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NO. CAAP-25-0000013

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE INTEREST OF C.F., Z.F., and L.F.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 20-00211)

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, Wadsworth and McCullen, JJ.)

Mother-Appellant J.W. (**Mother**) appeals from the Family Court of the First Circuit's December 20, 2024 Order Terminating Parental Rights (**TPR Order**), which terminated Mother's parental rights to C.F., Z.F., and L.F. (**the Children**), and the January 30, 2025 Findings of Fact and Conclusions of Law.[1] (Formatting altered.)

On appeal, Mother challenges the TPR Order and 119 findings of fact (**FOF**) and seven conclusions of law (**COL**).[2]

[1] The Honorable Lesley N. Maloian presided.

[2] Mother challenges FOF 25, 26, 32, 36, 40-44, 49, 50, 67-69, 72, 74, 76, 100, 115, 116, 130, 131, 162-164, 167-169, 172, 173, 176-178, 186-188, 190-193, 195-199, 201-213, 223-228, 232-241, 244, 245, 247, 251-255, 267,

(continued . . .)

Mother argues: (1) the family court lacked subject matter jurisdiction under Hawaiʻi Revised Statutes (**HRS**) § 587A-33(i) (2018); (2) Petitioner-Appellee the Department of Human Services (**DHS**) did not provide a reasonable opportunity for Mother to reunify with the Children through a service plan; and (3) the family court erred by concluding that Mother was not presently willing and able to provide the Children with a safe family home, even with the assistance of a service plan.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the issues raised and the arguments advanced, we resolve Mother's appeal as discussed below and affirm.

(1) First, Mother contends the family court "lacked subject matter jurisdiction" under HRS § 587A-33(i),[3] because DHS moved to terminate Mother's parental rights on July 11, 2024, over forty-one months after the Children entered foster care on January 19, 2021.

(. . . continued)

269, 270, 272–276, 279–284, 288, 291–298, 300–307, 314–318, and 381. Mother also challenges COL 428–432, 434, and 435.

We note, however, that Mother's opening brief does not present specific arguments as to why each challenged FOF and COL is erroneous. See Hawaiʻi Rules of Appellate Procedure Rule 28(b)(7) ("Points not argued may be deemed waived."); Rules Expediting Child Protective Appeals Rule 11(a)(4) (requiring abbreviated opening briefs to include a "[c]oncise legal argument about each point of error with citation to legal authority").

[3] HRS § 587A-33(i) requires DHS to move to terminate parental rights if a child has been in foster care "for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care."

But "HRS § 587A-33(i) is not a jurisdictional statute," and "any purported untimeliness and a child's placement in foster care for more than twenty-two months does not, standing alone, preclude DHS from filing a motion to terminate parental rights." In re A.O., 152 Hawaiʻi 259, 525 P.3d 708, No. CAAP-22-0000054, 2023 WL 2533260, at *3 (App. Mar. 16, 2023) (SDO); see HRS § 587A-5(1) (2018) (establishing the family court's "exclusive original jurisdiction . . . [i]n a child protective proceeding concerning any child who is or was found within the State at the time specified facts and circumstances occurred, are discovered, or are reported to the department") (formatting altered). Because Mother offers no basis for challenging this court's jurisdiction apart from the untimeliness of DHS's filing, this court retains jurisdiction. See In re A.O., 2023 WL 2533260, at *3.

(2) Mother next argues that DHS did not provide her with a reasonable opportunity to reunify with the Children through a service plan. Mother argues that from January 19, 2021, when the Children entered foster care, to July 1, 2022, when DHS moved to terminate her parental rights, "the record is void of evidence supporting DHS' position that it provided Mother with reasonable opportunity for reunification with the Children through its service plans."

Mother argues "over two (2) years elapsed from when the Children were placed in foster care with DHS until Mother was referred to [Parent-Child Interactive Therapy (**PCIT**)] services" in April 2023, and this "kept Mother from receiving and completing services that would foster reunification with the Children." Mother further argues "DHS failed to show how it provided reasonable opportunities for Mother to continue services and visitations with the Children while she was in Japan and Florida."

"DHS is under an obligation to provide a reasonable opportunity to parents through a service plan to reunify the family." In re Doe, 100 Hawaiʻi 335, 343, 60 P.3d 285, 293 (2002). "'[A] claim for additional services and accommodations must be timely made,' and there is no 'cognizable procedural complaint' when a request for services is not made until trial." In re KJ-I, 149 Hawaiʻi 423, 493 P.3d 945, No. CAAP-20-0000715, 2021 WL 3855772, at *8 (App. Aug. 30, 2021) (SDO) (citing In re Doe, 100 Hawaiʻi at 344, 60 P.3d at 294).

In this case, Mother does not identify where in the record she objected to the DHS service plans or requested additional services. As such, Mother's arguments may be deemed waived on appeal. See Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., 100 Hawaiʻi 97, 107, 58 P.3d 608, 618 (2002) ("Legal issues not raised in the trial court are

ordinarily deemed waived on appeal."); In re Doe, 100 Hawaiʻi at 344, 60 P.3d at 294 ("Manifestly, a claim for additional services and accommodations must be timely made.").

Even if not waived, the family court's findings that DHS provided Mother with a reasonable opportunity to reunify with the Children through a service plan are supported by the record.

We note that Mother's progress under the DHS service plans supported a first attempt at reunification under family supervision in August 2021. Mother does not provide any argument to dispute FOF 74, which states that at the time of DHS's July 1, 2022 motion to terminate parental rights, "Mother was not engaging in services nor maintaining consistent contact with the DHS or service providers. Several service providers closed their cases with Mother due to her being difficult to communicate with or Mother failing to answer or return calls."

When the latest reunification attempt was progressing in March 2024, Mother did not engage in required PCIT services for nearly three months while she took an extended trip to Japan and Florida, which disrupted efforts to reunify Mother and Children. The unchallenged findings state:

> [FOF] 180. On November 9, 2022, Mother completed a second psychological evaluation with Dr. Steven Choy, PhD., and the recommendations were for Mother to continue individual therapy until clinically discharged, parenting services to improve her perception of her children's needs and [PCIT].
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> . . . .

> [FOF] 182. Mother did not complete the recommended PCIT with Pono Roots Counseling Center ("Pono Roots"). The last PCIT session, Mother attended, was on March 19, 2024. Mother's counseling sessions with PCIT were interrupted because Mother chose to travel to Japan.
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> [FOF] 183. Against the advice of the DHS, on March 29, 2024, Mother traveled to Japan. Mother told the DHS she would be gone for 2-3 weeks. Mother was not truthful with the DHS. Mother didn't return to Honolulu until May 28, 2024. Mother chose to remain in Japan for two (2) months.
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> [FOF] 184. Upon returning to Honolulu, Mother chose to travel to Florida on June 4, 2024, and didn't return to Honolulu until June 13, 2024.
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> [FOF] 185. Mother claimed she was preparing to move to Florida and wanted this CPS case transferred to Florida. Prior to leaving for Florida, Mother did not consult with the DHS, the GAL nor the subject children's therapeutic providers.
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> . . . .
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> [FOF] 189. Mother resumed individual counseling/parenting with Pono Roots on September 24, 2024, and failed to progress sufficiently enough in order to engage in PCIT with the Children.

Based on this record and Mother's decisions to not consistently participate in and complete the required services, the family court did not clearly err by finding that DHS made reasonable efforts and provided Mother with a reasonable opportunity to reunify with the Children through a service plan.

(3) Finally, Mother refers to her prior arguments regarding the DHS service plans and argues "DHS did not meet its burden of proof by clear and convincing evidence that she was not presently willing and able to provide the Children with a safe family home, even with the assistance of a service plan."

Appellate courts generally afford the family court's determinations and decision-making wide latitude on appeal:

> 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.
>
> The family court's determinations with respect to (1) whether a child's parent is willing and able to provide a safe family home for the child and (2) whether it is reasonably foreseeable that a child's parent will become willing and able to provide a safe family home within a reasonable period of time present mixed questions of law and fact; thus, inasmuch as the family court's determinations in this regard are dependent upon the facts and circumstances of each case, they are reviewed on appeal under the clearly erroneous standard. Likewise, the family court's determination of what is or is not in a child's best interests is reviewed on appeal for clear error.
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> Moreover, the family court is given much leeway in its examination of the reports concerning a child's care, custody, and welfare, and its conclusions in this regard, if supported by the record and not clearly erroneous, must stand on appeal.

In re J.M., 150 Hawaiʻi 125, 137, 497 P.3d 140, 152 (App. 2021) (citation modified).

Mother does not provide any specific argument disputing the below FOF, summarized in part as follows:

- The Children have been in foster care for over three years and deserve to have a safe, stable, and permanent home (FOF 167, 171);
- It is not in the Children's best interest to allow Mother more time to participate in services in hopes that Mother will one day be able to provide a safe family home (FOF 173, 282);

- Mother failed to progress sufficiently in her individual counseling in order to engage in PCIT with the Children, and it would be traumatizing for the Children to have joint therapy with Mother (FOF 189, 291);
- Mother was combative, self-centered, defensive, appeared to not fully accept the goal of the PCIT joint treatment, and was often demeaning to the Children (FOF 292, 295);
- Mother is unable to parent the Children due to her failure to address safety concerns, to meaningfully engage in and complete services, and to demonstrate appropriate parenting during her visitation with the Children (FOF 195);
- Mother's poor parenting skills and lack of judgment place the Children at risk for abuse and neglect (FOF 203);
- Mother is unable to demonstrate sufficient skills or protective behaviors to ensure a safe family home for the Children (FOF 209);
- Mother's trips to Japan and Florida severely interrupted the reunification process and caused the Children's behavior to regress, resulting in feelings of abandonment, loss, and

confusion. Mother disregarded the advice she received that her trip to Japan would prolong the reunification process to the Children's detriment (FOF 262-264);

- The issues that necessitated the Children's removal still exist, including anger management, parenting, stress management, and visitation with the Children (FOF 272); and
- Mother is unable to understand what caring for the Children physically, mentally, emotionally, and financially requires, and she will not be able to meet their basic needs (FOF 305).

Based on the record before us, the family court did not clearly err by determining that Mother was not presently willing and able to provide a safe family home even with the assistance of a service plan. Nor was it reasonably foreseeable that Mother would become willing and able to provide a safe family home, even with the assistance of a service plan, within a reasonable period of time, not exceeding two years from the Children's January 19, 2021 date of entry into foster care. See HRS § 587A-33(a)-(b) (2018); In re J.M., 150 Hawaiʻi at 137, 497 P.3d at 152 ("Unchallenged findings of fact are binding on appeal."); In re Doe, 95 Hawaiʻi 183, 190, 20 P.3d 616, 623 (2001) ("[A]n 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." (citation omitted)); In re AK, 151 Hawaiʻi 16, 508 P.3d 290, No. CAAP-21-0000455, 2022 WL 1134991, at *3 (App. Apr. 18, 2022) (SDO) ("Two years is the maximum, not minimum, amount of time within which a parent must become willing and able to provide a safe family home.").

For these reasons, we affirm the family court's December 20, 2024 TPR Order and January 30, 2025 Findings of Fact and Conclusions of Law.

DATED: Honolulu, Hawaiʻi, November 25, 2026.

On the briefs:

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/s/ Katherine G. Leonard
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge