

## HRS CHAPTER 587 APPELLATE SUMMARY DISPOSITION ORDERS AND MEMORANDUM OPINIONS August 2008 to Present

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only. A copy of the decision (SDO/Memo Opinion) must be attached to the legal brief/memo. SDO/ Memo Opinions usually turn on the facts; important legal issues are digested only.

Case Name	Citation	Digest
In re "S" Children: S.L.S. and S.F.S.	SDO, No. 28565 (App. Sept. 22, 2008)	<ol style="list-style-type: none"> <li>1. Rejected ineffective assistance of counsel argument, based on facts.</li> <li>2. DHS under no obligation to provide services to incarcerated parent when services not available in prison system.</li> <li>3. Permanent custody not based on Father's incarceration.</li> <li>4. No law requiring hearing on permanent placement before the permanent custody trial.</li> <li>5. No error if permanent plan does not state whether children will remain in current placement.</li> <li>6. No error granting permanent custody, one year after court ordered foster custody.</li> </ol>
In re D.V.	SDO, No. 28567 (App. Sept. 26, 2008)	<ol style="list-style-type: none"> <li>1. Credible expert evidence to support permanent custody when Father:               <ul style="list-style-type: none"> <li>- Did not do services</li> <li>- Father did not attend court hearings for 22 months</li> </ul> </li> <li>2. Even if child wanted to return to Father's care, child was not 14 and his consent to the permanent plan not needed.</li> </ol>
In re "N.K." Children	SDO, No. 28723 (App. Sept. 29, 2008)	<ol style="list-style-type: none"> <li>1. Affirmed adjudication and award of foster custody.</li> <li>2. Stepfather was perpetrator of physical abuse and domestic violence to Mother.</li> <li>3. Mother's failure to separate from Stepfather sufficient basis to support adjudication and award of foster custody.</li> </ol>
In re K.D.	SDO, No. 28831 (App. Sept. 30, 2008)	<ol style="list-style-type: none"> <li>1. No error when DHS did not propose a permanent plan with the goal of guardianship. Ultimate decision rests with court, not DHS.</li> <li>2. Father completed a domestic violence program, but had a subsequent domestic violence incident: evidence of inability to integrate services.</li> <li>3. Court can look at the children's improvement while in foster care, and parent's inability to provide a safe home to support permanent plan (HRS § 587-73 (a) (3)) determination.</li> </ol>
In re C.R.	SDO, No. 28750 (App. Oct. 27, 2008)	<p>Mother was "mentally impaired."</p> <ol style="list-style-type: none"> <li>1. Rejected Mother's lack of reasonable efforts argument, because Mother did not make a demand for services. <i>In re Doe</i>, 100 Haw. 335, 60 P.3d 285 (2002).</li> <li>2. No evidence that additional services would have made a difference.</li> <li>3. Although Mother participated in services, unable to demonstrate ability to provide a safe</li> </ol>

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		<p>family home.            Note: This is the second appeal, after remand. 1<sup>st</sup> permanent custody order reversed in <u>In re Doe</u>, 109 Haw. 399, 126 P.3d 1086 (2006). SDO did not specifically refer to first appeal.</p>
In re E.L.-W.	SDO, No. 28725 (App. Dec. 16, 2008).	<ol style="list-style-type: none"> <li>1. Father waived challenges to parental unfitness (HRS § 587-73 (a) (1) &amp; (2)) determination on appeal, when stipulated to findings at trial.</li> <li>2. Issue of permanent placement, not part of HRS § 587-73 (a) determination.</li> <li>3. Must prove DHS, as permanent custodian, abused placement discretion.</li> <li>4. A safe placement proposed by a parent is not grounds not to grant permanent custody.</li> <li>5. No Due Process violation caused by parent, who is incarcerated on the mainland, participating in trial by telephone.</li> <li>6. Sentence of life, without parole, sufficient to support HRS § 587-73 (a) (2) determination.</li> </ol>
In re M.M.	SDO, No. 29022 (App. Dec. 17, 2008)	DHS did not abuse its discretion in choosing current foster parents as prospective adoptive parents, over Child's aunt (intervenor-appellant).
In re "T" Children: S.T. and M.T., III	SDO, No. 28573 (App. Dec. 26, 2008); cert. rejected Feb. 18, 2009.	<ol style="list-style-type: none"> <li>1. No error denying DHS' motion to continue permanent custody trial for 3 months to give parents further opportunity when trial was scheduled 3 months after the hearing on the motion to continue; youngest child was in court ordered foster custody of 2 ½ years</li> <li>2. No abuse of discretion when family court ordered DHS to clarify and confirm its position regarding permanent custody, placement and visitation when DHS' position had changed several times.</li> <li>3. No abuse of discretion when family court bifurcated the trial regarding permanent custody, and permanent placement. Issue of permanent placement would be moot if motion for permanent custody denied.</li> <li>4. Based on literal interpretation of HRS § 587-51.5, no abuse of discretion by allowing foster parents-intervenors to participate in permanent custody trial. Parents did not show prejudice.</li> </ol>
In re C.S.	SDO, No. 28876 (App. Dec.31, 2008)	<ol style="list-style-type: none"> <li>1. Affirmed permanent custody where Mother, who resided in California, did not do any services and had history of CPS involvement in that state.</li> <li>2. No error when no case management social worker assigned in California because California would not assign a courtesy social worker. DHS maintained active contact with Mother.</li> <li>3. No legal requirement for "permanent placement" to be identified before granting permanent custody.</li> <li>4. No error when permanent plan did not consider a placement in California when California, pursuant to the ICPC, did not approve the placement.</li> </ol>
In re "R" Children: J.S.R, J.A.R.1 and J.A.R.2	SDO, No. 28933 (App. Jan. 20, 2009)	<p>Affirmed permanent custody.</p> <ol style="list-style-type: none"> <li>1. No error when the order did not state:</li> </ol>

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		<ul style="list-style-type: none"> <li>a. Court qualifying the DHS social worker an expert: ruling is reflected in transcripts</li> <li>b. The burden of proof. Presume court applied correct burden of proof.</li> <li>c. The court's willingness to re-visit its permanent custody order if extra-ordinary circumstances exists under HRS § 587-73 (b) (1) (C) (ii). Not required.</li> </ul> <p>2. No abuse of discretion qualifying DHS social worker an expert and receiving testimony. Sufficient testimony about experience in social work and child welfare services, and in the case.</p> <p>3. Permanent placement is not an issue for permanent custody and court may bifurcate issues. Permanent placement is decided after permanent custody is awarded.</p> <p>4. Reservation of permanent custody issue regarding other children did not dictate return of other children to parent.</p> <p>5. Parent waived right to cross-examine report writers when parent did not subpoena them.</p> <p>6. Use criminal standard for "ineffective assistance of counsel" issue on appeal (a. specific errors or omissions reflecting counsel's lack of skill, judgment or diligence, and b. errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense). Parent's counsel not ineffective for failure to demand cross-examination of report writers.</p>
In re A.F.H.	SDO, No. 28891 (App. Jan. 26, 2009)	<p>Affirmed permanent custody.</p> <ul style="list-style-type: none"> <li>1. Substantial evidence to support parental unfitness ruling when Mother had long-standing alcohol and mental health problems, long history of failed treatments, history of alcohol abuse outside of structured settings.</li> <li>2. Parent must make timely demand for services, and explain how those services would have addressed parent's problems.</li> <li>3. Sufficient evidence to support permanent plan goal of adoption based on DHS social worker's testimony and evidence of the children's special needs, and bond and time with foster parents.</li> <li>4. No error by conditionally granting foster parents' motion to relocate with C's to mainland prior to permanent custody trial. Court allowed foster parents to ship C's belongings, but foster parents were responsible for costs of returning them if motion for permanent denied. Court did not authorize move until after completion of permanent custody trial.</li> <li>5. Sufficient evidence to support parental unfitness ruling when parent did not participate in services before incarceration, and parent sentenced to five years incarceration but the Hawaii Paroling Authority did not set minimum. Proper to consider possible length of incarceration.</li> <li>6. No error granting permanent custody even if parent has a relative who could care for the children during incarceration.</li> <li>7. No Due Process violation by DHS filing its motion for permanent custody, and court granting motion before the expiration of the HRS § 587-73 (a) (2) two-year period. Parent did not participate in services before incarceration. Court properly applied HRS § 587-73 (a) (2).</li> </ul>

In re L.D.	SDO, No. 29065 (App. Jan. 26, 2009)	Related cases where permanent custody trial was consolidated. Appeals were not consolidated. SDO's are almost identical. Affirmed permanent custody where parents have long-standing history of drug abuse, and failure to participate in treatment. Oldest child in foster custody for 2.5 years and youngest child for 1 year.
In re D.D.	SDO, No. 29066 (App. Jan. 26, 2009)	
In re T.W-R.	SDO, No. 29140 (App. Jan. 27, 2009)	Affirmed permanent custody. Sexual Harm. 1. Substantial evidence to support "parental unfitness" ruling when Mother did not recognize Father being at risk for threatened sexual harm to the children when Father was convicted of sexual assault of an unrelated teenage girl. 2. No error by DHS filing its motion for permanent custody before the expiration of the HRS § 587-73 (a) (2) two-year period. Mother given opportunity to reunify.
In re "R" Children: S.K.R (1), S.K.R. (2) and K.K.R.	SDO, No. 29011 (App. March 5, 2009)	Affirmed permanent custody. Parental Drug Use. Case decided on its facts (typical drug case). Children were removed, and then returned to Mother when she completed drug treatment. Mother relapsed and children removed. Parents continued to use drugs, with Mother giving birth to another drug-exposed baby three months before the trial.
In re J.M.	SDO, No. 29152 (App. March 6, 2009)	Affirmed permanent custody. 1. Expert testimony by Dr. Steven Choy, Ph.D. (KCPC), that Mother's six to seven months of sobriety did not mean her addiction was cured. Need twelve months sobriety to reduce the risk of relapse to 20%. 2. Expert testimony by Dr. Choy, that Mother's use of methamphetamines would make an accurate diagnosis of Bipolar Disorder difficult. Need at least twelve months sobriety before an accurate diagnosis could be made. 3. Mother did not make a timely demand for services, i.e. a dual-diagnosis program. <u>Cting In re Doe</u> , 100 Haw. 335, 344, 60 P.3d 285, 294 (2002). 4. Dr. Jean Adair-Leland, Ph.D. (KCPC) testified that another psychological evaluation would not have changed findings of original psychological evaluation.
In re "C" Children: S.K., O.N.C., S.K.H.C., and S.H.C.	SDO, No. 29142 (App. April 1, 2009)	Affirmed permanent custody. 1. Plain language of HRS § 587-27 (a) (1) (A) requires that if the goal of the permanent plan is either adoption or guardianship, that DHS submit the name(s) of the prospective adoptive parent or proposed guardian in a sealed report to the court. Court has discretion to release the report, if in the child's best interests. Even if the DHS social worker's testimony identified "foster parents" as prospective adoptive parents, in violation of HRS § 587-27 (a) (1) (A), the error is harmless. 2. Mother completed numerous services, including numerous parenting education classes. Mother failed to demonstrate that she had integrated and could apply the skills she learned in

		<p>services, as seen by her failure to manage four children during supervised visits.</p> <p>3. Rejected "reasonable efforts" argument where Mother's service plan requirements did not change over a two-year period. Mother argued that she was more comfortable with one service provider than the other.</p>
<p>In re R.G.B.</p>	<p>SDO, No. 28582 (App. April 9, 2009)</p>	<p>Background: Family Court, 3rd Cir.-Hilo has a policy where court-appointed counsel's representation ends after permanent custody is granted. If parent wants to appeal, parent must apply for court-appointed appellate counsel.</p> <p>Mother had severe mental health problems. Mother (through counsel) failed to file a motion for reconsideration of order awarding permanent custody, as required by the previous version of HRS § 571-54, and appeal was dismissed for lack of appellate jurisdiction. (Note: HRS § 571-54 was amended in 2006 to delete this requirement in CPA cases). Mother filed her motion for relief from order 2 years after permanent custody order pursuant to HFCR Rule 60.</p> <p>1. Mother was represented by counsel throughout the pendency of case. Mother did not show any errors by counsel that resulted in permanent custody.</p> <p>2. ICA was troubled by the Court's policy of terminating parent's counsel's appointment after permanent custody is granted, and having parent apply for court-appointed appellate counsel due to Mother's severe mental health problems. In this case, appointment of new counsel was timely.</p> <p>3. Use the criminal standard by analogy in determining whether counsel was ineffective. Must show that error or omission by counsel resulted in the withdrawal or substantial impairment of a meritorious defense. Mother did not show any meritorious "defenses" in her appeal.</p> <p>4. After permanent custody, parent has no right to review the court's file. Distinguish from <u>Doe v. Doe</u>, 118 Haw. 293, 305-307, 188 P.3d 807, 819-821 (2008) (in a divorce action, error in court's limiting a party's access to review court's file).</p>

In re Z.M.	SDO, No. 29299 (April 29, 2009)	<p>Unidentified Perpetrator  Mother appealed adjudication and the award of foster to DHS. Mother argued that the family court erred by entering its findings and orders when the family court was unable to identify the perpetrator.</p> <ol style="list-style-type: none"> <li>1. Depending on the circumstances of the abuse, the family court can take action to protect the child, even if the perpetrator is not identified. ICA cited to two cases from other jurisdictions.</li> <li>2. ICA looked at other factors: <ol style="list-style-type: none"> <li>a. Parents' explanations of how the injuries were caused were not plausible and not credible.</li> <li>b. Credible expert testimony of the child's primary care physician.</li> <li>c. Parents' history of abusive/assaultive behavior and Mother's past CPS history.</li> <li>d. Mother's mental health problems.</li> <li>e. The seriousness of the Child's injuries: multiple rib fractures, fracture clavicle and brain damage.</li> </ol> </li> <li>3. In a footnote, the ICA stated that Mother, through her counsel, failed to challenge any of the findings of fact. As a result, the findings of fact are binding for purposes of the appeal.</li> </ol>
In re M Children	SDO, No. 29434 (App. May 7, 2009)	<p>Affirmed permanent custody.</p> <ol style="list-style-type: none"> <li>1. Family Court did not abuse its discretion by denying visits between Father and Child as being in the child's best interests. Rejected Father's argument that there was no admissible evidence establishing the "validity" of the child's therapist's report that was a basis for the court's decision. Father did not object to the court's receiving the child's therapist's report into evidence. Even if issue not waived, court can consider the therapist's report as being relied upon by DHS (bases for DHS' assessment) citing HRS §§ 587-25 (a) and 587-40.</li> <li>2. No error awarding permanent custody 14 months after temporary foster custody ordered. Father inconsistent with services, focused on own needs, unlikely to make changes, continued to be at risk for neglect. DHS social worker testified it would take Father at least another year in services, and children could not wait.</li> </ol>
In re F. Children	Mem. Op., No. 28882, (App. May 8, 2009). [App for Writ of Cert. filed July 10, 2009].	<p>Affirmed permanent custody. Prior DHS and family court intervention from 2000 to 2003 due to physical abuse of older paternal ½ sibling by parents. Parents did services &amp; cases closed in 2003. 2nd intervention in 2005 due to physical abuse of and/or threat of abuse to children. Two children born during pendency of cases &amp; removed after birth. Youngest child born during pendency of cases, and his adjudication and disposition trial held at the same time.</p> <ol style="list-style-type: none"> <li>1. Rejected Father's argument that the findings of fact are too numerous and repetitious, in light of the number of consolidated cases (3), number of children (7 and one other sibling who is not part of this appeal), and the history and record of the cases. <u>Upchurch v. State</u> is not applicable because in that case, the findings of fact were not sufficient to support the trial court's decision.</li> <li>2. No denial of due process when psychologist who conducted psychological evaluation of parents and former VGAL were not made available for cross-examination. During trial ruled that it would compel their testimony if parents could provide an offer of proof of the subject</li> </ol>

matter of cross. Counsel did not provide an offer of proof.

a. Substitute VGAL was available for cross-examination. Findings of fact did not rely on prior VGAL's reports.

b. Father wanted psychologist to testify that he did not assess Mother to have unresolved childhood sexual abuse problems. In the psychological evaluation report, psychologist stated that Mother did not reveal childhood sex abuse. After psychological evaluation, Mother told her CSATP therapist about her childhood sex abuse. Based on Mother's statement, CSATP and DHS required Mother to address her adults molested as children ("AMAC") issues. Per ICA, psychologist did not have information about Mother's childhood sex abuse.

3. No prejudice holding the adjudication/disposition trial for the youngest child at the same time as the permanent custody trial. ICA made the distinction that the trials were not consolidated, but were held concurrently.

4. Father not prejudiced when DHS and VGAL did not disclose sex assault convictions of former foster father to the court until the day of (previously set) trial. Father and Mother did not file a written motion to disqualify DHS and the VGAL program (court stated it would hear written motions). In a footnote, the ICA stated that the court conducted a thorough inquiry into the matter, and discussed with DHS and VGAL how to prevent re-occurrence of situation.

5. Court did not abuse its discretion by not ordering the goal of the permanent plan to be amended from adoption to guardianship. During the inquiry about the former foster father, the DHS Unit Supervisor represented that DHS will explore guardianship, if Washington State approves placement of the children with a paternal uncle and/or a maternal aunt pursuant to ICPC. At trial, ICPC homestudies of the proposed relative placements were pending.

6. No error in issuing order authorizing foster parents of the two youngest children to re-locate to Germany with these children. Order was issued before the permanent custody trial, but foster parents did not move until after the permanent custody trial.

7. Long discussion of the findings of fact that Father argued to be clearly erroneous. Findings of fact found to be clearly erroneous were harmless error (no prejudice).

a. Findings of fact regarding accepted child protective and welfare services, and social worker concepts of "insight", history and patterns of behavior, and the need to demonstrate ability to provide safe home not mere participation in services supported by expert testimony (parents did not object), and HRS § 587-25 (a) (11), and case law - Woodruff v. Keale.

b. Findings of fact regarding the children's condition appropriate under HRS § 587-25 (a) (1), even if not relevant. Father did not show prejudice.

c. Findings of fact regarding prior intervention not clearly erroneous when court ruled that it would not consider specific allegations, but would consider the circumstances of prior intervention to show the "development of the family" and patterns of behavior are not clearly erroneous under HRS § 587-25 (a) (4) (D). Findings of fact regarding parents' convictions for assault during prior intervention clearly erroneous based on court's ruling, but harmless because the court did not rely on the convictions in its ultimate decision.

<p>In re A.W.</p>	<p>SDO, No. 29253 (App. May 8, 2009); cert. rejected, July 15, 2009</p>	<p>Affirmed permanent custody. This is a rare case where there is a dissenting opinion to an SDO affirming permanent custody.</p> <p>Facts: In 01/07, child born while both Mother and Father were in Federal custody. Mother signed voluntary foster custody agreement. In 05/07, child returned to Mother when she was released. In 07/07 Mother abandoned child and disappeared. Court awarded foster custody to DHS in 08/07. Permanent custody trial held on 06/30/08. Father was expected to be released to a half-way house in Indiana in 07/08, and to be released from the half-way house in 01/09. Father wanted the child to be placed with his brother &amp; sister-in-law in Indiana.</p> <ol style="list-style-type: none"> <li>1. Father's rights not violated by his participating in all proceedings by telephone.</li> <li>2. No clear error in terminating Father's parental rights. Although Father was expected to be released (01/09) before the expiration of the HRS § 587-73 (a) (2) two-year anniversary of court-ordered foster custody, sufficient evidence to support permanent custody: <ol style="list-style-type: none"> <li>a. Father's present incarceration: incarcerated for most of the 7 years before child's birth.</li> <li>b. Even after release, still need time to establish suitable adjustment to living in the community before he could care for the child.</li> <li>c. Father's history of criminal conduct &amp; history of re-incarceration.</li> <li>d. Father's lack of involvement in caring for his two older children.</li> </ol> </li> <li>3. Citing <u>In re T Children</u>, rejected Father's argument that his brother &amp; sister-in-law could help him care for C.</li> <li>4. Rejected Father's argument that the CPPPR violated his "appellate rights." He did not explain how having to comply with the CPPPR affected his substantive rights.</li> </ol> <p>Dissent:</p> <ol style="list-style-type: none"> <li>1. Accepted in part Father's argument that was raised in and rejected in <u>T Children</u>. [In <u>In Doe 100</u>, Haw., the Supreme Court quoted a sentence from the 1958 Colorado <u>Dierenfeld</u> decision: it may well be that the parent may have family who would be able to care for the child during the parent's incarceration]. In <u>T Children</u>, ICA ruled that the fact that an incarcerated parent has a relative who may be able to provide a safe home for the child is not grounds to deny a motion for permanent custody; the above quote must be read in the context of the entire Hawaii Supreme Court decision and HRS § 587-73 (a).</li> <li>2. Noted that it was possible for Father to reunify before the expiration of the two-year anniversary of court ordered foster custody (08/09). If court had allowed placement in Indiana, Father could visit and bond with the child. Dissent also noted Father's completion of services, and that DHS could have requested supervision by Indiana. This was predicated that Father "stayed the rehabilitative course."</li> </ol>
<p>In re "E-P" Children: C.E-P, B.E-P and I.E-P</p>	<p>SDO, No. 29323 (App. May 11, 2009)</p>	<p>Affirmed permanent custody.</p> <ol style="list-style-type: none"> <li>1. Rejected Mother's argument that court "misinterpreted" the facts.</li> <li>2. Rejected Mother's argument that Mother was "very cooperative" after she was incarcerated. Court found Mother's testimony not to be credible. Issues of credibility are the sole province of</li> </ol>



		<p>the trial court.</p> <p>3. Mother did not provide any legal authority supporting her argument that Mother's cooperation after the permanent custody trial are grounds to overturn court's permanent custody order.</p> <p>4. Rejected Mother's argument that children are better off in foster custody while Mother improves self. Foster custody ordered in 11/06 and Mother later absconded with younger children for almost 1 year; court found Mother's claim of service plan compliance to be "incredible."</p> <p>5. No evidence to rebut statutory presumption that permanent plan goal of adoption is in the children's best interests. Rejected Mother's argument that children's best interests to remain in foster custody.</p>
In re S. P-T.	SDO, No. 29122 (App. May 18, 2009)	<p>Affirmed permanent custody. Mother was in Family Drug Court ("FDC"), and later terminated.</p> <p>1. No violation of right to counsel when Mother was not represented by counsel during FDC hearing when court revoked family supervision and ordered foster custody. At initial FDC hearing, court advised Mother that she could request counsel at any time. Mother did not request counsel.</p> <p>2. Court (FDC) ordered foster custody on 05/11/07, but issue not addressed until 08/09/07. Mother did not show how she was prejudiced by the court's not holding hearing on foster custody within 10 days after foster custody assumed pursuant to HRS § 587-2 "Family Supervision."</p> <p>3. Court did not abuse its discretion by allowing DHS to re-open its case at the permanent custody trial for DHS to submit any amended permanent plan that did not identify the prospective adoptive parents ("PAP's"). (See HRS § 587-27). Permanent plan had named the PAP's. Mother did not show how it was a substantial detriment to her case (i.e., prejudice).</p> <p>4. Sufficient evidence to support permanent custody when Mother did not complete the service plan while in FDC, admitted to relapsing to using marijuana after being discharged from FDC, and did not complete services after termination from FDC.</p>
In re G.H.	SDO, No. 29187 (App. May 22, 2009)	<p>Affirmed permanent custody. Incarcerated Mother.</p> <p>1. Mother waived argument that court abused its discretion by denying her motion to continue the permanent custody trial. At trial, Mother argued that she had a pending motion for reconsideration of her sentence of incarceration in the circuit (criminal) court. On appeal, Mother argued that she was waiting for the Hawaii Paroling Authority to set her parole eligibility date. Arguments were inconsistent, and waived argument.</p> <p>2. Rejected reasonable efforts argument that DHS did not provide her services during incarceration. Citing <u>In re Doe</u>, 100 Haw. 335, DHS not required to provide services not available in prison system. In criminal case, Mother chose to be incarcerated, instead of participating in residential drug treatment, and therefore, in CPA case, cannot complain about lack of services during incarceration.</p> <p>3. Sufficient evidence to support permanent custody, when oldest child was in foster custody for 18 months at time of trial, and Mother started drug treatment in prison that would take 9 to</p>

		<p>18 months to complete. Mother used drugs while pregnant with younger child, and admitted to the court that she would test positive for drugs. Mother used drugs when not incarcerated. Don't have to give Mother the entire 2 years in HRS § 587-73 (a) (2).</p> <p>4. Rejected argument that permanent custody was "solely based on passage of time." Decision was based on Mother's conduct.</p>
In re J.K.	SDO, No. 29397 (App. May 28, 2009)	<p>Affirmed permanent custody. Initial involvement in 1997. Case started in 2004. Permanent custody trial in 2009. Sexual harm by Father with Mother aligned with Father. Mother has Untreated drug issues.</p> <p>1. Discovery.</p> <p>a. Mother did not show that she was prejudiced by DHS' late disclosure of visitation logs where court continued trial for 1 day to make writer of logs available to testify. Mother was allowed to re-open her case. Prejudice was speculative. No denial of Due Process.</p> <p>b. Father's rights not affected by DHS' failure to disclose results of Father's polygraph examination contained in an email. ICA noted that results of polygraph are inadmissible. Father introduced the polygraphs into evidence, but court did not rely on the polygraph results.</p> <p>2. Mother not prejudiced by DHS' 1 ½ year delay in referring Mother to individual therapy (service identified in 2004). Multidisciplinary Team stated that after 1 ½ years of individual therapy, Mother did not make any demonstrated changes. Mother was timely referred to AMAC therapy, as soon as identified; credible testimony of therapist that earlier referral would not have made a difference. Mother did not make timely demand for services.</p> <p>3. Substantial evidence to support permanent custody as to Mother because no changes since 1997. Mother consistently aligned with Father. Mother exposed youngest child to drugs in utero in 2007.</p> <p>4. Substantial evidence to support permanent custody as to Father. Still in early stages of sex offender treatment, and still at continued risk to re-offend.</p> <p>5. No prejudice to Father when DHS social worker testified that s/he considered best interests of the child in assessing Father's fitness, in light of evidence about Father's unfitness.</p> <p>6. No error awarding permanent custody of youngest children who were in foster custody for less than 2 years at time of trial. Older children were in foster custody for longer than 2 years. Father would need to be in services beyond the 2-year anniversary of foster custody of the youngest children.</p>
In re L.F.	SDO, No. 29171 (App. June 29, 2009)	<p>Affirmed permanent custody. Decision based on facts of case. Related to <u>In re F Children</u>, Memo. Op., No. 28882 (App. May 8, 2009)</p> <p>1. Without comment, ICA ruled that specific findings and conclusions are not erroneous and/or wrong; if any of the findings are wrong, they are harmless.</p> <p>2. DHS took custody and filed petition in 06/06. Due to numerous continuances (requested by Parents, including one caused by Parents' defaulting at one scheduled trial and court setting aside default and re-setting trial), adjudication trial not held until 11/07. Adjudicated and awarded foster custody in 11/07. DHS filed motion for permanent custody in 12/07. Permanent</p>

		custody awarded in 05/08. Parents not doing services and/or minimally compliant with services, and not consistently with child. 3. Mother did not argue why goal of PP (adoption) is not in best interest, and waived argument. 4. Father's counsel warned about failure to comply with appellate rules (HRAP Rule 28: failure to cite to the Record in statement of the case, and failure to show where in the Record the error occurred.