHS returned G.K. and B.K. to the custody of Mother, retaining family supervision. On December 10, 2004, Judge Luke returned G.K. and B.K. to the foster custody of the DHS.

K. HAMAKADO  
CLERK, APPELLATE COURTS,  
STATE OF HAWAII

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On May 6, 2005, the DHS filed a Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan. Judge Gale L.F. Ching presided over a trial on August 25, 2005, November 4, 2005, and December 22, 2005. On March 6, 2006, Judge Ching entered an "ORDER GRANTING MOTION FOR ORDER AWARDING PERMANENT CUSTODY AND ESTABLISHING A PERMANENT PLAN filed May 6, 2005[.]" Consistent therewith, the March 15, 2006 Order Awarding Permanent Custody ordered the April 27, 2005 Permanent Plan, the goal of which is adoption. On March 24, 2006, Father filed a motion for reconsideration. On April 5, 2006, Judge Ching entered Findings of Fact and Conclusions of Law (FsOF and CsOL). Judge Ching's April 12, 2006 Orders Concerning Child Protective Act denied Father's motion for reconsideration. On May 2, 2006, Father filed a notice of appeal.<sup>1</sup>

Hawaii Revised Statutes (HRS) § 587-25 (2006) states as follows:

**Safe family home guidelines.** (a) The following guidelines shall be fully considered when determining whether the child's family is willing and able to provide the child with a safe family home:

- (1) The current facts relating to the child which include:
  - (A) Age and vulnerability;
  - (B) Psychological, medical and dental needs;
  - (C) Peer and family relationships and bonding abilities;
  - (D) Developmental growth and schooling;
  - (E) Current living situation;
  - (F) Fear of being in the family home; and
  - (G) Services provided the child;

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<sup>1</sup> Prior to July 1, 2006, Hawaii Revised Statutes (HRS) § 571-54 (2006) allowed an appeal from an order awarding permanent custody only after an order denying a motion for reconsideration of the order awarding permanent custody. Appellant father's notice of appeal was filed prior to the July 1, 2006, effective date of 2006 Act 3 that amended HRS § 571-54 by discontinuing the prerequisite of an order denying a motion for reconsideration.

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- (2) The initial and any subsequent reports of harm and/or threatened harm suffered by the child;
- (3) Date(s) and reason for child's placement out of the home, description, appropriateness, and location of the placement and who has placement responsibility;
- (4) Historical facts relating to the alleged perpetrator and other appropriate family members who are parties which include:
  - (A) Birthplace and family of origin;
  - (B) How they were parented;
  - (C) Marital/relationship history; and
  - (D) Prior involvement in services;
- (5) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;
- (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
- (8) Whether the alleged perpetrator(s) has acknowledged and apologized for the harm;
- (9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to insure that any current protective orders are enforced;
- (10) Whether there is a support system of extended family and/or friends available to the child's family;
- (11) Whether the child's family has demonstrated an understanding and utilization of the recommended/court ordered services designated to effectuate a safe home for the child;
- (12) Whether the child's family has resolved or can resolve the identified safety issues in the family home within a reasonable period of time;
- (13) Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and
- (14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation.

(b) The court shall consider the likelihood that the current situation presented by the guidelines set forth in subsection (a) will continue in the reasonably foreseeable future and the likelihood that the court will receive timely notice of any change or changes in the family's willingness and ability to provide the child with a safe family home.

Father does not challenge the following FsOF:

52. The safety concerns regarding Mother centered on her substance abuse, parenting, history of domestic violence, unsuitable living conditions, her

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whereabouts being unknown for long periods of time and extensive CPS history.

. . . .

78. Father has not completed any of the services in the service plan.

. . . .

82. Father tested positive for methamphetamine and amphetamines in April of 2005.

83. After the positive UA, Father failed to engage in substance abuse treatment.

84. Father had not kept in regular contact with DHS and had not kept DHS informed of his current address.

85. At trial Father expressed both anger and frustration as to why he needed to prove to [Child Protective Services] that he was a good dad.

The only FOF challenged by Father is the following:

87. It is 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 not to exceed two years from the time foster custody was first ordered by the court.

In challenging FOF no. 87, Father contends:

In order for the court to find a parent "unfit" or unwilling or unable to provide a safe home for the child at the time of the permanent plan hearing or within a reasonable period of time requires the court to fully consider the safe family home guidelines pursuant to Section 587-25 (a), HRS.

In the instant case, the court made no findings as to guidelines (5) through (13) of Section 587-25 (a), HRS.

. . . .

The statement by the court in its Findings of Fact and Conclusions of Law that "The findings of fact and conclusions of law are based upon all relevant prior and current information related to the safe family home guidelines, as set forth in HRS Section 587-25 ... " does not rectify the absence of specific findings required in the safe family home guidelines pursuant to Section 587-25 (a), HRS.

. . . .

Without the specific findings pursuant to the safe family home guidelines of Section 587-25, HRS, the court erred in concluding Father is not able to provide the children with [a] safe family home, even with the assistance

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of a service plan, within tthe [sic] reasonable foreseeable future.

Opening Brief at pp. 11-13.

Save for the lack of specific findings, Father points to nothing in the record that clearly establishes the family court did not consider the safe family home guidelines as set out in HRS § 587-25. See State v. Sinagoga, 81 Hawai'i 421, 428, 918 P.2d 228, 235 (App. 1996) ("[A]bsent clear evidence to the contrary, it is presumed that a sentencing court . . . will have considered all the [statutory] factors . . . .") Therefore, 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 the Family Court of the First Circuit's March 15, 2006 Order Awarding Permanent Custody.

DATED: Honolulu, Hawai'i, June 21, 2007.

On the briefs:

Randal I. Shintani,  
for Father-Appellant.

  
Presiding Judge

Korrine S.S. Oki and  
Mary Anne Magnier  
Deputy Attorneys General,  
for Petitioner-Appellee.

  
Associate Judge

  
Associate Judge