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STATE OF HAWAII

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FIRST CIRCUIT
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JOHN ROE NO. 121,

Plaintiff,

vs.

STATE OF HAWAII; JOHN A. TEIXEIRA;
JOHN DOES 1-10; DOE CORPORATIONS
1-10; DOE PARTNERSHIPS 1-10; DOE
NON-PROFIT ENTITIES 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO.: 1CC191001419
(Other Non-Motor Vehicle Tort)

JOINT TRIAL EXHIBIT 11

Judge: Honorable Kevin T. Morikone
Trial: April 22, 2024

Gabriele Clark, Volunteer GAL
Volunteer Guardians Ad Litem Program
P.O. Box 3498
Honolulu, Hawaii 96811-3498

FAMILY COURT
FIRST CIRCUIT COURT
STATE OF HAWAII

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Volunteer Guardian Ad Litem for Child

IN THE FAMILY COURT OF THE FIRST CIRCUIT ^{FILED} C. TANIGAWA
CLERK

STATE OF HAWAII

In the Interest of)	FC-S No. 91-02190
J [REDACTED] W [REDACTED] S [REDACTED],)	
Born on [REDACTED] Redacted,)	GUARDIAN AD LITEM'S FIFTH
A Child.)	REPORT TO THE COURT
)	HEARING DATE: November 3, 1993
)	TIME: 10:30 A.M.
)	PRESIDING JUDGE

GUARDIAN AD LITEM'S FIFTH REPORT TO THE COURT

Date of Appointment: 09-20-91

GAL Program No.: 91-00352-01

Type of Case:

The Department of Human Services (DHS) petitioned because of threatened psychological and physical harm in A [REDACTED]'s case on August 30, 1989, and in J [REDACTED]' case on September 20, 1991.

Type of Hearing: Permanent Plan Review

How many months since foster placement?:

A [REDACTED] has been in foster placement since July 24, 1989 -- fifty-one months.

J [REDACTED] has been in foster placement since April 24, 1991 -- thirty months.

List of GAL's contact since the last report:

<u>Persons Interviewed</u>	<u>Title/ Relationship</u>	<u>Date of Contact</u>	<u>Method of Contact</u>
A [REDACTED] S [REDACTED]	Child concerned	06-25-93	Home visit
		07-26-93	"
		09-23-93	"
J [REDACTED] S [REDACTED]	Child concerned	06-25-93	Home visit
		07-26-93	"
		09-02-93	"
		10-15-93	"
B [REDACTED] D [REDACTED]	Foster mother	06-25-93	Home visit
		07-26-93	"
		09-23-93	"
		07-22-93	Phone call
		08-02-93	"
		08-04-93	"
		08-11-93	"
		08-12-93	"
		09-03-93	"
		09-20-93	"
		09-23-93	"
		10-13-93	"
Lee Dean	DHS social worker	08-12-93	Phone call
		09-14-93	"
		10-14-93	"
J [REDACTED] N [REDACTED]	J [REDACTED]' temporary foster mother	09-01-93	Phone call
		09-02-93	Home visit
J [REDACTED] T [REDACTED]	J [REDACTED]' temporary foster father	09-20-93	Phone call
		10-13-93	"
		10-18-93	"
M [REDACTED] B [REDACTED]	Maternal grand- mother	10-14-93	Phone call
Ruth Mizuba	VGAL supervisor	08-13-93	Phone call
		09-03-93	"
Marilyn Terayama	DHS supervisor	08-17-93	Phone call
Pat Spencer	DHS social worker	07-28-93	Phone call

Summary of GAL's important personal contacts:

B [REDACTED] D [REDACTED]

In July, foster mother notified the VGAL that she had requested DHS to remove J [REDACTED] temporarily from the foster home. Mrs. D [REDACTED] stated that her main reason for asking for J [REDACTED]' removal was that his behavior toward A [REDACTED] had become increasingly violent. Foster mother noted that A [REDACTED] had scratches on his hands and face. When asked how he had received the scratches, A [REDACTED] answered that J [REDACTED] was responsible. Mrs. D [REDACTED] said that the "last straw" was when J [REDACTED] threw a screwdriver at his brother. J [REDACTED] initially denied that he threw the screwdriver. When confronted by witnesses, J [REDACTED] claimed that it was an "accident".

In addition to the escalating violence against A [REDACTED], foster mother stated that J [REDACTED] constantly teased and harassed his brother. Although antagonistic toward A [REDACTED], Mrs. D [REDACTED] said that J [REDACTED] was also very dependent upon him. J [REDACTED]' teasing and harassing extended to his peers in the neighborhood and as a result J [REDACTED] found himself without close friends. J [REDACTED] then began to rely on A [REDACTED] as his companion and playmate, tagging along wherever A [REDACTED] went. Foster mother felt that this was not fair to A [REDACTED].

Although A [REDACTED] was J [REDACTED] main target, J [REDACTED] also hit Mrs. D [REDACTED]'s five-year-old twin nephews. Mrs. D [REDACTED] also reported that her niece discovered J [REDACTED] fondling one of the twins.

Foster mother feels, that because of J[REDACTED]' behavior, especially toward his older brother and his inability to communicate and cooperate with the family, that it was necessary to remove J[REDACTED] for the good of the entire family.

Mrs. D[REDACTED] is quite clear that although the family needs a respite from J[REDACTED], this is a temporary situation. The family is still committed to adopting A[REDACTED] and J[REDACTED]. Adoption of both boys will be postponed until J[REDACTED] makes some progress in therapy. Mrs. D[REDACTED] says she feels that the family cannot adopt just A[REDACTED] at this time because she is afraid of how that would affect J[REDACTED].

Because of the violent nature of his behavior, foster mother requested that DHS arrange for therapy before beginning visits between J[REDACTED] and the family. Foster mother also thought that this would motivate J[REDACTED] to accept counseling, something to which he was initially opposed. Mrs. D[REDACTED] also feels that the family as a whole should be involved in the therapeutic process. While waiting for DHS to schedule counseling for J[REDACTED], foster mother maintains contact with J[REDACTED] by phone and by writing to him. She encourages the boys to write to one another. Mrs. D[REDACTED] reports that J[REDACTED] did not respond well to this plan. He told her that he did not write because he didn't have paper, envelopes or stamps. Foster mom then provided him with all the essentials.

B[REDACTED] D[REDACTED] has been in contact with both J[REDACTED] N[REDACTED] and J[REDACTED] T[REDACTED], J[REDACTED]' temporary foster parents. Through them she learned that J[REDACTED] is reluctant to speak with

her, or A [REDACTED], by phone. She also learned from both foster parents that J [REDACTED] said that he did not want to return to the D [REDACTED] home. Mrs. D [REDACTED] is understandably hurt and worried by this disclosure and shared with the VGAL that she fears that J [REDACTED] has no feeling for the family. She stated that although the family wants him back, they cannot force J [REDACTED] to do something he does not want to do.

Foster mother noted that A [REDACTED] is doing very well since J [REDACTED] left the home. She describes him as more relaxed.

According to Mrs. D [REDACTED], A [REDACTED] who had been a solid B+ student in intermediate school, earned two C's at the mid-term report. She is monitoring the situation and plans to limit activities if his grades do not improve for the first period report.

In July, when she notified the VGAL that she wanted J [REDACTED] removed from the home, Mrs. D [REDACTED] told the VGAL something about J [REDACTED] that suggests separation and loss of parents may be more of an issue than anyone realized. Foster mother said that whenever J [REDACTED] is upset or angry, he goes into his room and hugs his teddy bear and cries. During these crying spells he calls out to his mother and father. Sometimes, instead of using his toy bear, he clutches a family portrait (biological parents, A [REDACTED] and J [REDACTED]). Mrs. D [REDACTED] reports that the picture was so damaged by his tears that it had to be thrown away.

A [REDACTED]

A [REDACTED] said that he missed his brother but that he understood why J [REDACTED] was in another home right now. He seemed a little annoyed that J [REDACTED] had not answered his letter promptly. A [REDACTED] told me that he liked high school although he found the work harder than in intermediate school. He eagerly shared with me his involvement in the ROTC program and his recent participation in the Aloha Day Parade. A [REDACTED] did seem very relaxed during my home visit.

J [REDACTED]

During my last home visit with J [REDACTED] in Waiānae, it was apparent that tensions in the home were high, J [REDACTED] was extremely subdued. He refused to make eye contact and mumbled when he talked.

When I saw him in the N [REDACTED] home, he communicated well until we touched on the subject of his removal from the D [REDACTED] home. It was difficult for him, but he did say that he understood that his behavior was the cause of his removal. He said that he did not want to return to the D [REDACTED] home to live but that he would like to go back to visit. J [REDACTED] stated that he was happy with Grandma J [REDACTED] (Mrs. N [REDACTED]) and wanted to stay there. When I asked him why, he said "cause they got plenty of kids here" and that he was having fun.

J [REDACTED] was recently moved from the N [REDACTED] home to the home of J [REDACTED] T [REDACTED] in Hauula. J [REDACTED] reports that he likes his home very much and hopes that J [REDACTED] will adopt him. I explained to J [REDACTED] that this is a temporary move and that our goal, after

therapy starts, is to get him to return to the D [REDACTED] home. He said that he understood that but that he did not want to go back there to live. Not only that but he did not want to visit there either. I asked him if he wanted to live with or visit A [REDACTED] and his answer was "no". He also said that he did not miss A [REDACTED] at all. Later in our conversation he relented and said that because he had A [REDACTED]'s picture he didn't miss him much. He added that he wouldn't mind if A [REDACTED] came to visit him in Hauula. When asked why he didn't want to return to his original foster home he said it was "junk there". His explanation of "junk" was that he was required to do yardwork, take care of the roosters, do housework, and that he was yelled at and hit daily. He said that he had chores to do in the T [REDACTED] home but did not mind doing those.

J [REDACTED] shares this foster placement with five other boys ranging in ages from nine to fifteen. He claims to get along well with them.

J [REDACTED] N [REDACTED]

Within two weeks of being placed in the N [REDACTED] home, Mrs. N [REDACTED] described J [REDACTED]' behavior "frustrating" for her family and for the two other foster children in her care. According to foster mother, J [REDACTED] harassed everyone, making unwanted comments and generally "butting into other people's business".

Mrs. N [REDACTED] reported to the VGAL that J [REDACTED]' behavior had provoked one of two physical attacks by another foster son, fourteen-year-old W [REDACTED]. After the second attack on J [REDACTED] by

W████, W████ threatened J████ with additional harm, saying that he would get J████ while J████ was asleep. Mrs. N████ felt the incident was serious enough to have W████ arrested. After spending the weekend in the detention home, W████ returned to the emergency shelter home, to share a room with J████. Mrs. N████ said she watched the boys closely and scheduled different bedtimes for J████ and W████. These precautions suggested to the VGAL that the foster mother thought another incident was likely to occur. Placing J████, who has a history of taunting and teasing, with a child who has extreme anger management problems, seemed to this VGAL too volatile a mix and not in J████' best interest.

J████ T████

J████ T████'s first question for me when I contacted him regarding a home visit with J████ was why J████ wasn't in therapy. J████' behavior is described by Mr. T████ as "very, very, very irritating" and "extremely aggravating". He feels, based on the behavior that J████ exhibits, that J████ should be receiving therapeutic treatment. Foster father says J████ teases and hits his foster brothers (there are five other foster children in the home, boys ranging in age from nine to fifteen). J████ irritates most conversations with a punch on the arm. Although this inappropriate behavior has been brought to his attention by foster dad and foster brothers, J████ persists in repeating it. Mr. T████ has had reports that J████ does this in school also. J████ seems to have developed a phobia about bugs and frogs, screaming when he comes near or in contact with them.

Recently, when a bee landed on him, J [REDACTED] got so hysterical, it became necessary to stop the car and make J [REDACTED] get out and calm down. It is interesting to note that, according to Mrs. D [REDACTED], J [REDACTED] played with toads and lizards, killed cockroaches and removed dead mice from traps in her home. J [REDACTED] T [REDACTED] feels that J [REDACTED]' fear is genuine. Foster father reports that J [REDACTED] shadows him constantly, and, at times mimics his every move. After one day in his foster placement, J [REDACTED] asked Mr. T [REDACTED] to adopt him. Mr. T [REDACTED] explained that J [REDACTED]' stay in his home was temporary. J [REDACTED], however, persists in asking J [REDACTED] to adopt him. Mr. T [REDACTED] said that J [REDACTED] expressed his opposition to return to the D [REDACTED] home, both permanently and for visits. Foster father feels that J [REDACTED] should not be forced to return to the D [REDACTED] when he has expressed such strong resistance. In addition, J [REDACTED] T [REDACTED] reports that J [REDACTED] is "always moving, moving, moving". He believes that J [REDACTED] is hyperactive and plans to speak with the therapist about medication for J [REDACTED]. In the past, Mrs. D [REDACTED] also mentioned that J [REDACTED] seems to be in constant motion.

On the positive side, Mr. T [REDACTED] says that J [REDACTED] is doing well in school and that his teachers think highly of him. Foster father reports that J [REDACTED] is very good at helping around the house with chores. In fact, J [REDACTED] gets up around 5:30 A.M. and straightens up the house. Mr. T [REDACTED] feels that this may be J [REDACTED]' way of "making up" for his objectionable behavior.

DHS - Lee Dean, Marilyn Terayama

Contacts with Lee Dean and Ms. Terayama were to share with them information about J [REDACTED] which the VGAL considered significant -- specifically his crying accompanied by verbal appeals to long absent parents, and the assaults on J [REDACTED] by another child in the emergency shelter home. With respect to the assaults, the VGAL requested J [REDACTED]' removal from this home because the VGAL considered this an unsafe placement for the child. Although DHS did not seem to agree fully with the VGAL's position, J [REDACTED] was placed in another home on September 30, 1993. (Judge Uale, after reviewing the file, also requested another placement.)

The VGAL has stressed the importance of therapy since Mrs. D [REDACTED] asked for his biological parents, and sharing this with DHS, the VGAL again emphasized the urgent need for therapy. DHS has always agreed that J [REDACTED] needs therapy. However, it took two months before J [REDACTED] was scheduled a psychological evaluation and although a therapist has been selected, no appointment has been made by DHS.

ASSESSMENT:

Child/ren:

A [REDACTED] (age 14) The most significant change in A [REDACTED]'s life is the removal of his brother, J [REDACTED], from the D [REDACTED] home. A [REDACTED] understands the reasons that led to J [REDACTED]' temporary placement with another foster family and he appears to be coping well with this change. Although A [REDACTED]'s grades have dropped slightly since entering Waianae High School,

he continues to be a good student who is enthusiastic about school and participation in the ROTC program. A [REDACTED] misses his brother and encourages J [REDACTED] to "get his act together" so that he can return to the family as soon as possible.

A [REDACTED] had one weekend visit with J [REDACTED] since he was moved and according to A [REDACTED] the boys had a good time.

Maternal grandmother and maternal aunt keep in touch with the boys and visits, which occur once every two or three months, are arranged through Mrs. D [REDACTED]. A [REDACTED] enjoys the visits and it is important to him to retain these ties to his birth family.

Foster mother reports that A [REDACTED] is healthy and current on his physical and dental checkups.

J [REDACTED] (age 13) J [REDACTED]'s escalating violent behavior toward A [REDACTED], his harassing and teasing A [REDACTED] as well as others, his inability or unwillingness to accept any responsibility for the problems or to change behavior which the family has identified as a source of concern led to temporary removal from his foster family of two years.

Since moving out of the D [REDACTED] home on August 12, 1993, J [REDACTED] has been quite clear that he does not wish to return to live with the D [REDACTED] or A [REDACTED]. Initially he stated that he wanted weekend and holiday visits with the family. Now he claims that he does not want contact with the D [REDACTED] and does not seem particularly eager for contact with A [REDACTED]. J [REDACTED] says that he does not want to return to the D [REDACTED] home because he was mistreated there. The VGAL has seen no evidence of this.

J [REDACTED] did admit to the VGAL that he was angry at Mrs. D [REDACTED] but would not elaborate further.

It is clear that J [REDACTED] needs immediate therapeutic intervention. The issues that need to be addressed in therapy, according to Rob Wetzel, Ph.D., are [REDACTED] [REDACTED] as well as helping J [REDACTED] to [REDACTED] [REDACTED]. Psychosexual issues can also be further explored in therapy, although the psychologist does not feel that this is a major issue for J [REDACTED] at present.

Parents:

Biological Parents: With the exception of one letter written by mother, the children have had no contact with their biological parents since being placed in foster care.

Foster Parents - Prospective Adoptive Parents:

Mr. and Mrs. D [REDACTED] still intend to adopt A [REDACTED] and J [REDACTED]. They feel, however, that the adoption must be postponed until J [REDACTED]' behavior is dealt with. Additionally, the D [REDACTED] believe that J [REDACTED] is not sufficiently bonded to the family at this time. Foster parents asked that J [REDACTED] receive therapy and made it clear that they expect to be part of the therapeutic process. Mrs. D [REDACTED] feels that the family has to be involved in resolving the problems that exist and they will do all that is necessary to facilitate his return to the family. Foster mother told the VGAL that she does not feel that the situation with J [REDACTED] is all his fault. Although she tried different techniques to communicate with J [REDACTED] and to deal with his behavior, she feels there might be options that she did not consider.

DHS/DOH/DOE:

The VGAL feels that there has been an unacceptable delay in arranging therapeutic services for J[REDACTED]. On July 22, 1993, foster mother notified the VGAL that she asked DHS to remove J[REDACTED] from the home temporarily. The behaviors which led to J[REDACTED] removal from the foster home and the subsequent disclosures regarding inappropriate sexual activity and unresolved issues of loss and separation from biological parents, made it clear to the VGAL that counseling was urgently needed. Foster mother stated, at the time she requested removal, that counseling was urgently needed. Foster mother stated, at the time she requested removal, that she did not want J[REDACTED] to return to the home, even for visits, until he received counseling. Any delay in securing counseling services meant a delay in returning the child to the D[REDACTED] home.

The VGAL acknowledged that some delays, such as Mr. Dean's absence because of illness and a therapist's vacation are unavoidable. However, it is now almost three months since J[REDACTED]' problems surfaced and the child is not in therapy.

Service/Permanent Plan:

The one area that needs to be addressed in the new Permanent Plan is the area of therapeutic intervention.

Dr. Wetzel recommends a [REDACTED] [REDACTED] for J[REDACTED], addressing specific areas such as [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The VGAL feels, that in addition to individual therapy for J[REDACTED], it is

imperative that the D [REDACTED], A [REDACTED] and J [REDACTED] join in family therapy in order to resolve family contacts.

Would this case benefit from a discussion facilitated by the Court's Judicial Pretrial Assistant? Why/Why not?:

This case is not going to trial.

RECOMMENDATIONS:

1. Immediate therapeutic intervention for J [REDACTED], concentrating on the areas of rejection, abandonment, loss, behavioral self-control, low self-worth, psychosexual issues and development and issues dealing with his proposed return to the D [REDACTED] home.
2. Family therapy to include the D [REDACTED], A [REDACTED] and J [REDACTED].
3. Given J [REDACTED]' strong resistance to returning to the D [REDACTED] home, visits between J [REDACTED], the D [REDACTED] and A [REDACTED] should be at the discretion of the therapist. Forcing J [REDACTED] to visit prior to therapy could be counterproductive.

DATED: Honolulu, Hawaii, October 20, 1993.

Lois M. Hoots for
Gabriele Clark, Volunteer GAL
by Sandra H. Kato, MSW
VGAL Program Manager

John Roe 121 v. State of Hawai'i, et al.

Civil No.: **1CC191001419**

Defendant's Exhibit: **JT11**

Marked for Identification: _____

Received into Evidence: _____

Clerk, First Circuit Court