

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27396

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THE DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAII,
Appellant-Appellee,
v.
MELVIN PONTES, JR., Appellee-Appellant,
and
LILLIAN KOLLER, DIRECTOR OF THE DEPARTMENT OF HUMAN
SERVICES, STATE OF HAWAII, Appellee-Appellee

KHAMAKAOKA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-2395)

SUMMARY DISPOSITION ORDER

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

In this secondary agency appeal, Appellee-Appellant Melvin Pontes, Jr. (Pontes) appeals pro se from the Judgment filed on August 4, 2005 in the Circuit Court of the First Circuit (circuit court).^{1/} The circuit court ruled in favor of Appellant-Appellee Department of Human Services, State of Hawaii, (DHS) and against Pontes, reversing a DHS Administrative Hearing Decision (Hearing Decision) issued on November 30, 2004.

On appeal, Pontes appears to argue that the Judgment was wrong because the Hearing Decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we resolve Ponte's points of error as follows:

^{1/} The Honorable Eden Elizabeth Hifo presided.

(1) The Judgment was not wrong because the hearing decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See United Pub. Workers, AFSCME, Local 646, AFL-CIO, v. Hanneman, 106 Hawai'i 359, 363, 105 P.3d 236, 240 (2005).

(a) Client A consistently and on numerous occasions indicated that the perpetrator had sexually abused her with his fingers.

(b) Client A was able to communicate sufficiently to describe the sexual abuse and identify Pontes as the perpetrator of the abuse.

(c) None of the following findings relied upon by the hearing officer were probative in the instant case: Pontes had no prior record of patient abuse, Client A's husband waited two days to report the incident, and Pontes's wife's allegation that the injury was caused by a blunt instrument.

Therefore,

The Judgment filed on August 4, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 21, 2008.

On the briefs:

Melvin Pontes, Jr.,
Appellee-Appellant pro se.

Heidi M. Rian and
Candace J. Park
Deputy Attorneys General
for Appellant-Appellee.


Presiding Judge


Associate Judge


Associate Judge