

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28326

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

IN THE INTEREST OF "K-F" CHILDREN:
U. K-F. and R. K-F.

CLERK, APPELLATE COURTS
STATE OF HAWAI'I
L. M. RIMANDO

2007 DEC 24 AM 8:17

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 04-09935)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Nakamura, and Fujise, JJ.)

Mother-Appellant (Mother) and Father-Appellant (Father) appeal from an order entered by the Family Court of the First Circuit¹ (the family court) on November 29, 2006 (the November 29, 2006 Order) that awarded permanent custody of their children, U. K-F. and R. K-F. (collectively, Children), to Petitioner-Appellee Department of Human Services, State of Hawai'i (DHS).

In her opening brief, Mother argues that the family court "erred, abused its discretion and was clearly erroneous" when it: (1) found and concluded that she was not presently willing and able to provide Children with a safe family home, even with the assistance of a service plan; (2) found and concluded that it was not reasonably foreseeable that she would become willing and able to provide Children with a safe family home within a reasonable amount of time, even with the assistance of a service plan; (3) entered Findings of Fact (FsOF) Nos. 121, 123, 126, 127, 176, 177, 183, and 185 and Conclusions of Law (CsOL) Nos. 8 and 9; (4) issued an order granting DHS's Motion for Permanent Custody only seven months after DHS filed its

¹The Honorable Nancy Ryan presided.

Petition for Foster Custody; and (5) entered the November 29, 2006 Order.

Father argues that: (1) parental rights are fundamental rights that are protected by both the Hawai'i and United States constitutions; (2) the record is insufficient to prove by clear and convincing evidence that he was unable or unwilling to provide a safe family home for Children within a reasonable amount of time, even with the assistance of a service plan; (3) the family court erred in entering FsOF Nos. 133, 134, 135, 137, 151, 165, 169, 170, 171, 172, 173, 174, 175, 176, 177, 182, 183, 185, 186, and 189 and CsOL Nos. 8 and 9; and (4) the family court abused its discretion when it entered the November 29, 2006 Order and established a permanent plan where there was no clear and convincing evidence that he could not reunify with Children.

The Hawai'i Supreme Court has stated that "the family court is given much leeway in its examination of the reports concerning a child's care, custody, and welfare, and its conclusions in this regard, if supported by the record and not clearly erroneous, must stand on appeal." In re Doe, 101 Hawai'i 220, 227, 65 P.3d 167, 174 (2003) (quoting In re Jane Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001)) (brackets and internal quotation marks omitted). Moreover, in appeals from family court decisions that terminate parental rights,

the question on appeal is whether the record contains "substantial evidence" supporting the family court's determinations, and appellate review is thereby limited to assessing whether those determinations are supported by "credible evidence of sufficient quality and probative value." In this regard, the testimony of a single witness, if found by the trier of fact to have been credible, will suffice.

In re Jane Doe, 95 Hawai'i at 196, 20 P.3d at 629 (emphasis added; citations omitted). Additionally,

[t]he family court possesses wide discretion in making its decisions and those decisions will not be set aside unless

there is a manifest abuse of discretion. Under the abuse of discretion standard of review, the family court's decision will not be disturbed unless "the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason."

In re Doe, 77 Hawai'i 109, 115, 883 P.2d 30, 36 (1994)

(citations, brackets, and ellipsis omitted).

After a careful review of the record on appeal and the briefs submitted by the parties, and having duly considered the issues and arguments raised on appeal, as well as the statutory and case law relevant to these issues, we affirm the November 29, 2006 Order.

The record contains substantial evidence that Mother subjected Children to a risk of threatened harm and neglect due to her longstanding substance-abuse problem, which caused her to: (1) expose a third child, G. K-F., to drugs in utero; (2) commit theft to support her drug addiction; (3) use rent and welfare money to pay for drugs, thus leading to her family's electricity being turned off and their eviction from their home; and (4) sleep during the day, causing her to be unavailable to care for Children. The record also indicates that despite DHS's efforts, Mother was unable to adequately address her drug addiction during DHS's two-year family intervention and could not be protective of Children, meet their needs, or provide them with a safe family home. Thus, substantial evidence in the record supports the family court's findings and conclusions that Mother was not presently willing and able to, and it was not reasonably foreseeable that she would become willing and able to, provide Children with a safe family home within a reasonable amount of time, even with the assistance of a service plan.

With respect to Father, especially in light of the restrictive standard of review applicable, we must conclude that there is substantial evidence in the record that Father was not

presently willing and able to, and it was not reasonably foreseeable that he would become willing and able to, provide Children with a safe family home within a reasonable amount of time, even with the assistance of a service plan. While the record indicates that Father provided and cared for Children and did not abuse them or use illegal drugs, there was credible testimony that Father's passive stance towards Mother's drug addiction subjected Children to the risk of being harmed and neglected and demonstrated that he could not be protective of Children, meet their emotional and physical needs, or provide them with a safe family home.

In light of the record, we cannot conclude that the family court disregarded principles of law or practice to the substantial detriment of Mother or Father or that its decision clearly exceeded the bounds of reason.

Accordingly, the Order Awarding Permanent Custody entered on November 29, 2006 is hereby affirmed.

DATED: Honolulu, Hawai'i, December 24, 2007.

On the briefs:

Joseph Dubiel
for mother-appellant.

Dean T. Nagamine
for father-appellant.

Patrick A. Pascual and
Mary Anne Magnier,
deputy attorneys general,
State of Hawai'i,
for petitioner-appellee
Department of Human Services,
State of Hawai'i.

Corinne K. A. Watanabe

Craig W. Nakamura

Quana M. Fujita