

NO. 29434

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

IN THE INTEREST OF "M" CHILDREN

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NO. 07-11394)

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakamura and Leonard, JJ.)

Father-Appellant (**Father**) appeals the Decision and Order filed on October 7, 2008 by the Family Court of the First Circuit (Family Court)<sup>1/</sup> that terminated his parental and custodial rights over his daughter (**Daughter**) and three sons (all four children referred to collectively as the M Children) and granted permanent custody over the M Children to Petitioner-Appellee State of Hawai'i Department of Human Services (**DHS**).

On appeal, Father contends that: (1) the Family Court erred in discontinuing supervised visitation with Daughter; (2) the Family Court erred in denying a reasonable opportunity for Father to reunite with his children; and (3) there was a lack of clear and convincing evidence that Father would not be able to provide a safe home within a reasonable period of time.

After careful consideration of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced, applicable legal authorities, and the issues raised by the parties, we resolve Father's issues on appeal as follows:

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<sup>1</sup> The Honorable James H. Hershey entered the October 7, 2008 Decision and Order as well as the November 21, 2008 Findings of Fact and Conclusions of Law. The Honorable Bode A. Uale rendered the June 28, 2008 Orders Concerning Child Protective Act that suspended visitation between Father and Daughter.

The Family Court did not abuse its discretion in denying visitation between Father and Daughter. The Family Court considered evidence that impacted upon the issue of visitation, including reports and testimony of the social worker, Father, the Guardian Ad Litem, Daughter's therapists, and Father's psychologist, in addition to Daughter's stated desires to discontinue visitation. The record supports the Family Court's determination that continued visitation would not be in the best interests of the child. Hawaii Revised Statutes (HRS) §§ 587-2 (2006) ("foster custody"), 587-3(a)(3) (Supp. 2008), 587-63(c)(2) (2006), 587-71(d) and (m) (2006), 587-72 (b)(6) (2006); In re Doe, 109 Hawai'i 399, 411, 126 P.3d 1086, 1098 (2006) ("Where the best interests of a child is of paramount importance, consideration of all relevant evidence becomes a critical duty of the court in making a decision regarding custody and visitation." (citations omitted)). The record does not reflect that Father objected to the admission into evidence of the report of Daughter's therapist. Consequently, Father's argument that there was no admissible evidence establishing the "validity" of the therapist's report is waived. In re Doe, 99 Hawai'i 522, 537, 57 P.3d 447, 462 (2002) (holding that failure to object amounts to a waiver of claim on appeal) (citing, e.g., State v. Stanley, 91 Hawai'i 275, 284 n.7, 982 P.2d 904, 913 n.7 (1999)). Even if the issue was not waived, the Family Court did not err in considering the report of Daughter's therapist upon which the DHS social worker relied. See HRS §§ 587-25(a) (2006 & Supp. 2008), 587-40 (2006).

The Family Court did not err in terminating Father's parental rights fourteen months after temporary foster custody was awarded. Evidence existed that father was inconsistent with his services, was unable to maintain stable employment, was terminated from home-based services, had shown noncompliance with drug testing and a substance abuse assessment which resulted in a

delayed assessment, tended to focus more on his needs as opposed to the needs of others, was unlikely to make changes to address financial strains that led to the children having untreated medical conditions, poor school attendance, and lack of basic needs (including food, medical care, and transportation to school), was at risk in neglecting his children, and was given a low success rate in progressing to provide a safe home. The DHS social worker testified, *inter alia*, that more than a year would be required until Father might be ready to have the M Children in his care, and that the M Children could not wait that long because the M children were doing well in their current environment and the M Children wanted to know what would happen in their future. Additionally, three of the M children consented to the permanent plan consistent with HRS § 587-73(a)(4) (2006). Under the circumstances of this case, sufficient time was provided for unification. The record contains clear and convincing evidence supporting the Family Court's determination that it was not reasonably foreseeable that Father could provide a safe family home within a reasonable period of time even with the assistance of a service plan. In re Doe, 89 Hawai'i 477, 492, 974 P.2d 1067, 1082 (App. 1999); In re Doe, 100 Hawai'i 335, 344 n.15, 60 P.3d 285, 294 n.15 (2002).

For these reasons, we affirm the Family Court's October 7, 2008 Decision and Order.

DATED: Honolulu, Hawai'i, May 7, 2009.

On the briefs:

Herbert Y. Hamada  
for Father-Appellant

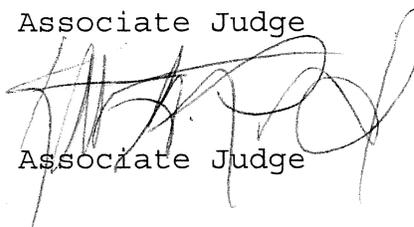
Eric J. Alabanza  
Mary Anne Magnier  
Deputy Attorneys General  
State of Hawai'i  
for Petitioner-Appellee  
Department of Human Services



Chief Judge



Associate Judge



Associate Judge