

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NOS. 29323, 29324, 29325, and 29326

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

No. 29323

IN RE "E-P" CHILDREN: C. E-P., B. E-P., and I. E-P.
(FC-S NO. 01-07465)

and

No. 29324

IN RE "S" CHILDREN: D.A.S. and D.J.H.S.
(FC-S. NO. 01-07466)

and

No. 29325

IN RE P.P.
(FC-S NO. 02-08464)

and

No. 29326

IN RE S.P.
(FC-S NO. 05-10643)

K. HANAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 MAY 11 AM 8:35

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

Mother-Appellant (Mother), the natural mother of subject children C. E-P., B. E-P., I. E-P., D.A.S., D.J.H.S., P.P., and S.P. (collectively Children), appeals from the August 7, 2008 Order Awarding Permanent Custody and the August 7, 2008 Letters of Permanent Custody entered in FC-S 01-07465, 01-07466, 02-08464, and 05-10643 in the Family Court of the First Circuit (family court),¹ granting Petitioner-Appellee Department of Human Services, State of Hawai'i (DHS) permanent custody of the children and terminating Mother's parental rights to the children.

¹ The Honorable Jennifer L. Ching presided.

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On appeal, Mother challenges findings of fact numbers 66, 67, 68, 69, 70, 71, 98, and 99 in SC No. 29323; numbers 64, 65, 66, 67, 68, 69, 89, and 90 in SC No. 29324; numbers 64, 65, 66, 67, 68, 86, 87 in SC No. 29325; and numbers 64, 65, 66, 68, 69, 86, and 87 in SC No. 29326. Mother also challenges conclusions of law numbers 10, 11, 12, 13, 14, and 15 in SC No. 29323; numbers 8, 10, 11, and 12 in SC No. 29324; numbers 8, 10, and 11 in SC No. 29325; and numbers 8, 10, and 11 in SC No. 29326.

After a careful review of the issues raised, arguments advanced, applicable law, and the record on appeal, we conclude that the family court's findings of fact and conclusions of law are not clearly erroneous and/or wrong.

We note that Mother does not make any argument specifically addressing the findings of fact and conclusions of law she identifies as error. A failure to present a discernible argument supporting points of error results in a waiver of those points. Hawaii Ventures, LLC v. Otaka, Inc., 114 Hawai'i 438, 478-79, 164 P.3d 696, 736-37 (2007).

Mother acknowledges that the family court adopted findings of fact consistent with its ultimate conclusion Mother could not provide a safe family home for her children. Nevertheless, Mother argues there were a number of "facts" presented to the family court that show the family court was mistaken in this determination: (a) Mother was doing well caring for Children but had difficulty "getting them to school[;]" (b) Children are hard to manage; (c) Mother tried to convince Children to go to school; (d) Mother was suffering from severe depression when DHS intervened; (e) since receiving mental health services Mother has been very cooperative in completing ordered services; and (f) with mental health services she can complete her services. Mother fails to show why the findings of fact that support the family court's determination of unfitness are clearly erroneous and where evidence of the "facts" she offers on appeal appears in the record. As a result, Mother has failed to

convince this court that the family court's determination that she was not able to provide a safe family home for Children was clearly erroneous. See In re Doe, 89 Hawai'i 477, 486-87, 974 P.2d 1067, 1076-77 (App. 1999).

Mother also argues that she was "very cooperative" in her participation in services since her incarceration. However, as to her testimony regarding cooperation prior to the permanency hearing, the family court found Mother's testimony "not to be credible." "[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." Inoue v. Inoue, 118 Hawai'i 86, 101, 185 P.3d 834, 849 (App. 2008) (citing In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001)). To the extent that Mother relies on her efforts to cooperate with the service plan after the permanency hearing, these efforts were not before the family court and Mother provides no authority for the proposition that we may overturn the family court's determination on this basis.

Lastly, Mother's suggestion that the children should remain in foster care in order for Mother "to learn better parenting skills" and "to improve herself" is without merit. Based on the evidence in the record, Mother was given sufficient time to become a safe parent. A "reasonable period of time" under Hawaii Revised Statutes (HRS) § 587-73(a)(2) (2006) "shall not exceed two years from the date upon which the child was first placed under foster custody by the court." The court awarded foster custody of the Children in November 2006. Thereafter, Mother absconded with the younger children for almost a year and the family court found that Mother's claims of compliance with the service plan were incredible. Although Mother now claims that terminating her parental rights would not be in the best interests of the children, no evidence was presented to rebut the presumption that the goal of adoption as stated in the permanent plans was in the best interests of the children. See HRS § 587-73(a)(3).

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Accordingly, it is hereby ordered that the August 7, 2008 Order Awarding Permanent Custody and the August 7, 2008 Letters of Permanent Custody entered in the Family Court of the First Circuit in FC-S Nos. 01-07465, 01-07466, 02-08464, 05-10643 are affirmed.

DATED: Honolulu, Hawai'i, May 11, 2009.

On the briefs:

Dean T. Nagamine,
for Mother-Appellant.



Chief Judge

Catherine A. Betts,
Mary Anne Magnier,
Deputy Attorneys General,
for Petitioner-Appellee.



Associate Judge



Associate Judge