

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28801

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

IN THE INTEREST OF "B" CHILDREN: V.B. and S

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 05-1-10618)

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

2008 JUL 28 AM 8:02

FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Foley and Fujise, JJ.)

Mother-Appellant (Mother) appeals from the September 19, 2007 Order Awarding Permanent Custody filed in the Family Court of the First Circuit¹ (family court) that awarded custody of her daughter and son (collectively, the Children) to the Department of Human Services, State of Hawai'i (DHS).

On appeal, Mother contends that (1) the family court erred in concluding that Mother was unable to provide a safe home for the Children within a reasonable period of time, and (2) the permanent plans for the Children were not in their best interest because DHS had not yet found a permanent placement for the Children.

After a 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, we resolve Mother's points of error as follows:

(1) The family court did not clearly err in concluding that Mother had been provided a reasonable period of time to provide a safe home for the Children. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) (family court's determinations under Hawaii Revised Statutes (HRS) § 587-73(a) are reviewed on appeal

¹ The Honorable Bode A. Uale presided.

for clear error); In re Doe, 103 Hawai'i 130, 135, 80 P.3d 20, 25 (App. 2003).

Mother did not challenge the family court's findings that: (1) she and her current husband were the perpetrators of harm to the Children due to their drug abuse and domestic violence; (2) she tested positive for crystal methamphetamine when she gave birth to another child on April 2, 2007; (3) she had left the Children alone at home so that she could use drugs; (4) she had failed to complete three different drug treatment programs; (5) she was referred for a psychological evaluation, but did not follow up with the appointment; and (6) she had exposed the Children to domestic violence and has used inappropriate physical discipline. At trial, several expert witnesses testified that Mother was not able to provide a safe family home.

Mother contends that she was "certainly willing to provide a safe home based upon her three attempts at completing drug treatment." However, the family court found, and Mother does not challenge on appeal, that "Mother lacks the adequate relapse prevention and coping skills and tools to maintain long-term abstinence for [sic] mood-altering substances."

In sum, there was substantial evidence that Mother was not presently able to provide a safe home for the Children and would not be able to do so within a reasonable period of time. Therefore, the family court's findings with respect to that issue was not clearly erroneous.

(2) The family court's approval of the proposed permanent plans was not clearly erroneous, even though the plans did not have a permanent placement for the Children. The law does not require that a permanent plan include permanent placement before the family court can terminate parental rights. See HRS § 587-73(b) (2006). Moreover, there was substantial evidence before the family court to support its conclusion that

the permanent plans were in the best interests of the Children, and we are not otherwise "left with a firm and definite conviction that a mistake has been made." Doe, 95 Hawai'i at 190, 20 P.3d at 623 (citation and internal quotation marks omitted).

Therefore,

IT IS HEREBY ORDERED that the Order Awarding Permanent Custody filed on September 19, 2007 in the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 28, 2008.

On the briefs:

Herbert Y. Hamada
for Mother-Appellant.

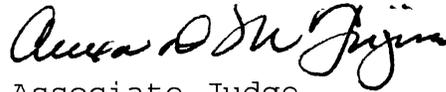
Lila C. A. King and
Mary Anne Magnier,
Deputy Attorneys General,
for Petitioner-Appellee.



Chief Judge



Associate Judge



Associate Judge