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NO. 29022

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

IN THE INTEREST OF M.M.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII
2008 DEC 17 AM 8:01
FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 05-10696)

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

On January 29, 2008, the Family Court of the First Circuit (**Family Court**)[1/] entered Orders Concerning Child Protective Act (**Orders**), which found that the Department of Human Services (**DHS**), as the previously adjudicated permanent custodian for M.M., did not abuse its discretion in recommending that M.M. should remain in the care of M.M.'s current foster parents (**Foster Parents**), rather than Appellants-Intervenors (**Appellants**), and denied Appellants' request to have M.M. placed in Appellants' custody. Appellants timely filed a notice of appeal on February 22, 2008. On April 2, 2008, the Family Court entered Findings of Fact (**FOFs**) and Conclusions of Law (**COLs**).

On appeal, Appellants raise two points of error: (1) the Family Court clearly erred when it entered FOFs 9, 13, 14, 15, 21, 27, 28, 31, and 34; and (2) the Family Court erred when it determined in COL 13 that DHS did not abuse its discretion in determining that M.M.'s current placement with and permanent

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[1/] The Honorable Nancy Ryan presided.

adoption by Foster Parents was in M.M.'s best interest because: (a) DHS did not make any effort to place M.M. with Appellants; (b) DHS had decided not to place M.M. with Appellants before the adoption home study was done; and (c) Appellants were never given a chance to be a placement for M.M. Appellants argue that DHS abused its discretion in determining that M.M.'s current placement is in M.M.'s best interest and the Family Court abused its discretion by concluding that DHS did not abuse its discretion.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced, the issues raised, and the applicable statutes, case law, and other authorities, we resolve Appellants' arguments as follows:

Each of the challenged FOFs is supported by credible evidence of sufficient quality and probative value to support the findings. See, e.g., Fisher v. Fisher, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006). We conclude that the Family Court's findings are supported by substantial evidence in the record and, although the record also shows that Appellants were timely and appropriately considered for placement and the home of one of the Appellants (M.M.'s aunt) was found to be adequate for placement, we are not left with a definite and firm conviction that a mistake has been made in this case. COL 13 is supported by the record and applicable law. There was no abuse of discretion in

conjunction with the placement of M.M. with Foster Parents based on the facts relied upon and criteria used by DHS in making its assessment and decision that the placement is in M.M.'s best interest. There was no abuse of discretion in the Family Court's Orders upholding DHS's placement decision. See, e.g., In re Doe, 7 Haw. App. 547, 558-59, 784 P.2d 873, 881 (1989).

For these reasons, the Family Court's Orders entered on January 29, 2008 are affirmed.

DATED: Honolulu, Hawai'i, December 17, 2008.

On the briefs:

Ronald P. Tongg
(Tongg and Tongg)
for Intervenors-Appellants

Mark J. Bennett
Attorney General
Eric J. Alabanza
Mary Anne Magnier
Deputy Attorneys General
for Petitioner-Appellee
Department of Human Services

Chief Judge

Corinne K A Watanabe
Associate Judge

Associate Judge