LAW LIBRARY

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28567

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 SEP 26 AM 8:05

FILED

IN THE INTEREST OF D.V.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 03-09293)

SUMMARY DISPOSITION ORDER
(By: Foley, Presiding Judge, Nakamura and Leonard, JJ.)

Appellant Father (**Father**), the natural and legal father of D.V., appeals from: (1) the Decision and Order filed in FC-S No. 03-09293 in the Family Court of the First Circuit (**Family Court**), on April 30, 2007 (**Decision**); and (2) the Family Court's Order Awarding Permanent Custody, filed on May 15, 2007 (**Order**).[1] On appeal, Father challenges the Family Court's Findings of Fact (**FOFs**) Nos. 61, 75, 77, 80, 82, 84, 86, 90, 93, 94, 97, 98, 99, 100, 101, 106, 107, 108, 109, 110, 111, and 112, Conclusions of Law (**COLs**) Nos. 10, 11 and 13, and contends that: (1) the Family Court erred in concluding that Father was unable to provide a safe home for D.V. within a reasonable period of time; and (2) the permanent plan for D.V. is not in the best interest of D.V.

The standard applicable to this court's review of the Family Court's FOFs is whether the findings are clearly erroneous. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001); see also In re Doe, 103 Hawai'i 130, 135, 80 P.3d 20, 25

---

[1] The Honorable Bode A. Uale presided.

(App. 2003). The determination of witness credibility is left to the Family Court.

> It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of evidence; this is the province of the trier of fact.

Fisher v. Fisher, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006) (citation omitted). The Family Court's COLs are review de novo.

Upon careful review of the Family Court's FOFs and COLs, the entire record of the proceedings in this case, the briefs submitted by the parties, and the issues raised by the parties, we resolve Father's points of error as follows:

The Family Court's determinations are consistent with and supported by substantial evidence in the record and the expert opinions presented at trial. There was substantial evidence that Father was the perpetrator of harm to D.V., that Father has anger management issues that have not been addressed due to Father's failure to adequately follow through with the service plan, and that Father presents a continued risk of physical abuse. Although there was evidence to the contrary, there was substantial evidence to support the Family Court's findings that, based upon Father's failure to attend numerous court hearings over a period of approximately twenty months, and Father's failure to fully participate in services, Father did not have an interest in D.V. The Family Court did not find Father's explanations of these failures to be credible. There was expert testimony, which the Family Court found to be credible, that the

problems posed by Father could not be resolved in a reasonable time. Therefore, the Family Court's conclusion that Father could not provide a safe home for D.V., even with the assistance of a service plan, within a reasonable time was not clearly erroneous.

Nor was the Family Court's approval of the proposed permanent plan clearly erroneous in spite of evidence that D.V. expressed a desire to return to Father. Based upon all of the evidence, the Family Court found that D.V. was ambivalent about contacts with Father. The law does not require the consent of a child under 14 years of age to a permanent plan and D.V.'s ambivalence does not warrant a conclusion that the Family Court's approval of the permanent plan was clearly erroneous. See Hawaii Revised Statutes § 587-73(a)(4) (2006).

For these reasons, the Family Court's April 30, 2007 Decision and May 15, 2007 Order are affirmed.

DATED: Honolulu, Hawai'i, September 26, 2008.

On the briefs:

Dean T. Nagamine
for Father-Appellant.

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

Daniel R. Foley
Presiding Judge

Craig H. Nakamura
Associate Judge

Associate Judge