

NO. 28232

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

IN THE INTEREST OF "F" CHILDREN: T.F. and K.F.

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

2007 JUL 31 AM 8:36

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 04-09851)

SUMMARY DISPOSITION ORDER

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

Father-Appellant (Father), the natural father of subject children T.F. and K.F. (Children) appeals from the following orders entered by the Family Court of the First Circuit (family court)¹: (1) the September 25, 2006 Decision and Order, (2) the October 20, 2006 Order Awarding Permanent Custody, and (3) the October 20, 2006 Letters of Permanent Custody awarding permanent custody of Children to Petitioner-Appellee, the State of Hawai'i Department of Human Services (DHS).

On appeal, Father argues that the family court erred in ruling, in its Finding of Fact (FOF) Number 118 and Conclusion of Law (COL) Number 13 that it is not reasonably foreseeable that Father will become willing and able to provide Children with a safe family home, even with the assistance of a service plan, within a reasonable amount of time. After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we conclude that the family court did not err. Consequently, we affirm.

Father's minimum term of incarceration will expire after the two-year maximum interval allowed for parents to provide a safe family home specified in Hawaii Revised Statutes (HRS) § 587-73(a)(2) (2006). The family court originally awarded foster custody of Children to DHS on July 26, 2004. Children

¹ The Honorable Bode A. Uale presided.

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were returned to their mother on November 24, 2004 but were again removed on June 23, 2005. On September 21, 2006, when the trial on the motion for permanent custody was held, Children had been continuously in foster care for fifteen months. When Father's mandatory minimum term is set to expire in November 2007, approximately three years and four months after Children were first placed under foster custody and two years five months since last taken into custody will have elapsed.

Given Father's incarceration beyond the two year maximum set forth in HRS § 587-73(a)(2), his history of criminal activities and substance abuse, as well as lack of other appropriate family member to care for Children, the family court's FOF and COL were not clearly erroneous.

Therefore,

The Family Court of the First Circuit's September 25, 2006 Decision and Order, October 20, 2006 Order Awarding Permanent Custody, and October 20, 2006 Letters of Permanent Custody awarding permanent custody of Children are affirmed.

DATED: Honolulu, Hawai'i, July 31, 2007.

On the briefs:

Randal I. Shintani,
for Father-Appellant.


Presiding Judge

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


Associate Judge


Associate Judge