HAWAII SUMMARY DISPOSITION ORDERS & MEMORANDM OPINIONS

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only.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 RJ, JJ, MJ, DJ, RJ2, and LH (Short cite: In re RJ, et al.)	No. 29983, SDO (App. Sept. 10, 2010)	Mother appealed PC (TPR). ICA affirmed. Mother continued to deny that she and her "male associate" physically abused her children. 1. Rejected Mother's argument that the DHS social worker's testimony that Mother did not have insight was not sufficient evidence when other service providers did not testify that Mother did not have insight. Ample evidence of the physical abuse. Mother's denial shows that she did not have insight (into the reason for DHS' involvement). 2. Rejected Mother's argument that DHS failed to provide an appropriate service plan to address Mother's lack of insight. No service plan can address Mother's strong denial.
In re MG	No. 30062. SDO (App. Oct. 28, 2010); cert. rejected, Feb. 28, 2011	Mother appealed PC (TPR). ICA affirmed. 1. No error in admitting and considering psychological evaluation and testimony of psychologist, who was a post-doctoral psych. resident, working under the supervision of a licensed clinical psychologist when the evaluation was conducted. At trial, the psychologist was licensed (for 5 months). Based on the HRS Chapter 465 (governing the practice of clinical psychology), expert witness was exempt from the licensing requirement when the evaluation was conducted because he was working under the supervision of a licensed psychologist. HRS § 465-3 (2). 2. No error in taking judicial notice of related younger sibling's case (that was consolidated for trial but the issue was adjudication). Mother failed to object, and the issue was reviewed for plain error. Family Court has to consider family history and persons having access to the home (i.e., stepfather). 3. Harmless error where the Family Court relied on the DHS social worker's affidavit regarding Stepfather's "profane and derogatory" phone calls, but the affidavit was excluded from the hearing (the affidavit was admitted into evidence at an earlier hearing, but excluded at trial). Mother did not object when the affidavit was admitted into evidence at a prior hearing. DHS social worker testified at trial and was subject cross examination on the affidavit. 4. Mother failed to preserve the issue of whether the consolidated trials prejudiced Mother. Stepfather's conduct was relevant to the PC (TPR) trial. 5. Rejected Mother's service plan argument. Mother did not list this error in her "points of error." Mother did not preserve the issue by objecting to the service plan.

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In re BP Children	No. 29984, SDO (Nov. 15, 2010)	Father appealed PC (TPR). ICA affirmed. 1. No error in making the HRS § 587-73 (a) (1) and (2) [HRS § 587A-33 (a) (1) and (2)] parental unfitness findings when Father completed services such as domestic violence, anger management and parenting education. However, Father continued to deny/minimize his physical abuse of Mother and the Children, and continued to make undocumented accusations against foster parents. Showed that Father failed to utilize and integrate services. 2. Father failed to show in the Record where he objected to the permanent plan goal of adoption (failed to preserve issue on appeal). Even if issue were preserved, no evidence to rebut statutory presumption that adoption is in the Children's best interests.
In re KC	No. 30257, SDO (App. Dec. 30, 2010)	Parents appealed PC (TPR). ICA Affirmed. Drug case with domestic violence issue. Appeal decided on the facts. 1. On appeal Mother attempted to present facts about her progress after the PC order. Appellate court cannot consider facts not in the Record. 2. Mother had a 25-year history of chronic drug abuse, failed treatments and relapse after completing treatment, and her rights to her four older children terminated. During the 2-year period of the case, Mother had 5 relapses and was terminated from Family Drug Court. Although Mother made recent progress before the trial, Family Court was entitled to consider Mother's history and patterns of behavior. 3. Father consistently used drugs throughout the 2-year period of the case. He only started treatment one and one-half months before trial. Although he completed anger management, he did not demonstrate, integrate and apply what he was taught.
In re J.K.	No. 30631, SDO (App. Feb. 24, 2011)	Father appealed PC (TPR). ICA Affirmed. Rejected Father's arguments that the Family Court's ruling was based solely on his incarceration. Father relied on In re Doe, 100 Haw. 335, 60 P.3d 285 (2002). Child had been in foster custody since 2008. Father was incarcerated for robbery, sexual assault and kidnapping convictions, and incarcerated when the Child was born. At trial, he had served five years of his sentence that would end in 2024. ICA noted Father's inconsistent testimony that his mandatory minimum expired in 2023 and that he was eligible for parole in 2 years (2012). 1. Based on In re Doe, 100 Haw. 335, the length of the parent's incarceration and the reasons for incarceration can be the bases to terminate parental rights. 2. Father could not provide a safe home in the reasonable future because even if he were paroled in 2012, the child would have been in foster custody for 4 years. 3. Sufficient evidence based on the DHS social worker's credible testimony of the violent nature of Father's criminal conduct, Father's history of domestic violence towards Mother, and

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		Father's minimal relationship with the Child.
In re M.M.	No. 30345, SDO (App. Feb. 25, 2010)	Parents appealed PC (TPR). ICA Affirmed. ICA ruled that Mother and & Father's arguments that DHS did not make reasonable efforts and that Mother & Father were not given a reasonable opportunity because of their mental illness. [ICA noted the arguments and without addressing each argument, ruled that their arguments did not have merit].
In re L.K.	No. 30207, SDO (App. Mar. 20, 2011); cert. rejected July 13, 2011	Mother appealed PC (TPR). ICA Affirmed. Mother was 14 years old when she was sexually abused by her stepfather, and gave birth to the child. 1. No error when DHS gave minor Mother 4 years to reunify with the Child. 2. Mother did not provide any legal authority to support her argument that the Family Court should have used a different standard due to Mother's age.
In re AU, MI	No. 30676 SDO (App. Mar. 30, 2011)	ICA affirmed adjudication and disposition. Mother argued that there was insufficient evidence to establish that there was "reasonable cause believe that foster custody was necessary to protect the children from imminent harm." 1. Mother did not challenge any of the Family Court's findings of facts. ICA affirmed based on the Family Court's unchallenged findings of fact. [Unchallenged findings are deemed to be correct]. -HPD found the then 3 1/2 year old AU wandering in the street without adult supervision -neighbor reported that this was sixth time -DHS returned AU to Mother -Next day, AU found wandering outside Mother's home without supervision; HPD called and AU returned to Mother -DHS SW found family home to be unkempt and in disarray that was a safety concern for the Children; DHS social worker was also concerned about Mother being mentally unstable -Prior DHS intervention of 2 older siblings that resulted in the termination of Mother's parental rights -Medical and dental neglect; MI (who was less than 1 year old) was sick with fever and diarrhea that required several visits to the ER after removal
In re KB	No. 30521, SDO (App. Mar, 31, 2011)	Reversed PC. Family Court abused its discretion by denying Father's motion to set aside default (titled motion for reconsideration) when: 1. Father was defaulted at the pretrial hearing

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		-Father appeared at the courthouse for the previously scheduled trial date -Father attended every hearing and participated in services when he was incarcerated and -Father was living on Kauai -Father had several excuses: 1) called-in for the pretrial hearing but hung-up when on hold for 30 minutes and 2) forgot about the pretrial hearing but knew about the trial date 2. Courts prefer an adjudication on the merits instead of proceeding by way of default. 3. In a footnote, the "filing" date of a motion for reconsideration is the day the motion was received by the court.
In re MA	No. 30728, SDO (App. April 29, 2011).	ICA affirmed PC (TPR). In the first appeal, In re M.A. and H.W., No. 30032, SDO (App. April 16, 2010), the ICA reversed because the Family Courtdid not issue proper findings of fact and conclusions of law to support its order awarding PC. Remanded for family court to enter findings of fact and conclusions of law. The SDO did not refer to the first appeal. Family Court did not err: 1. Mother continued to use marijuana despite being warned that her continued use may result in TPR, and did not fully comply with the court-ordered service plans. No error despite evidence that Mother was making progress. 2. No evidence that the Family Court's decision was based on the mere passage of time. 3. Rejected Mother's challenge to findings: foundational, evaluation of evidence, etc.
In re JM	No. 30586, SDO (App. May 26, 2011)	ICA affirmed PC (TPR), without stating the facts of the case: 1. There is substantial evidence in the record to support the findings Father alleged to be clearly erroneous 2. The appellate court declines to address findings of fact regarding the credibility of the witnesses. citing In re Doe, 108 Haw. 134, 117 P.3d 866 (App. 2005). [Appellate courts will pass on issues regarding the credibility of witnesses and the weight of the evidence]. 3. Father misconstrued the Record regarding the DHS social worker's testimony, that the Family Court found to be credible. 4. Father did not present any arguments on some of the findings of fact alleged to be in error, and waived these issues.
In re KK	No. 30716, SDO (App. May 27, 2011)	Father appealed PC (TPR). ICA affirmed. 1. DHS' expert witness in the field of clinical psychology testified that Father would need to participate in individual therapy and parenting classes before reunifying. The expert witness was not aware whether Father was participating in these services while in drug treatment. 2. Father (and DHS social worker) testified that he was not participating in individual therapy

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		and parenting classes because they were not offered at the drug treatment program. 3. DHS social worker testified that Father would not be able to reunify if he completes drug treatment on his expected completion date in May 2011. DHS social worker further testified that Father would not be able to do so before the 2-year anniversary of court-ordered foster custody in August 2011. 4. Proper to consider Father's prior CPS case and his participation in services in determining ability to provide safe home, citing HRS § 587-25 (a) (4) (D) [now HRS § 587A-7 (a) (4) (D)] of the Safe Family Home Guidelines (Factors). 5. Nothing in the findings of fact and the conclusions of law to support Father's argument that the Family Court made its parental unfitness ruling [HRS § 587-73 (a) (1) & (2) (now HRS § 587A-33 (a) (1) & (2))] based on the Child's best interests and the permanent plan. The conclusions of law show that the Family Court's ruling was correct, and it made the parental unfitness ruling before making the permanent plan [HRS § 587-73 (a) (3) (now HRS § 587A-33 (a) (3)] ruling. 6. HRS § 587-73 (a) (2) [HRS § 587A-33 (a) (2)] does not state that a parent must be given 2 years to attempt reunification. The 2-year period is the maximum period of time to reunify with the child.