

# CPA SUMMARY DISPOSITION ORDERS AND MEMORANDUM OPINIONS

August 2012 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HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only.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   | CITATION  | DIGEST   |
|--|---|--|
| In re SL and NL<br><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2012/oct/CAAP-11-0000685sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2012/oct/CAAP-11-0000685sdo.pdf</a>           | No. CAAP-11-00685,<br>SDO (App. Oct. 31,<br>2012) | Family Court granted MTPR. Mother of both children and Father of oldest child appealed. ICA affirmed:<br>1. Both parents had a long history of using illegal drugs, domestic violence, and prior involvement with CPS. None of their children are in their care.<br>2. Both parents had a history of completing services, but relapsed to drug use, and were not able to demonstrate the ability to provide a safe home.<br>3. At trial, DHS opined that both parents would need an additional year of services to address their safety issues. This would be beyond the HRS § 587A-33 (a) (2) 2-year period.  |
| In re J Children: KJ, KJ<br><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2012/dec/CAAP-12-0000026sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2012/dec/CAAP-12-0000026sdo.pdf</a>  | No. CAAP-12-00026,<br>SDO (App. Dec. 28,<br>2012) | Family Court granted MTPR. Father appealed. ICA affirmed:<br>Rejected Father's argument that the Family Court did not have jurisdiction over him due to lack of personal service because Father did not raise the issue in a timely manner; Father waived the issue. HFCR Rule 12 (b), (g), (h) (1). <u>Puckett v. Puckett</u> , 94 Haw. 471, 481, 16 P.3d 876, 886 (App. 2000).<br>Father appeared at every hearing for almost two years, and waited until the closing argument of the MTPR trial to raise the argument.  |
| In re AI and AK<br><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2013/February/CAAP-12-0000390sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2013/February/CAAP-12-0000390sdo.pdf</a> | No. CAAP-12-00390<br>SDO (App. Feb. 11,<br>2013)  | Family Court granted MTPR. Father appealed. ICA affirmed:<br>1. Mother failed to challenge any Findings of Fact and Conclusions of Law, and failed to show where in the Record she made objections and/or where the Family Court committed error. Regardless, the ICA was able to discern Mother's points of error on appeal from her argument.<br>2. No error when the Family Court found that Mother was not presently willing and able to provide a safe family home. Mother did not challenge the finding of fact that Mother testified that she could not care for her children because of untreated drug abuse and her on-going therapy.<br>3. No error when the Family Court found that Mother could not reunify in the reasonable future:<br>- At the time of trial, the children were in foster care (from the date of entry into foster care) two weeks shy of two years.<br>- The Family Court was correct in looking at Mother's extensive history of drug abuse, failed |

| CASE   | CITATION   | DIGEST  |
|--|--|---|
|  |  | <p>drug treatments and relapses (including a relapse two weeks before trial).</p> <p>4. The appellate courts will not address issues regarding the credibility of witnesses and the weight of the evidence. Rejected Mother's argument that the Family Court erred by not giving weight to her testimony that she wanted to change and to accept help for her substance abuse problem.</p> <p>5. The Family Court did not err in making its reasonable efforts/opportunity findings.</p> <ul style="list-style-type: none"> <li>- Mother did not appear at the hearing to determine whether the Children should be placed with a relative in California.</li> <li>- Mother did not tell the Children when her telephone number changed, and did not answer the Children's telephone calls.</li> <li>- During the review hearings, Mother did not object to the reasonable efforts findings.</li> </ul> <p>Failure to make an objection is a waiver on appeal; reasonable efforts is not a defense to TPR unless the issue is properly preserved.</p> <p>6. Mother waived any challenges to the service plans because she did not object to them when the Family Court ordered them.</p>   |
| <p>In re P Children</p> <p><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2013/May/CAAP-12-0000780sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2013/May/CAAP-12-0000780sdo.pdf</a></p> | <p>No. CAAP-12-0000789, SDO (App. May 29, 2013)</p>  | <p>Family Court granted MTPR. Mother appealed. ICA affirmed.</p> <p>1. No error when the Family Court did not make a specific HRS § 587A-33 (a) (3) permanent plan finding of fact. The Family Court made the determination that the permanent plan is in the children's best interest because the Family Court made a specific HRS § 587A-33 (a) (3) permanent plan conclusion of law; the Family Court is only required to make that determination.</p> <p>2. Expert Witnesses are not required to have personal knowledge of the case, can rely on hearsay testimony as the basis for opinions, and can rely upon the evidence that was already in the record.</p> <p>3. Despite her participation in services, Mother could not demonstrate the ability to provide a safe family home. Rejected argument that DHS failed to provide appropriate services. DHS assessed that Mother was the cause, not her service providers.</p> <p>4. No error when DHS required Mother to provide service provider reports when Mother chose her own service providers.</p> <p>5. The Family Court found that the testimony of Mother's therapist, who also provided substance abuse treatment, was not credible on the issue of Mother's substance abuse because he was not aware of Mother's behavior that was consistent with her using drugs.</p> |
| <p>In re TM</p> <p><a href="http://www.courts.state.hi.us/do">http://www.courts.state.hi.us/do</a></p>   | <p>No. CAAP-12-0000521, SDO (App. June 28, 2013)</p> | <p>Family Court granted MTPR. Mother appealed. ICA affirmed.</p> <p>1. Family Court did not abuse its discretion by not appointing counsel for Mother for the approximately first 19 months of the case, while Mother was a minor, but Mother had a court-</p>  |

| CASE   | CITATION   | DIGEST   |
|--|--|--|
| <p>cs/opin_ord/ica/2013/June/CAAP-12-0000521sdo.pdf</p> <p>Dissent:</p> <p><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2013/June/CAAP-12-0000521dis.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2013/June/CAAP-12-0000521dis.pdf</a></p> |  | <p>appointed GAL during that time. Counsel was appointed when Mother turned 18, approximately 5 months before the TPR hearing. Per the 3rd prong of the <u>Lassiter</u> test, Mother did not show that she was prejudiced by the Family Court's failure to appoint counsel earlier.</p> <p>2. Family Court did not abuse its discretion in denying Mother request to continue the TPR trial to give her more time to work for reunification. Mother was given more than 2 years after the C was first placed in FC to work for reunification.</p>  |
| <p>In re D.K.</p> <p><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2013/July/CAAP-12-0000875sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2013/July/CAAP-12-0000875sdo.pdf</a></p>   | <p>No. CAAP-12-0000875, SDO (App. July 22, 2013)</p> | <p>Family Court Granted MTPR. Mother and Father appealed. ICA affirmed:</p> <p>1. Mother: Clear and convincing evidence supporting the Family Court's HRS § 587A-33 (a) (1) &amp; (2) findings as to Mother based on expert testimony that Mother's problems of drug use, mental health problems, lack of insight and motivation, minimization, and parenting issues continued to exist, and that Mother could not resolve her problems in a reasonable time. Mother admitted that she could not provide a safe home at the time of trial and in the reasonable future.</p> <p>2. As to Father, the expert testimony of the psychologist, who conducted Mother's psychological evaluation, on the effects of child abuse on the child was harmless error. The expert only testified as to Mother.</p> <p>3. DHS did not fail to give Father the reasonable opportunity to reunify by filing its MTPR seven months after the Child's date of entry into foster care. HRS § 587A-31(g) requires DHS to file its MTPR when the concerned child has been in foster care for twelve consecutive months. However, HRS § 587A-31(h) states that "nothing in this section shall prevent the department from filing a motion to terminate parental rights if the department determines that the criteria for termination of parental rights are present."</p> <p>4. Father: Clear and convincing evidence supporting the Family Court's HRS § 587A-33 (a) (1) &amp; (2) findings as to Father based on the expert testimony that Father continued to have unresolved substance abuse, anger and mental health problems, showed the inability to participate in services on a sustained basis, and his inability to see that Mother was unsafe. Father admitted to having the above problems, and his not participating in services.</p> |

| CASE   | CITATION   | DIGEST   |
|--|--|--|
| <p>In re TW</p> <p><a href="http://www.courts.state.hi.us/docs/opin_ord/ica/2013/July/CAAP-12-0000874sdo.pdf">http://www.courts.state.hi.us/docs/opin_ord/ica/2013/July/CAAP-12-0000874sdo.pdf</a></p> | <p>No. CAAP-12-0000874, SDO (App. July 31, 2013)</p> | <p>In 2009, Family Court defaulted Mother, and granted DHS' MTPR. Mother appealed, and ICA reversed. Per the ICA, the Family Court erred in denying Mother's motion to set aside default. <u>In re TW</u>, 124 Haw. 468, 248 P.3d 234 (App. 2011). On remand, Family Court granted MTPR. Mother appealed. ICA affirmed.</p> <p>1. Family Court did not err in finding that Mother was not presently willing and able to provide a safe family home, and it was not reasonably foreseeable that she would be able to do so in the reasonably foreseeable future:</p> <ul style="list-style-type: none"> <li>- Mother's problems of unresolved substance abuse, mental health issues, minimization of her problems, and lack of insight and motivation continued to exist.</li> <li>- Mother admitted that she could not care for the Child because she was living in a shelter. Mother denied having the problems that prevented her from providing a safe home.</li> </ul> <p>2. Rejected Mother's argument that DHS did not make reasonable efforts to reunify.</p> <ul style="list-style-type: none"> <li>- Mother was given more than 4 years to reunify with the Child. DHS provided services to Mother, but Mother failed to make changes.</li> <li>- Rejected Mother's argument that DHS did not refer Mother to parenting education classes and domestic violence services. Per the testimony of the DHS social worker, DHS wanted Mother to address her substance abuse issues before referring Mother to other services so Mother could better understand and benefit from those other services.</li> </ul> |
|  |  |  |