

CAAP-15-0000881

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

In the Interest of K Children

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 14-00205)

SUMMARY DISPOSITION ORDER

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

Father-Appellant (Father) appeals from the "Order Terminating Parental Rights" (Order) filed on October 29, 2015, by the Family Court of the First Circuit (Family Court).¹ The Order terminated the parental rights of Father over the five children (Children) involved in this case, terminated the parental rights of the Children's mother (Mother), and appointed the Director of the Department of Human Services as permanent custodian of the Children.

On appeal, Father contends that the Family Court erred in issuing the Order because he claims that there was insufficient evidence to support the termination of his parental rights.² Father also challenges the Family Court's findings of fact and conclusions of law "as a whole as clearly erroneous,"

¹The Honorable Bode A. Uale presided.

²Mother has not appealed from the Order.

and he lists numerous findings of fact and conclusions of law which he claims are erroneous. We affirm.

I.

The Department of Human Services (DHS) has a history of involvement with Father dating back to 2003, including involvement with Father in eight separate child welfare cases. In four of these eight cases, the DHS confirmed that Father's children "were subject to threat of abuse, threat of neglect, abuse and/or neglect." The safety concerns causing the DHS's involvement in Father's prior child welfare cases were related to substance abuse issues, domestic violence issues, and inappropriate parenting issues.

In 2004, Father and Mother's parental rights were terminated over two older siblings of the Children. In that case, Father did not participate in court ordered services, and the Family Court found that he was not willing and able to provide a safe family home for the two older siblings.

The DHS's involvement in the current case began on September 26, 2014, when the DHS received a report alleging threat of abuse and threatened neglect of the Children due to Mother's substance abuse, domestic violence between Mother and Father, and the lack of a consistent caretaker for the Children. Following its investigation, the DHS confirmed the threat of abuse and threat of neglect of the Children. The Honolulu Police Department took protective police custody of the Children, and the DHS thereafter assumed temporary foster custody of the Children.

Father began using marijuana and drinking alcohol at a young age, began using cocaine when he was twenty-one, and has a long history of methamphetamine use. Father's relationship with Mother has been marked by violence. In September 2014, Mother and Father argued about Mother's boyfriend, and Mother attempted to stab Father with a steak knife in their home while the Children were in the home or nearby. In October/November 2014, Mother and Father had an argument and Mother hit Father in the

head with a flashlight. In October/November 2014, Father and Mother's boyfriend got into a physical altercation, and Mother repeatedly hit Father in the head with a baseball bat.

The DHS presented evidence that Father has a criminal history that includes charges of abuse of a family or household member, terroristic threatening, and burglary, probation revocations, and at least one conviction for abuse of a family or household member. Father was released from incarceration at the end of September 2014, but was again incarcerated in February 2015. From February 2015 through the October 29, 2015, hearing on the DHS's motion to terminate Father's parental rights, Father was incarcerated and held on a charge of assault against a law enforcement officer in the first degree. If convicted of this charge, Father could be sentenced to up to five years in prison.

Father was incarcerated during the majority of time that this case was pending before the Family Court. During the four months that he was not incarcerated, Father failed to participate in any services recommended by the DHS and failed to remain in contact with the DHS. During the pendency of this case before the Family Court, Father did not participate in random urinalysis tests or complete any substance abuse treatment programs; did not participate in a psychological evaluation; and did not participate in comprehensive counseling and support services, or anger management, domestic violence, or parenting classes. Prior to the DHS's involvement in this case, Father had not been caring for the Children, and Mother had been the primary caregiver. In addition, during the pendency of this case before the Family Court, Father only had contact with the Children on three occasions.

II.

We resolve the arguments raised by Father on appeal as follows:

1. Father contends that there was insufficient evidence to support the termination of his parental rights. In particular, Father argues that incarceration does not *per se*

result in the forfeiture of parental rights and that failure to complete services does not "equate to proving" that he cannot provide a safe family home.

While a parent's incarceration does not mandate *per se* forfeiture of parental rights, a parent's incarceration and the consequences of that incarceration are relevant factors for the Family Court to consider in evaluating whether a parent can provide a safe family home. See In re Doe, 100 Hawai'i 335, 345, 60 P.3d 285, 295 (2002). Similarly, a parent's failure to complete services is a relevant factor for the Family Court to consider in determining whether a parent can provide a safe family home.

Here, the record does not indicate that the Family Court believed or ruled that Father's incarceration required it on a *per se* basis to terminate Father's parental rights. The record also does not indicate that the Family Court improperly considered Father's failure to complete services. Rather, the record reflects that the Family Court considered Father's incarceration and failure to complete services as relevant factors, along with other circumstances in Father's case, in rendering its decision. We therefore reject Father's claim that the Family Court improperly evaluated his incarceration and failure to complete services in terminating his parental rights. Based on our review of the record, we conclude that there was sufficient evidence to support the Family Court's termination of Father's parental rights and its findings by clear and convincing evidence that: (1) Father is "not presently willing and able to provide [the Children] with a safe family home, even with the assistance of a service plan" and (2) "[i]t is not reasonably foreseeable that . . . [Father] . . . 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[.]" See Hawaii Revised Statutes (HRS) § 587A-33(a)(1) and (a)(2) (Supp. 2015).

2. We reject Father's challenge to the Family Court's findings of fact and conclusions of law. Father apparently challenges the Family Court's finding that he has a long history of methamphetamine use by asserting that he has never admitted to using crystal methamphetamine. However, a DHS social worker testified that Father told her that he has a long history of using crystal methamphetamine, and the Family Court found that the social worker's testimony was more credible than Father's contrary testimony. Although Father lists numerous other findings of fact he claims are erroneous, he does not make specific arguments relating to these findings or cite evidence in the record demonstrating that these findings are clearly erroneous. In any event, the findings of fact which Father claims are erroneous are supported by substantial evidence and are not clearly erroneous. With respect to the enumerated conclusions of law challenged by Father on appeal, Father provides no valid argument to support his claim that these conclusions are erroneous. We conclude that Father's challenge to these conclusions is without merit.

III.

For the foregoing reasons, we affirm the Family Court's Order Terminating Parental Rights.

DATED: Honolulu, Hawai'i, June 2, 2016.

On the briefs:

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for Appellant-Father

Chief Judge

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Department of Human Services

Associate Judge

Associate Judge