

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29122

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

IN THE INTEREST OF S. P-T.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 06-10908)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 MAY 18 AM 8:33

FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting Chief Judge, Foley and Fujise, JJ.)

Appellant Mother (Mother) appeals from the Order filed on March 31, 2008; the Order Awarding Permanent Custody filed on May 29, 2008; the Letters of Permanent Custody filed on May 29, 2008; and the Findings of Fact and Conclusions of Law filed on May 30, 2008 in the Family Court of the First Circuit (family court).¹

On appeal, Mother contends (1) the family court erred by not ensuring that Mother was represented by counsel at the hearing revoking family supervision and awarding foster custody and at the hearing dismissing Mother from the Hawai'i Family Drug Court (Drug Court) and by failing to conduct a colloquy with Mother regarding waiver of her right to counsel at these hearings; (2) the family court erred by not scheduling a hearing within ten days of revoking family supervision and assuming foster custody of Mother's child, S. P-T.; (3) the family court erred in granting, after the start of trial, the Motion for Immediate Review filed by the Department of Human Services (DHS), in which DHS sought to reopen its case-in-chief; and (4) there was no clear and convincing evidence that Mother was not able to provide presently and in the foreseeable future a safe home for S. P-T., even with the assistance of a service plan. In connection with the above points of error, Mother specifically

¹ The Honorable Gale L. F. Ching presided.

challenges Findings of Fact (FOFs) 48, 59, 61, 62, 63, 64, 67, 68, 69, 70, and 71, and Conclusions of Law (COLs) 6 and 8.²

Upon 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 by the parties, we resolve Mother's points of error as follows:

(1) Mother was orally advised at an August 25, 2006 hearing that she had a right to counsel at any time and could request counsel at any time. Mother signed the Family Drug Court Program Participation Agreement, acknowledging that she understood she had a right to counsel at any time and could request appointment of counsel at any time during the proceeding. Mother did not request counsel for the May 11 and 18, 2007 hearings. Therefore, Mother's claim that the family court erred by not appointing counsel for her for the May 11 and 18, 2007 hearings is without merit.

(2) On May 15, 2007, the family court ordered that family supervision be revoked, DHS was awarded foster custody of S. P-T., and the parties were ordered to appear for a hearing on May 18, 2007. On May 18, 2007, the Drug Court held a hearing, but placement of S. P-T. into foster custody was not discussed, and the parties were ordered to appear on August 9, 2007. No hearing on DHS's assumption of foster custody was held within ten days as required by Hawaii Revised Statutes (HRS) § 587-2 (2006 Repl.). However, Mother does not assert that she suffered any harm by the failure to hold a hearing within ten days. Thus, such an error was harmless.

(3) "As a general matter, permitting or disallowing a party to reopen its case for the purpose of submitting additional evidence is a matter within the discretion of the trial court and

² Although Mother raises specific FOFs and COLs in her points of error, Mother fails to argue the specific FOFs and COLs in her opening brief. Therefore, pursuant to Hawai'i Rules of Appellate Procedure Rule 28(b)(7), "[p]oints not argued may be deemed waived."

is subject to review for abuse of discretion. The trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." State v. Kwak, 80 Hawai'i 297, 304-05, 909 P.2d 1112, 1119-20 (1995) (internal quotation marks and citation omitted).

DHS requested to re-open its case-in-chief to submit an amended permanent plan because the August 6, 2007 Permanent Plan specified the names of the proposed adoptive parents, in violation of HRS § 587-21 (2006 Repl.). DHS stated that the amended permanent plan would omit the names of the proposed adoptive parents. The family court did not abuse its discretion by permitting DHS to submit an amended permanent plan omitting the names of proposed adoptive parents so that the plan complied with HRS § 587-21. On appeal, Mother does not argue that permitting DHS to omit the names of proposed adoptive parents was a substantial detriment to her case; she merely argues that the family court should not have allowed such a change. We cannot discern any substantial detriment to Mother's case by the omission of the names of the proposed adoptive parents. Therefore, the family court did not abuse its discretion by allowing DHS to re-open its case-in-chief to submit an amended permanent plan.

(4) Mother did not complete the service plans while she was in the Drug Court program. Mother admitted that she relapsed by using marijuana after being discharged from the Drug Court program. Mother also failed to complete services ordered by the family court in a service plan formulated after she was discharged from the Drug Court program. At the time of trial, Mother was not participating in services.

Therefore, there was substantial evidence to support the family court's finding that Mother could not provide a safe home, presently and in the foreseeable future, even with the

assistance of a service plan. In re Doe, 95 Hawai'i 183, 189-90, 20 P.3d 616, 622-23 (2001).

Therefore,

IT IS HEREBY ORDERED that the Order filed on March 31, 2008; the Order Awarding Permanent Custody filed on May 29, 2008; the Letters of Permanent Custody filed on May 29, 2008; and the Findings of Fact and Conclusions of Law filed on May 30, 2008 in the Family Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, May 18, 2009.

On the briefs:

Randal I. Shintani
for Mother-Appellant.

Kurt J. Shimamoto and
Mary Anne Magnier,
Deputy Attorneys General,
for Petitioner-Appellee
Department of Human
Services.



Acting Chief Judge



Associate Judge



Associate Judge