

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER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

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2008 JAN 11 PM 3:29

FILED

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

ORDER DENYING FATHER-APPELLANT'S  
MOTION FOR RECONSIDERATION

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

Upon consideration of the Motion for Reconsideration (the motion) filed by Father-Appellant (Father) on January 3, 2008, requesting that this court reconsider its Summary Disposition Order filed on December 24, 2007, Father's memorandum in support of the motion, and the briefs and record for this case,

IT IS HEREBY ORDERED that the motion is DENIED.

Father argues in his memorandum in support of his motion that

[t]he Summary Disposition Order noted that [Father] did not abuse drugs, and had never personally harmed the children. In fact [Father] provided for and cared for the children. The criticism leveled against [F]ather was that he allowed contact between the children and mother.

What was significant was that [Father] took measures to ensure that mother was not abusing drugs when she had contact with the children. [Father] permitted contact, but not in situations where the safety of the children was compromised. So the children had their need for contact with mother satisfied, but under conditions where their safety was never at issue.

The [Department of Human Services (DHS)] appeared to be concerned that although there was no harm that took place as a result of the contact, the potential existed.

[Father's] position has been that terminating his parental rights because there is a fear that he could potentially allow unsafe conduct between the children and their mother is too drastic a remedy for the concern being put forth. The present case is not one where there is substance abuse, or domestic violence on the part of [Father] to worry about, the only reason for terminating his parental rights is the mere possibility that he would allow unsupervised contact with mother. The thrust of [Father's] argument is that there are other avenues for dealing with this very speculative and limited concern; a service plan which required [Father] to supervise visits [sic] would have addressed the issue.

In 2000, this court decided an appeal in a termination-of-parental-rights case that was factually similar in many respects to the instant case. The mother-appellant in In re Jane Doe, 95 Hawai'i 201, 20 P.3d 634 (App. 2000), like Father, had never abused, harmed, or neglected her daughter (Jane). Id. at 202, 207, 239, 20 P.3d at 635, 640, 672. As with Father, the family court found that the mother-appellant had failed to be protective of Jane and had thus subjected Jane to threatened harm. Id. at 226, 20 P.3d at 659. This court held that the family court clearly erred in divesting the mother-appellant of her parental rights to Jane because, "[i]n light of the dearth of evidence that Jane was harmed, subjected to harm, or threatened with harm while under [the mother-appellant's] care," there "was no clear and convincing evidence that [the mother-appellant] was unwilling or unable to provide Jane with a safe family home and was thus unfit to retain her parental rights in Jane." Id. at 239, 20 P.2d at 672.

On *certiorari*, the Hawai'i Supreme Court reversed our opinion. In re Jane Doe, 95 Hawai'i 183, 20 P.3d 616 (2001). The supreme court held that the clearly erroneous standard applies in reviewing a family court's findings of fact and determinations in termination-of-parental-rights cases pursuant

to Hawaii Revised Statutes (HRS) § 587-73(a). Id. at 196, 20 P.3d at 629. Therefore, the supreme court explained,

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. . . . Because it is not the province of the appellate court to reassess the credibility of the witnesses or the weight of the evidence, as determined by the family court, the family court "is given much leeway in its examinations of the reports concerning a child's care, custody, and welfare."

Id. at 196-97, 20 P.3d at 629-30 (citations and brackets omitted). Applying the foregoing standard, the supreme court held that the family court's award of permanent custody of Jane to DHS was not clearly erroneous. Id. at 197, 20 P.3d at 630. After citing examples from the record that illustrated the mother-appellant's poor parenting decisions and their effects on her child, and noting that two credible witnesses "expressly testified that [the mother-appellant] could not provide a safe family home for Jane, even with the assistance of a service plan," the supreme court concluded that "[t]he record unquestionably contains substantial evidence supporting the family court's determination the mother-appellant is not willing and able to provide Jane with a safe family home, even with the assistance of a service plan." Id. The supreme court also held that "nothing in the record [left it] with the definite and firm conviction that a mistake [had] been made" by the family court and therefore, this court's "holding that clear and convincing evidence did not support the divestiture of [the mother-appellant's] parental rights in Jane, pursuant to HRS § 587-73(a), was erroneous." Id. at 197-98, 20 P.3d at 630-31.

In light of the restrictive standard of review that the supreme court adopted in In re Jane Doe, we cannot conclude that the family court lacked substantial evidence to support its determinations pursuant to HRS § 587-73(a) in the instant case. Accordingly, Father's motion is denied.

DATED: Honolulu, Hawai'i, January 11, 2008.

Dean T. Nagamine  
on the motion for  
father-appellant.

*Corinne KA Watanabe*  
Presiding Judge

*Ces rd. Nakama*  
Associate Judge

*Quana KA Griffin*  
Associate Judge