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IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

CAAP-25-0000496
IN THE INTEREST OF O.B.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 24-00043)

CAAP-25-0000497
IN THE INTEREST OF N.B., T.B., C.B., A.B. and K.B.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 24-00012)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, McCullen and Gluck, JJ.)

In this consolidated termination of parental rights (**TPR**) appeal, Father-Appellant/Cross Appellee (**Father**) appeals and Mother-Appellee/Cross Appellant (**Mother**) cross appeals (Father and Mother collectively, **Parents**) from the June 30, 2025

"Order Terminating Parental Rights" (**TPR Order**) entered by the Family Court of the First Circuit (**Family Court**).[1] The subject six children in both cases are N.B., T.B., C.B., A.B., K.B. and O.B. (collectively, **Children**), who range in age from two to seventeen. O.B. was born after Mother was arrested and incarcerated pending trial in a separate criminal case (**Criminal Case**). In the Criminal Case, Father, Mother, and non-party Maternal Grandmother (**Grandmother**) were collectively charged with two counts of second-degree murder and seventeen other counts for allegedly abusing A.B. and causing the death of child G.B. by abuse, medical neglect, and malnutrition. N.B., T.B., C.B., K.B., and O.B. are Parents' biological children. Parents were the legal guardians of G.B. and the adoptive parents of A.B.

Parents raise the following three points of error: **(1)** Father contends there was insufficient evidence for the Family Court to conclude that he was not presently, or in the reasonably foreseeable future, willing and able to provide the Children a safe family home, even with the assistance of a service plan, and that the permanent plans were in the Children's best interests; **(2)** Mother contends she was deprived of her parental rights without due process of law because Petitioner-Appellee/Cross Appellee Department of Human Services (**DHS**) failed to provide her a reasonable opportunity for reunification services while she was incarcerated, and **(3)** Mother contends the service plans violated her constitutional rights to free speech and against self-incrimination.

[1] The Honorable Jessi L.K. Hall presided. The Family Court entered its "Findings of Fact and Conclusions of Law" (**FOFs/COLs**) on August 19, 2025.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we resolve Parents' contentions as follows, and affirm.

On January 25, 2024, DHS filed a Petition for Temporary Foster Custody of N.B., T.B., C.B., A.B., and K.B. (collectively, **Older Children**), creating FC-S No. 24-00012. DHS filed the petition after learning that ten-year-old G.B. died while in Parents' custody, had severe injuries that were not treated, and her condition was consistent with extreme malnutrition and chronic injuries to the skin; and that four-year-old A.B. was emaciated, "has scars on his feet and hands, wobbles as he walks, does not talk, is not potty trained, and is not in a special education preschool." DHS alleged the threat of abuse or neglect is severe and suggests "impending danger" to the Children.

On February 14, 2024, Parents and Grandmother were indicted in the Criminal Case. The same day, the circuit court entered No-Contact Orders "as a condition of bail and/or release," that "the Defendant[s] shall not contact" the Older Children. Father was taken into custody on February 15, 2024, Mother and Grandmother were taken into custody on February 21, 2024, and the circuit court ordered Parents and Grandmother to be held without bail "with conditions as set forth in the No-Contact Order." It appears Parents and Grandmother are still incarcerated, awaiting trial in the Criminal Case.

In early 2024, while incarcerated, Mother gave birth to O.B. On March 20, 2024, DHS filed a Petition for Temporary Foster Custody of O.B., creating FC-S No. 24-00043. On March 22, 2024, the Family Court held a contested adjudication trial

in both Child Protective Act (**CPA**) cases. Parents represented that their response to all questions would be to assert their Fifth Amendment right against self-incrimination under the U.S. Constitution. The Family Court adjudicated both petitions, asserted jurisdiction over the Children, and determined the Children's date of entry into foster care was March 22, 2024.

Based on orders entered in the Criminal Case, the Family Court ordered no contact between the Children and Parents. The Older Children participated in psychological examinations in February and March, 2024. All were diagnosed with some form of trauma or disorder. DHS's Family Service Plans required Parents to participate in psychological evaluations, individual therapy, Comprehensive Counseling and Support Services (**CCSS**) parenting education, CCSS outreach parenting services, and anger management. DHS provided Parents individual therapy and anger management through CCSS, which was available within the corrections system. Parents also participated in parenting education and outreach parenting services. Parents completed the CCSS parenting education component. Parents were permitted to have supervised visitation with O.B. The correctional facilities did not permit the DHS-referred service provider to conduct psychological evaluations in the correctional facilities.

On February 28, 2025, DHS filed Motions to Terminate Parental Rights in each case. On June 26, 2025, the Family Court held a joint trial on the motions. Parents both stipulated that if they were called to testify, their response to any question would be that they invoke their respective Fifth Amendment rights. Parents did not testify.

The Family Court granted the motions to terminate parental rights, finding inter alia, that Parents' trial in the Criminal Case was (at the time) set for April 2026; there was no clear date when Parents would be released from incarceration; and even if they were released, they would not be able to complete all their services and process to be reunified with the Children prior to the two-year anniversary of their placement in foster custody. See FOFs 84-86, 106. The Family Court found that issues that necessitated foster custody still exist, and that Parents have not expressed remorse or responsibility for "the alleged harm" to the Children, in particular "the alleged harm" to G.B. that "allegedly resulted in [G.B.'s] death" and "the alleged serious harm and neglect" to A.B. FOF 107. The Family Court found that Parents refused to discuss past harms, they did not have access to all required services due to their incarceration, and they "have not gained any insight regarding their role in the alleged harm" to the Children and "how the alleged harm affects [the] [C]hildren's emotional well-being." Id. The Family Court explained that "[t]he basis for granting the Motion to Terminate Parental Rights is . . . the fact that the [C]hildren do not have an available legal caretaker and [P]arents have been unable to fully participate in services and demonstrate that they would be able to provide a safe family home either now or in the foreseeable future." COL 23. This consolidated appeal followed.

> Generally, the family court possesses wide discretion in making its decisions and those decision[s] will not be set aside unless there is a manifest abuse of discretion. Thus, we will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

In re AA, 150 Hawaiʻi 270, 283, 500 P.3d 455, 468 (2021) (citation omitted).

Under the CPA, a family court may grant a motion to terminate parental rights if the following HRS § 587A-33(a) (2018) elements are met by clear and convincing evidence: (1) the parent "is not presently willing and able" to provide the child "with a safe family home, even with the assistance of a service plan"; (2) "[i]t is not reasonably foreseeable" that the parent "will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time," defined as not exceeding two years from the child's date of entry into foster care; and (3) "[t]he proposed permanent plan is in the best interests of the child."

A family court's determinations under HRS § 587A-33(a) with respect to (1) whether a parent is willing and able to provide a safe family home for the child and (2) whether it is reasonably foreseeable that a 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" that are "depend[e]nt upon the facts and circumstances of each case" and are reviewed for clear error. In re J.M., 150 Hawaiʻi 125, 137, 497 P.3d 140, 152 (App. 2021) (citation omitted). A 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." Id.

(1) Father argues that he made "'significant progress'" in the services he was able to participate in while

incarcerated. Father contends it is "illogical" for DHS and the Family Court to argue he lacked "insight" into the harms that occurred while the Children were in his care. Father argues DHS and the Family Court recognized that Father could not acknowledge the harms without implicating himself in the Criminal Case, pointing to DHS's testimony that it "was aware of [Father]'s criminal attorney's instructions to not disclose any information or admission as the criminal case is still pending[,]" and the Family Court's similar statement that Father could not "acknowledge [the] harm [that] occurred … because the circumstances [he is] in with the criminal case[.]" Father further argues that "not [being] allowed to make an acknowledgment of harm due to his pending criminal charge" is a per se forfeiture of his parental rights; that the Family Court misread the No-Contact Order, which only prohibited contact with the Children as a condition of bail or release; that Father was denied an opportunity to demonstrate insight into his safety issues without visitations with the Children; and that DHS's trial witnesses lacked credibility.

We decline to address the credibility arguments, as "[a]n appellate court will not pass upon issues dependent upon credibility of witnesses and the weight of the evidence; this is the province of the trial judge." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 117, 839 P.2d 10, 28 (1992) (citation omitted).

Father's argument that the No-Contact Orders were merely a condition of bail or release lacks merit. The circuit court in the Criminal Case ordered that Parents and Grandmother were to be held without bail "with conditions as set forth in the No-Contact Order." The Family Court later allowed

visitations only as to O.B., who was born after entry of the No-Contact Order.

Even assuming Father had made "significant progress" with the services mandated by the Family Service Plan, this does not establish that Father could provide a "safe family home" to the Children within two years of their placement in foster custody. "The two-year time limit [in HRS § 587A-33(a)(2)] is the maximum a parent is allowed within which to demonstrate that the parent can provide a safe home, not the minimum." In re G.H., Nos. 29187, 29188, 2009 WL 1426786, at *2 (Haw. App. May 22, 2009) (SDO); see also In re Doe, 100 Hawaiʻi 335, 344 n.15, 60 P.3d 285, 294 n.15 (2002) (noting that it may have been reasonable for DHS to engage in only three months of reunification efforts with a mother due to her "continued failure to appear before the court at any of the previously scheduled hearings and her express unwillingness to participate in any service programs").

The Family Court determined Father would not be able to demonstrate he can provide a safe family home due to his incarceration. In In re Doe, 100 Hawaiʻi 335, 60 P.3d 285, the family court terminated an incarcerated father's parental rights under nearly identical circumstances. The Doe court recognized that "involuntary confinement, a criminal charge, or conviction for a criminal offense does not mandate a per se forfeiture of a parent's rights to a child"; "[h]owever, incarceration may be considered along with other factors and circumstances impacting the ability of the parent to remedy the conditions of abuse and neglect." Id. at 345, 60 P.3d at 295 (citation modified). It also noted, "[w]hile there is no dispute that DHS had an obligation to make every reasonable opportunity to reunite"

parents with their children, "it is not reasonable to expect [the DHS] to provide services beyond what was available within the corrections system." Id. The Doe court also held that "the completion of a service plan is an empty pursuit until the parent has been released and is capable of raising a child again." Id. "At that point, the parent would be able to participate in a service plan with DHS's assistance." Id. The Doe court affirmed the trial court's termination of the father's parental rights after it "determined that [the father] would not be released within the foreseeable future," and therefore, would not be able to demonstrate that he could provide a safe family home within the statutory deadline. Id. at 345–46, 60 P.3d at 295–96.

Here, Father is being held in jail without bail pending trial in the Criminal Case. At the time the TPR Order was entered, trial in the Criminal Case was set for April 2026, which is more than two years after the date of the Children's entry into foster care. We conclude the Family Court did not clearly err in its determination under HRS § 587-33(a). See J.M., 150 Hawaiʻi at 137, 497 P.3d at 152.

(2) Mother contends she was denied due process of law because the Family Court "marched lockstep through periodic review hearings and trial as if" her rights and the State's corresponding obligations "evaporate[d]" due to her incarceration. Mother asserts that DHS is obligated to craft a service plan that specifies the "steps necessary to facilitate" a child's return to a safe family home, including the "treatment and services" to "be provided." Mother claims the guardian ad litem (**GAL**) reported that Mother had been placed on a "waitlist" for some services, and DHS had no provider who could offer

certain services at the correctional facility, including a psychological exam. Mother argues the Family Court improperly assumed that she could not demonstrate insight or acknowledge harm, and that she was denied an opportunity to do so because DHS failed to provide the necessary services.

Parents have a substantive liberty interest in the care, custody, and control of their children that is protected by the due process clause of Article I, Section 5 of the Hawaiʻi Constitution. In re Doe, 99 Hawaiʻi 522, 533, 57 P.3d 447, 458 (2002). "[P]rocedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." State v. Bani, 97 Hawaiʻi 285, 293, 36 P.3d 1255, 1263 (2001) (citations omitted). "DHS is under an obligation to provide a reasonable opportunity to parents through a service plan to reunify the family" and "to make reasonable efforts to reunite parent and child." In re Doe, 100 Hawaiʻi at 343, 60 P.3d at 293.

The record does not reflect that DHS disregarded its obligation to provide Mother services to address her ability to provide a safe family home to the Children. In unchallenged FOF 72, the Family Court found that DHS provided all services that were available within the correctional facilities. Even if DHS could have made additional efforts to find a psychologist to enter the correctional facilities, "the completion of a service plan is an empty pursuit until the parent has been released and is capable of raising a child again." Id. at 345, 60 P.3d at 295. Regardless of a parent's participation in a service plan, the parent still needs to demonstrate he or she can provide a safe family home within the statutory deadline of two years. If

the court determines that an imprisoned parent "would not be released within the foreseeable future," it may conclude that the parent is unable to demonstrate he or she can provide a safe family home within the statutory limit. Id. at 345–46, 60 P.3d at 295–96. This was the crux of the Family Court's decision to terminate parental rights. Although Mother claims the charges against her could be dropped prior to trial, this argument lacks support in the record and is speculative.

(3) Mother contends that DHS required her to demonstrate "insight" into her alleged abuse and neglect for her to be considered to have completed the service plans, and that the Family Court similarly found that unless she "acknowledges" the Children suffered harm under her care, she could not demonstrate she could provide a safe family home. Mother claims it thus appears she cannot succeed in this CPA proceeding unless she admits she "did the acts of which [she is] accused[,]" and such a requirement violates her constitutional rights to free speech and against self-incrimination. Mother argues that DHS's requirement that she demonstrate insight or acknowledgment requires her to speak certain words, in violation of her First Amendment right.

Though Mother failed to preserve these constitutional arguments, we address them under plain error review. See In re T.J., No. SCWC-24-0000619, 2026 WL 3060464, at *5 (Haw. Oct. 13, 2026) (Opinion).

Regarding Mother's First Amendment challenge, assuming arguendo that being required to demonstrate insight and acknowledge harm in therapy is a restriction on free speech, the requirement is narrowly tailored to serve a compelling government interest. The safety of children in child custody

cases is a compelling government interest. Id. at *10 ("This court has long recognized that the 'paramount consideration' in child custody cases is the welfare of the child." (citation omitted)); In re I.W., 158 Hawaiʻi 244, 251, 591 P.3d 498, 505 (2026) ("The State has a compelling interest in child welfare."). DHS witnesses testified that demonstrating insight into the harms Parents caused is necessary to "demonstrate that they have made a change" and can provide a safe home. The requirement is also narrowly tailored, as nothing in the record indicates Mother must speak certain words. Rather, Mother need only meaningfully engage in therapy to demonstrate that she can provide a safe home. Here, the Family Court found that "Parents refused to discuss the alleged past harm or are prohibited from discussing the alleged harm due to the ongoing criminal case[,]" and that "Parents have not gained any insight regarding their role in the alleged harm to their children and how the alleged harm affects their children's emotional well-being." FOF 107. We conclude Mother's First Amendment challenge lacks merit.

As for Mother's Fifth Amendment challenge, the Hawaiʻi Supreme Court's recent decision of In re T.J. is relevant. There, the family court adjudicated petitions for foster custody of the children due to allegations of, inter alia, sexual abuse by the father. The family court ordered a service plan requiring that the father "acknowledge and take responsibility for the sexual abuse to his victims." In re T.J., 2026 WL 3060464, at *1. The father's psychologist "testified that [the father] must admit to sexually abusing the children to receive a clinical discharge as part of the Service Plan." Id. at *9. The supreme court concluded that "[i]n effect, the Service Plan requires [the father] to admit to sexual abuse" and "is

unconstitutional to the extent it requires [the father]'s admission of sexual abuse." Id. at *1, *9. It explained that "[t]he State may mandate therapy, but it may not go as far as requiring [the father] to incriminate himself[.]" Id. It held "that the Fifth Amendment does not protect parents from the consequences of failing to undergo meaningful therapy, particularly where the refusal to admit to past abuse hinders engagement." Id. at *10. It noted that "parents can begin to understand and reform their abusive behaviors by acknowledging their past abuse," and that "acknowledgment is an important step in the rehabilitation of the family" and, depending on the circumstances, a necessary factor in determining whether a parent engaged in meaningful therapy. Id. at *10-11 (citation omitted). By considering "whether a parent engaged in meaningful therapy, which may hinge in part on the parent's failure to confront their past abuse," a family court "protects a parent's self-incrimination rights but also ensures that we uphold the 'paramount' purpose of protecting children in Hawaiʻi." Id. at *11. Thus, though the State "may not compel a parent to admit to past sexual abuse, it may nonetheless require them to undergo sexual abuse treatment and consider their failure to admit as an indication that the parent did not effectively engage in treatment, which could impact the disposition of their parental rights," along with other factors. Id.

Here, as DHS points out, the service plans did not require Parents to admit to the alleged acts of abuse. The service plans merely required Parents to participate in therapy, which included demonstrating insight and acknowledgment of the harms the Children experienced while in the Parents' care, "to

demonstrate that they have made a change." This therapy was just one aspect of determining whether Parents could (or could not) provide a safe home for the Children. The Family Court concluded that Parents' refusal to discuss the past, in any capacity, prevented them from gaining any insight regarding the past harm to the Children and that Parents "have not meaningfully engaged in therapy." FOF 107. On this record, Mother fails to show a violation of her Fifth Amendment rights. See In re T.J., 2026 WL 3060464.

For the foregoing reasons, the Family Court of the First Circuit's June 30, 2025 "Order Terminating Parental Rights" is affirmed.

DATED: Honolulu, Hawaiʻi, November 13, 2026.

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