

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29142

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE INTEREST OF "C" CHILDREN:
S.K. O N.C., S.K.H.C., and S.H.C.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 05-10686)

SUMMARY DISPOSITION ORDER

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

Appellant Mother (Mother) appeals the Order Awarding Permanent Custody, filed in the Family Court of the First Circuit (family court)¹ on April 11, 2008.

On appeal, Mother challenges Findings of Fact Nos. 7, 51, 52, 85, 95, 112, 113, 114, 115, 116, 117, 129, 130, 131, 132, 133, 139, 141, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 154, as well as Conclusions of Law Nos. 8, 9, 10, 11, and 12, issued on June 20, 2008 by the family court. Mother claims the family court abused its discretion by failing to dismiss the Motion for Permanent Custody filed by the Department of Human Services (DHS) and by granting the DHS's Motion for Permanent Custody. Mother does not provide specific objections to each challenged Finding of Fact or Conclusion of Law. Instead, Mother summarizes her arguments as follows:

1. The identity of proposed adoptive parent or parents was not provided to Family Court in a separate report. The identity of the proposed adoptive parent or parents was not sealed and it was released to all parties at trial. Prior to the release of the identity of the proposed adoptive parent or parents, Family Court did not find that release of the identity of the proposed adoptive parent or parents was in the best interest of the children[.]
2. The evidence was not clear and convincing that Mother was unwilling and unable to provide a safe home for the children with the assistance of the services. Mother has been compliant with services recommended by

¹ The Honorable Jennifer L. Ching presided.

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the DHS. She has engaged in services recommended by the DHS. The DHS has not exerted reasonable and active efforts to reunify Mother with the children.

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) The plain language of Hawaii Revised Statutes § 587-27(a)(1)(A) (1993) requires submission of the identities of the proposed adoptive parents shall be sealed and not released to the parties when the State's permanent plan calls for adoption or guardianship. Mother appears to be arguing that testimony presented by DHS that a goal of the permanent plan included adoption by the "foster parents" was a violation of this statute. Assuming, arguendo, that this testimony constituted a violation, as that disclosure did not affect the decision to terminate Mother's parental rights it was harmless. Mother has not provided any authority for her argument that such disclosure requires dismissal of DHS's motion. The family court did not err by denying Mother's motion to dismiss the Motion for Order Awarding Permanent Custody.

(2) There was clear and convincing evidence that Mother was unwilling and unable to provide a safe home for the children. There was also clear and convincing evidence that DHS exerted reasonable and active efforts to reunify Mother with the children.

There is no dispute that Mother completed many parenting skills classes. However, DHS presented evidence that despite such classes, "Mother was having a hard time applying what she's learning during services and was having a hard time managing all four children and in implementing what she had been taught in her parenting classes." The evidence showed that Mother had difficulty maintaining the proximity and safety of her children because she tends to focus on one child at a time: (1) one of the children would run out of the visitation room without

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her knowledge and had to be told that one of them was gone; (2) during a home visit one of the children was left unattended in the kitchen and almost pulled a boiling pot of water onto himself; (3) during another home visit, one of the children was left unattended in the kitchen and was about to break a glass coffee pot at face level; (4) two of the children were stopped from running out into the street while Mother dealt with another child.

Mother also claims that DHS did not exert reasonable efforts to reunify Mother with her children. Mother did not present any reason why services of other providers were inadequate, except to say that she felt more comfortable with one facility over another. The multiple service plans that Mother was ordered to follow consisted of the same services over a two-year period in which she failed to demonstrate that she could care for her four children and provide a safe family home. There is ample evidence that Mother received hands-on parenting services.

Therefore,

IT IS HEREBY ORDERED that the Order Awarding Permanent Custody, filed in the Family Court of the First Circuit, on April 11, 2008 is affirmed.

DATED: Honolulu, Hawai'i, April 1, 2009.

On the briefs:

Tae W. Kim,
for Mother-Appellant.


Presiding Judge

Korrine S.S. Oki and
Mary Anne Magnier,
Deputy Attorneys General,
for Petitioner-Appellee.


Associate Judge


Associate Judge