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NO. CAAP-24-0000644

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF T.A.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(CASE NO. FC-S 22-00052)

**SUMMARY DISPOSITION ORDER**

(By: Hiraoka, Presiding Judge, McCullen and Guidry, JJ.)

Father-Appellant (**Father**) appeals from the Family Court of the First Circuit's[1] (**family court**) September 3, 2024 "Order Terminating Parental Rights" of child T.A. (**TA**) and November 4, 2024 "Findings of Fact [(**FOFs**)] and Conclusions of Law [(**COLs**)]" (**FOFs/COLs**).

Father sets forth five points of error on appeal, contending that the family court erred by: (1) "converting a voluntary foster custody placement into involuntary foster custody and termination proceedings," and entering FOFs 33-36;

[1] The Honorable Brian A. Costa presided.

(2) terminating Father's parental rights because Petitioner-Appellee Department of Human Services (**DHS**) failed to "prove by clear and convincing evidence" that Father could not provide a safe family home within a reasonable period of time; (3) entering FOFs 118-19, 127, 133, 145, 151-52, 156-57, 161, and 166-99; (4) entering COLs 5-23 because they rely on clearly erroneous FOFs, and "an unsupported determination that DHS made reasonable efforts and that Father could not provide a safe family home within a reasonable period of time"; and (5) "relying upon a legally deficient and lapsed permanent plan" that failed to comply with Hawaii Revised Statutes (**HRS**) chapter 587A, and could not support a termination of parental rights.

Upon careful review of the record, briefs, and relevant legal authorities, and having given due consideration to the arguments advanced and the issues raised by the parties, we consolidate and resolve Father's contentions of error as follows.

(1) Father first contends that the family court erred by "converting a voluntary foster custody placement into involuntary foster custody and termination proceedings" by permitting DHS to file the March 21, 2022 "Petition for Temporary Foster Custody" while the March 9, 2022 Voluntary Foster Custody Agreement (**VFCA**) still remained "in full force and effect."

The family court exerted jurisdiction over TA and the parties, and awarded foster custody to DHS, through its entry of the March 1, 2023 "Orders Concerning Child Protective Act" (**March 2023 Order**). An order awarding foster custody to DHS is a final and appealable order. In re Doe, 77 Hawaiʻi 109, 115, 883 P.2d 30, 36 (1994) ("[T]he family court's determination of jurisdiction, followed by the award of foster custody, met the requisite degree of finality of an appealable order[.]"). Father's October 3, 2024 appeal of the family court's Order Terminating Parental Rights, and corresponding FOFs/COLs, is untimely as to the March 2023 Order, and we therefore lack jurisdiction over Father's challenge to the foster custody award. See Rules Expediting Child Protective Appeals (**RECPA**) Rule 3; Hawaiʻi Rules of Appellate Procedure (**HRAP**) Rule 4(a); see also Order Dismissing Mother Appellant's Appeal, In re K.D., No. 27663, 2006 WL 1519439, at *1 (Haw. May 30, 2006) (determining that "the jurisdictional requirement for [timely] appealing the [order awarding permanent custody] was not met by mother-appellant and we lack jurisdiction over mother-appellant's appeal").[2]

[2] RECPA Rule 3 states, in relevant part,

> **When an appeal is permitted by law, the notice of appeal shall be filed within 15 days after entry of the judgment or appealable order or decree.** If the appeal is not filed within the 15-day period, **but is otherwise filed**

(continued . . .)

(2) Father contends that DHS failed to prove by clear and convincing evidence that Father could not provide a safe family home within a reasonable time. Father relatedly challenges FOFs 118-19, 127, 133, 145, 151-52, 156-57, 161, and 166-99, and COLs 5-23. We review the challenged FOFs under the clearly erroneous standard and the challenged COLs under the right/wrong standard. DL v. CL, 146 Hawaiʻi 328, 336, 463 P.3d 985, 993 (2020).

With regard to FOF 161,[3] the record on appeal reflects that the relevant text messages were sent on August 23, 2024, not August 23, 2023 as erroneously represented. We therefore conclude that the "mutually inconsistent dates" represented therein amounts to harmless error. See Hawaiʻi Family Court

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[2](. . . continued)

> **within the time permitted by Rule 4 of the [HRAP]**, the appeal shall not be dismissed for lack of jurisdiction, but the appellate court shall require the late-filing party or counsel to show cause as to why the party or counsel did not comply with the 15-day filing requirement. Absent good cause, the court may assess an appropriate monetary sanction against the responsible party or counsel.

(Emphasis added.) HRAP Rule 4(a)(1) states, in relevant part, "[w]hen a civil appeal is permitted by law, **the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.**" (Emphasis added.)

[3] Father challenges the dates in FOF 161 as inconsistent, and therefore erroneous. FOF 161 states, in relevant part,

> 161. While the [Motion to Terminate Parental Rights] was being litigated, Father got upset during the August 21, **2024** Zoom visit when [TA] said the word "punch", and Father questioned [TA], swore, and thereafter sent text messages to the DHS aide on August 23, **2023**[.]

(Emphasis added.)

Rules Rule 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.").

With the exception of FOF 161, Father provides scant support for his contention that the challenged FOFs are clearly erroneous. It is not for this court to search the voluminous record to "crystal[l]ize" Father's unsupported arguments. See Haw. Ventures, LLC v. Otaka, Inc., 114 Hawaiʻi 438, 469 n.16, 164 P.3d 696, 727 n.16 (2007) (citation omitted). Father has not, moreover, satisfied his burden to provide the court with a "sufficient record to positively show the alleged error."[4] See Bettencourt v. Bettencourt, 80 Hawaiʻi 225, 230, 909 P.2d 553, 558 (1995) (citations omitted). We disregard contentions for which Father "makes no discernible argument in support." See Taomae v. Lingle, 108 Hawaiʻi 245, 257, 118 P.3d 1188, 1200 (2005) (citations omitted).

Having concluded that the challenged FOFs should be affirmed, we next consider whether the unchallenged FOFs and record evidence support the family court's conclusion that

[4] It appears, moreover, that the transcript of the trial on DHS' Motion to Terminate Parental Rights is incomplete. It was Father's responsibility, as Appellant, to provide this court with a complete transcript. "The burden is upon appellant in an appeal to show error by reference to matters in the record, and he [or she] has the responsibility of providing an adequate transcript." Bettencourt v. Bettencourt, 80 Hawaiʻi 225, 230, 909 P.2d 553, 558 (1995) (citations omitted).

Father "is not presently willing and able to provide [TA] with a safe family home, even with the assistance of a service plan" and "[i]t is not reasonably foreseeable that [Father] . . . will become willing and able to provide [TA] with a safe family home, even with the assistance of a service plan, within a reasonable period of time." See HRS § 587A-33(a)(1), (2) (2018).

The Hawaiʻi Supreme Court has defined "safe family home" as a "family home in which the child's parents or legal custodian can adequately provide for the child's physical and psychological health and welfare and thereby adequately protect the child from harm, be it actual, imminent, or threatened." In re Doe, 95 Hawaiʻi 183, 194, 20 P.3d 616, 627 (2001) (citations omitted); see also HRS § 587A-7 (2018) ("Safe family home factors").

The record reflects that on March 16, 2022, after Father had signed the VFCA, DHS "confirmed threat of abuse and threatened neglect to [TA] by Father."

Pursuant to the March 2023 Order, which was entered the following year, the family court awarded DHS foster custody, ordered execution of the March 21, 2022 Family Service Plan, and ordered Father to engage in individual therapy and "[Parent Child Interactive Therapy (**PCIT**)] (when appropriate) as recommended in [Father's] psychological evaluation."

The May 11, 2023 Safe Family Home Report reported incidents in which Father "verbally assault[ed] service providers, state agencies, [Court Appointed Special Advocates], DHS, and other individuals" through "combative and inappropriate emails." (Formatting altered.) DHS recommended that Father engage in individual therapy, anger management classes, parenting classes, and domestic violence classes. Father had started Comprehensive Counseling and Support Services (**CCSS**), did not understand DHS' involvement or the "safety concerns that [were] present," did not engage in therapy on a regular basis, and had not complied with all of the recommended services. (Formatting altered.)

On October 9, 2023, the family court found that Father was not presently willing and able to provide TA with a safe family home even with the assistance of a family service plan, and ordered the continued foster custody of TA and the September 27, 2023 Family Service Plan. The Family Service Plan reported that Father had not completed Domestic Violence Services for Families with Parents and Children Together, CCSS Outreach Parenting Services, individual therapy, intensive home-based services, and PCIT. The September 27, 2023 Safe Family Home Report reported that although Father had completed five out of the recommended eight anger management classes, he continued to be combative with DHS, and "lack[ed] the insight about his

anger and the coping skills needed [to] self-regulate in times of anger." (Formatting altered.)

The January 9, 2024 Safe Family Home Report reported that Father continued to be threatening, negative, and combative towards DHS and service providers. Dr. Patricia Morgan, a service provider from the Kapiʻolani Child Advocacy and Protection Center, informed DHS that she was "taking protective measure[s]" through Kapiʻolani Medical Center's legal department because Father made her feel unsafe. (Formatting altered.) Moreover, although Father had completed some of the recommended services, Father did not "appear to understand the needs and development of [TA]." (Formatting altered.) DHS recommended termination of Father's parental rights, and for permanent custody to be awarded to DHS.

The March 13, 2024 Supplemental Safe Family Home Report to Court reported a delay of services to Father due to Father's "inability to maintain stability in engagement in services."

The April 9, 2024 Supplemental Safe Family Home Report to Court reported that Father had been repeatedly emailing and calling DHS, and that Father's emails "were of great concern to

DHS." DHS filed reports with the Honolulu Police Department regarding Father's threats.[5]

In April 2024, the District Court of the First Circuit granted two DHS employees a temporary restraining order and an injunction against harassment against Father.

Father does not challenge the family court's finding that the date of TA's entry into foster care was May 15, 2022. Nor does Father challenge the family court's finding that TA had been in foster custody for two years and three months from the date of entry into foster care at the time the family court issued its decision to terminate Father's parental rights on September 3, 2024. See HRS § 587A-33(a)(2); In re JH, 152 Hawaiʻi 373, 379, 526 P.3d 350, 356 (2023) ("Parents have two years from a child's entry into foster custody to become willing and able to provide a safe family home.").

On this record, we conclude that the family court did not err in concluding that Father failed to demonstrate the ability to provide a safe family home to TA within the two-year period set forth by HRS § 587A-33(a)(2).

[5] The record reflects that Father referred to DHS employees as "a threat to [his] son," "Garbage," "fake Hawaiians," "dead men walking," and "jackass[es]." Father's emails included statements, among other things, that said he would "go hunting after Wednesday," "you will die," that "[he] will protect [his] son . . . and eliminate all who has [sic] illegally separated [his] son from [him]," and "return my son next week or else."

(3) Father contends that the family court's adoption of the January 10, 2024 Permanent Plan (**2024 Permanent Plan**) was not in TA's best interest because the timelines set forth therein had already expired and thus could not have satisfied HRS §§ 587A-4 or -33 (2018). Father further contends that he was deprived of due process because the termination of his parental rights was "based on a written plan whose timelines [had] already expired and whose operative terms [were] effectively replaced by testimony at trial."

The record reflects that the family court's Order Terminating Parental Rights adopted the 2024 Permanent Plan, as amended to specify that placement for adoption would occur by December 2024, and to calendar a permanency hearing for October 8, 2024. HRS § 587A-32(a)(2) (2018) provides that a permanent plan shall "[e]stablish a reasonable period of time by which the adoption or legal guardianship shall be finalized." The statute does not "mandate specific parameters for determining the reasonable time." In re J.F., No. CAAP-24-0000424, 2025 WL 101647, at *4 (Haw. App. Jan. 15, 2025) (SDO).

Nothing in HRS §§ 587A-4, -32, or -33 provides that an expired timeline in a permanent plan makes the plan "legally deficient." Father's arguments lack merit.

For the foregoing reasons, we affirm the September 3, 2024 Order Terminating Parental Rights.

DATED: Honolulu, Hawaiʻi, November 4, 2026.

On the briefs:

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for Guardian Ad Litem-
Appellee.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge