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E.M. FINMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
FILED

NOS. 28750 and 28751

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

NO. 28750

IN THE INTEREST OF C.R.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08475)

and

NO. 28751

IN THE INTEREST OF M.S.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08654)

SUMMARY DISPOSITION ORDER
(By: Recktenwald, C.J., Fujise and Leonard, JJ.)

In this consolidated appeal, Mother-Appellant (**Mother**) appeals from certain orders of the Family Court of the First Circuit (**Family Court**)[1/] in FC-S No. 02-08475 and FC-S No. 02-08654, which awarded permanent custody of Mother's two children, C.R. and M.S., to the State of Hawai'i, Department of Human Services (**DHS**). The challenged orders were entered on the following (identical) dates, with the following (identical) titles, in each of the Family Court cases: (1) Order re Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan, filed on November 20, 2002, filed on August 21, 2007, (2) Order Awarding Permanent Custody, filed on September 4, 2007, and (3) Letters of Permanent Custody, filed on September 4, 2007. On September 19, 2007, the Family Court entered Findings of Fact and Conclusions of Law applicable to both cases.

1/ The Honorable Gale L.F. Ching presided.

On appeal, Mother challenges Findings of Fact Nos. (**FOFs**) 118, 119, 120, 136, 137, 138, 139, 141, 142, 143, 144, and 145 and Conclusions of Law Nos. (**COLs**) 5, 6, and 7. Mother also argues that there was no clear and convincing evidence to find that Mother was not willing and able to provide a safe home for her children, even with the assistance of a service plan at the time of trial.

After a careful review of the record and the arguments and supporting authorities presented by the parties, we resolve Mother's points of error as follows:

We agree with Mother that some of the challenged FOFs are unsupported or minimally supported by the record in this case (118, 142), another FOF contains equivocal statements that are not actually findings (119), efforts to reunify Mother with C.R. and M.S. were minimal (cf. FOFs 143, 144), Mother's ability to care for the children was hampered by her mental illness, which was improved when Mother was taking her prescribed medication, and DHS did not refer Mother for further services after the supreme court's remand of this case for an evidentiary hearing. However, any error in the context of particular FOFs was harmless.

The gravamen of Mother's argument is that DHS should have provided her with additional and/or repetitive services after she began taking medication for her mental illness so that she might better comply with the service plan. Under the circumstances of this case, however, we reject that argument. It appears that Mother did not object to the service plan nor did she request additional services or accommodations at any time prior to or during the trial. See In re Doe, 100 Hawai'i 335, 60 P.3d 285 (2002) (holding that mother was not prejudiced by any failure to make reasonable efforts to reunite mother and child where, *inter alia*, mother never contested service plan or requested additional services or accommodations). Indeed, there was no evidence in this case that additional services would have

enabled Mother to effectuate changes that would have positively impacted Mother's ability to provide a safe family home for the children.

On the contrary, although Mother complied with her court-ordered parenting class, it appears that Mother was unable to gain parenting skills and insight into the needs of her children through those services. Mother does not challenge, for example, FOFs 124 through 133, which describe Mother's serious psychological impairments, significant cognitive limitations, lack of insight into her own problems (Mother insisted that she had no psychiatric problems and did not need services), lack of understanding of normal childhood growth and development, and lack of parenting and nurturing skills. These FOFs include reference to a post-remand psychological evaluation concluding that, even with medication, it was unlikely that Mother would follow through with services without extensive external controls, and that it was highly unlikely that Mother would ever be able to care for her children, particularly in light of the children's special needs, even with assistance. The record of this case contains clear and convincing evidence that Mother will not be able to resolve her problems within an identifiable time frame.

The Family Court's COLs 5, 6 and 7 are supported by substantial, clear and convincing evidence that Mother was not willing and able to provide a safe family home, even with the assistance of a service plan, and that it was not foreseeable that Mother could provide a safe family home, even with the assistance of a service plan, within a reasonable period of time, pursuant to HRS §§ 587-73(a)(1) and 587-73(a)(2). There was no evidence presented in this case to rebut the presumption that the permanent plans' goal of adoption is in the best interest of the children. See HRS § 587-73(a)(3) and (b)(3)(A).

For these reasons, the Family Court's August 21, 2007, and September 4, 2007 orders in FC-S No. 02-08475 and FC-S No. 02-08654 are affirmed.

DATED: Honolulu, Hawai'i, October 27, 2008.

On the briefs:

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Chief Judge

Associate Judge

Associate Judge