

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NOS. 29140 and 29144

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

NO. 29140IN THE INTEREST OF T.W-R.  
(FC-S NO. 05-10305)

and

NO. 29144IN THE INTEREST OF "W" CHILDREN: F.W. and A.W.  
(FC-S NO. 05-10304)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

In this termination-of-parental-rights matter involving two related cases and appeals, Mother-Appellant (**Mother**) appeals from two orders of the Family Court of the First Circuit (**Family Court**): (1) Order Granting Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan Filed June 22, 2007, filed on April 24, 2008 in FC-S NO. 05-10305; and (2) Order Granting Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan Filed June 22, 2007, filed on April 24, 2008 in FC-S No. 05-10304 (**Orders**).<sup>1</sup> Both appeals raise the same issues, but concern different children. The first case, FC-S No. 05-10305 and appellate no. 29140, concerns Mother's daughter, **T.W-R**. The second case, FC-S No. 05-10304 and appellate no. 29144, concerns Mother's sons, **F.W.** and **A.W.** (collectively, **T.W-R.**, **F.W.** and **A.W.** are referred to as **the Children**). In the proceedings below, the Family Court jointly handled the cases and filed the same Findings of Fact and

<sup>1</sup>

The Honorable William J. Nagle, III presided.

KHAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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Conclusions of Law on July 7, 2008, in both cases. Permanent custody of the Children was awarded to Department of Human Services (DHS). Mother timely filed notices of appeal in each case. These cases have been consolidated for decision.

On appeal, Mother contests generally all Findings of Fact (FOFs) and Conclusions of Law (COLs) adverse to her parental rights, but fails to specifically identify and make any argument except as follows: (1) the Family Court erred, abused its discretion, and was clearly erroneous in finding and concluding that Mother is not presently willing and able to provide the Children with a safe family home, and it is not reasonably foreseeable that Mother will become willing and able to provide the Children with a safe family home, even with the assistance of a service plan, within a reasonable period of time (FOFs 143 and 144, COLs 8 and 9); and (2) the Family Court erred and abused its discretion by not giving Mother a reasonable period of time to demonstrate her willingness and ability to provide a safe family home for the Children (FOFs 37 and 38 and the Orders).

The crux of DHS's response is that, as evidenced by the effectively uncontested FOFs in this case, Mother is unable to provide a safe family home for the Children because she does not protect the Children from Father (the natural and legal father of T.W-R. and A.W. and the alleged natural father of F.W.),<sup>2</sup> who is a convicted sex offender (three counts of Sexual Assault in the Third Degree stemming from harm to an unrelated thirteen-year-old girl), and Mother does not adequately provide for the educational and health needs of the Children, each of whom have "additional needs" due to various physical, behavioral, and developmental concerns or disorders.

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<sup>2</sup> It appears that Father did not appeal the Family Court's termination of his parental rights.

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:

(1) We conclude that the Family Court's award of permanent custody of T.W-R., F.W., and A.W. to DHS was not an abuse of discretion because substantial, credible, clear and convincing evidence supports the finding that Mother is presently unwilling and unable, and is not likely to become willing and able, to provide a safe family home for the Children in the reasonably foreseeable future. The record supports numerous effectively undisputed findings by the Family Court that pertain to the considerations mandated in the safe family home guidelines set forth in Hawaii Revised Statutes (HRS) § 587-25 (2006).<sup>3</sup> These findings establish, inter alia, that Mother demonstrated poor parenting skills and an inability to deal with the challenging special needs of all three Children, notwithstanding her participation in services to help her learn to care for the Children. Importantly, the findings establish that Mother failed to recognize the threat to the Children posed by Father, that she could not or would not protect the Children from Father, and that she was repeatedly deceptive about the ongoing contact between Father and the Children. Finally, based on Mother's longstanding and ongoing behavior and her own challenges, it is unlikely that she will sufficiently resolve her problems and be able to provide a safe family home at an identifiable point in the future, even with the assistance of a service plan.

(2) Under the facts of this case, we also reject Mother's argument that the sixteen-month period between February

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<sup>3</sup> We note that the Family Court's FOFs also included findings that were in the nature of value judgments about parenting, such as Mother's bringing of "sugared treats" to her supervised visits with the Children and Mother's allowing the Children to hold their infant sibling during a supervised visit. Such FOFs are not relevant to the issue of Mother's willingness and ability to provide a safe family home for the Children. Thus, we have disregarded them in our analysis of whether the FOFs supported the Family Court's exercise of its discretion in this case.

23, 2006, when foster custody was finally ordered and awarded to DHS, and June 22, 2007, when the permanent custody motions were filed, was not a reasonable time under HRS § 587-73(a)(2). HRS § 587-73(a)(2) does not require a *minimum* two-year period to elapse from the date which the child was first placed under foster custody before DHS can file a motion for permanent custody. Instead, HRS § 587-73(a)(2) states, in part, that the issue is whether the parent will become willing and able to provide the child with a safe family home, "within a reasonable period of time which shall not exceed two years[.]" See also In re Doe, 89 Hawai'i 477, 479, 974 P.2d 1067, 1069 (App. 1999); In re T.H. and K.H., 112 Hawai'i 331, 336, 145 P.3d 874, 879 (App. 2006). Second, the record shows that DHS assumed foster custody on May 3, 2005 and continued temporary foster custody pursuant to the Family Court's order in May 2005, Mother stipulated to foster custody in August 2005, and the Family Court awarded foster custody to DHS in August 2005, roughly twenty-two months before DHS filed the motions for permanent custody over the Children in June 2007. We conclude that Mother had a reasonable period of time to demonstrate her willingness and ability to provide a safe family home, but failed to do so.

With respect to her arguments generally, Mother failed to show how the Family Court clearly erred in reaching its findings.

For these reasons, we conclude that the Family Court did not err in terminating Mother's parental rights and awarding permanent custody to DHS. Therefore, we affirm.

DATED: Honolulu, Hawai'i, January 27, 2009.

On the briefs:

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for Petitioner-Appellee

  
Presiding Judge

  
Associate Judge

  
Associate Judge

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NOS. 29140 and 29144; IN THE INTEREST OF T.W-R. (FC-S NO. 05-10305) and IN THE INTEREST OF "W" CHILDREN: F.W. and A.W. (FC-S NO. 05-10304); APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT;  
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