

*** NOT FOR PUBLICATION ***

NO. 26112

IN THE SUPREME COURT OF THE STATE OF HAWAII

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JAN 31 AM 9:29

FILED

IN the Interest of DOE CHILDREN:

JOHN, Born on February 7, 1997;
JANE, Born on August 16, 1998;
JOHN, Born on February 14, 2000.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 02-08368)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Respondent-appellant, father [hereinafter "Father"], appeals from the first circuit family court's August 1, 2003 order, which, inter alia, divested his parental rights and awarded permanent custody of his children to the Director of Human Services. On appeal, Father argues that: (1) the family court committed reversible error by ignoring the fact that the Department of Human Services [hereinafter "DHS"] abused its discretion and violated his parental rights when it failed to place his children with his non-Muslim brother; (2) DHS abused its discretion and violated his parental rights by relocating his children from their first, "quasi-Muslim" home to a second "official Muslim foster home"; (3) DHS abused its discretion and violated his parental rights by designating a non-therapeutic Muslim home as the post-trial, custodial placement for his children; and (4) the family court violated his equal protection and due process rights by, sua sponte, permitting his deceased wife's Muslim relatives to intervene and by appointing them counsel, while denying the same rights to Father's non-Muslim

*** NOT FOR PUBLICATION ***

relatives.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows: (1) Father's parental rights in the care, custody, and control of his children -- prior to termination -- were subject to the state's determination of the children's best interests, and the record indicates that the family court did not exhibit a manifest abuse of discretion by deferring to DHS' placement discretion;¹ (2) Father waived his argument that DHS abused its discretion by transferring the children to the second "official Muslim foster home" inasmuch as Father does not indicate, nor does the record reflect, that Father raised the argument before the family court;² (3) Father does not challenge the divestiture of his

¹ See Walker v. Johnson, 891 F. Supp. 1040, 1048-1049 (M.D. Pa. 1995) (stating that "when a child is placed in foster care, a parent's right to control her child's religious training is no longer absolute. . . . Fundamental . . . is the notion that the best interests of the child are paramount, and that while parental rights certainly do not cease to exist upon an adjudication of dependency, the parent retains only limited rights to control the religious upbringing of the child and certainly does not retain an absolute right to dictate, at whim, that the child be placed in a setting where he or she will receive instruction in a particular religion.") (ellipses added); Bruker v. New York, 337 F. Supp. 2d 539, 550-551 (S.D. N.Y. 2004) (citing Walker with approval); Hawai'i Revised Statutes §§ 587-24(a) (1993) and 587-2 (1993) (vesting discretion as to temporary placement with DHS); In re Jane Doe, Born on June 20, 1995, 95 Hawai'i 183, 189-190, 20 P.3d 616, 622-623 (2001) ("Generally, the 'family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion.'") (citations omitted).

² See Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 107, 58 P.3d 608, 618 (2002) ("Legal issues not raised in the trial court are ordinarily deemed waived on appeal."); Molinar v. Schweizer, 95 Hawai'i 331, 339, 22 P.3d 978, 986 (2001) ("We decline to address the merits of these claims because issues not properly presented to the circuit court may be deemed waived on appeal."); Hawai'i Rules of Appellate Procedure [hereinafter "HRAP"] Rule 28(b)(4) (2003) (requiring that each point of error "shall state . . . where in the record the alleged error was objected to or the manner in which the alleged error was brought to the
(continued...)

*** NOT FOR PUBLICATION ***

parental rights on appeal, and therefore (a) he had no parental rights when DHS made its post-trial, custodial placement,³ and (b) he has waived his challenge of DHS' post-trial custodial placement as an abuse of discretion;⁴ (4) the family court did not violate Father's equal protection rights by appointing counsel for, and granting intervention to, the children's maternal uncle, while denying the same rights to the children's paternal aunt and uncle, inasmuch as Father has failed to demonstrate that the parties were similarly situated and that the family court was unjustifiably motivated by religious considerations;⁵ and (5) the family court did not violate Father's due process rights by appointing counsel for, and granting intervention to, the children's maternal uncle, while denying the same rights to the children's paternal aunt and uncle, inasmuch as the record indicates that such action did not

²(...continued)
attention of the lower court or agency.") (emphasis added) (ellipses added).

³ See HRAP Rule 28(b)(7) (2003) ("Points not argued may be deemed waived.").

⁴ See Mottl v. Miyahira, 95 Hawai'i 381, 388, 23 P.3d 716, 723-724 (2001) ("It is well settled that the crucial inquiry with regard to standing is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his or her invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on his or her behalf.") (citation omitted).

⁵ See State v. Villeza, 85 Hawai'i 258, 267-268, 942 P.2d 522, 531-532 (1997) ("To substantiate a claim of discriminatory enforcement of the law, the party raising the claim must satisfy a two-part test. First, the party must demonstrate that the law is administered differently against others similarly situated. Second, the party must establish that its selection was 'deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification.'") (citation omitted).

*** NOT FOR PUBLICATION ***

render the proceedings fundamentally unfair.⁶ Therefore,

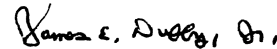
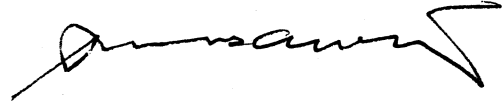
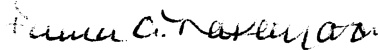
IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2006.

On the briefs:

Carl Debo
for respondent-appellant
Father

Susan Barr Brandon and
Mary Anne Magnier, Deputy
Attorneys General, for
petitioner-appellee



⁶ See Santosky v. Kramer, 455 U.S. 745, 754 (1982) (stating, in the context of a due process analysis, that "[w]hen the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.") (brackets added).