FC-S SDO'S & MEMO OPINIONS

August 9, 2013 to August 8, 2014

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only.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 H Children	No. CAAP-13-0001152 (App. Sept. 30, 2013) (SDO)	Family Court granted MTPR. Father appealed and ICA affirmed: 1. On a procedural note, Father's points of error failed to comply with RECPA Rule 11 (a), (3), and failed to make discernible arguments regarding the findings of facts and conclusions of law he contested on appeal in violation of RECPA Rule 11 (a) (4). ICA warned counsel that any future non-compliance with RECPA Rule 11 and HRAP Rule 28 (Form of Briefs) may result in sanctions. 2. In reviewing the Record, the ICA ruled that the family court did not err in making its HRS § 587A-33 (a) (2) and (3) determinations, and in ruling that Father was given a reasonable amount of time to address his problems. [The ICA did not address the facts of the case].
In re K Children	No. CAAP-12-000917 (App. Sept. 30, 2013) (mem.); *Cert. Rejected* (Feb 29, 2014)	Family Court granted MTPR. Mother appealed and ICA affirmed: 1. The family court did not err in making its HRS § 587A-33 (a) (1) and (2) parental unfitness determinations. Mother failed to address her mental health problems that subjected the Children to psychological and emotional harm. As a result, Mother could not provide a safe family home at the time of trial and in the reasonable future. 2. The family court did abuse its wide discretion in making its HRS § 587A-33 (a) (3) permanent plan determination. 3. Rejected Mother's argument that she was denied Due Process because she was required to take psychotropic medications against her will or lose her children. The family court did not require Mother to take psychotropic medications, and Mother chose to treat her mental illness without psychotropic medications and was unsuccessful. 4. The family court did not err by not appointing a GAL for Mother. Mother understood the nature of the proceedings, and therefore was not incapacitated. "Although Mother's mental illness prevented her from providing the Children with a safe family home, that did not necessarily mean that Mother was an incapacitated person whose needs could not be met by less restrictive means than the appointment of a guardian ad litem."

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In re K Children	No. CAAP-11-0000805 (App. Nov. 29, 2013) (SDO)	Note: This is the first appellate decision addressing the evidentiary shield provision of the CPA in HRS § 587A-20 (formerly HRS § 587-42 (a)). Family Court adjudicated the petition, and awarded foster custody to DHS. The harm was sexual harm by Father. Father was facing related criminal charges for the sexual harm. ICA affirmed: 1. The family court did not err in not compelling one of the Children to testify because it would not be in her best interests: - The Child was afraid of Father and suffered from post-traumatic stress disorder (from the sexual harm). The GAL did not believe it would be in the Child's best interest to testify. The Child's therapist opined that testifying would be very stressful for the Child. - Father did not object to the admission of the CJC video/DVD recordings of the forensic interviews of the Children. - The family court received the recording of the Child's interview with the detective, where she recanted, into evidence. (She later recanted her recantation). Father was allowed to examine the detective. 2. The family court did not err in considering Father's failure to participate in the court-ordered psycho-sexual evaluation. Father's refusal was based on self-incrimination concerns due to his pending criminal case. There was no self-incrimination problem because the family court invoked HRS § 587A-20 and the psychosexual evaluation cannot be used in the criminal case. 3. The family court did not err in ordering Father to participate in the psychosexual evaluation on the grounds that he may to submit to a polygraph examination. There was no evidence in the Record that the psychosexual evaluation required a polygraph examination. 4. The ICA declined to consider whether the appeal was moot due to Father's conviction and sentence to incarceration in the related criminal case (after the appeal was filed); due to his incarceration, Father cannot provide a safe home. Father's appeal in the criminal case was still pending.
In re MA, H	No. CAAP-12-0000523 (App. Dec. 17, 2013) (SDO)	Family Court granted MTPR. Mother appealed and ICA affirmed: 1. Relying on *In re Doe*, 100 Haw. 335, 344, 60 P.3d 285, 294 (2002), the ICA rejected Mother's argument that she was denied the reasonable opportunity to reunify because the court- ordered service plans failed to include a referral for dual diagnosis treatment: - Mother failed to make timely objections to the court-ordered service plans when they were ordered, and the reasonable efforts findings when they were entered. - Mother was non-compliant with services, engaged in negative behaviors affecting her ability to provide a safe home, and did not cooperate with DHS, thereby showing the unwillingness to participate in services. 2. The family court did not err in entering its HRS § 587A-33 (a) (2) finding of fact and conclusion of law based on Mother's conduct (notwithstanding her participation in dual diagnosis treatment at the time of trial), the DHS social worker's testimony that it would it would

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		take Mother another year or longer to complete services, and the Children being in foster care for more than 2 and 1/2 years.
In re DS	No. CAAP-13-0000635 & CAAP No. 0001138 (App. March 19, 2014) (SD0)	Family Court granted MTPR. Mother and Father appealed, and ICA affirmed: 1. The family court's finding of fact that stated that the service plans offered by DHS and ordered by the court were not fair, appropriate and comprehensive was clearly erroneous. They did not include all of the DHS required services for the Parents, such as "medical therapeutic training" with the pediatric home care nurse, and did not include all of the requirements, expectations (what Parents needed to demonstrate) and obligations/responsibilities. DHS never amended the service plans to include these requirements, even though DHS told Parents that they were required to participate in these services and/or to make those changes. 2. However, the error was harmless: a. Parents failed to make timely objections to the court-ordered service plans to preserve the issue for trial and appeal, as required by *In re Doe*, 100 Haw. 335, 344, 60 P.3d 285, 294 (2002). b. The deficiency of the service plans was harmless error because there was sufficient evidence to support TPR. The Child has numerous special needs, including medical needs, that require 24-hour care, and Parents were not able to demonstrate the ability to care for the Child's needs. The Parents have a CPS history, including prior termination of parental rights to their older children, history of substance abuse and other problems. As a result, the Parents did not suffer substantial prejudice.
In re SP	No. CAAP-13-0003106 (App. Apr. 25, 2014) (SDO)	Family Court granted MTPR. Mother appealed and ICA affirmed: 1. No error in ordering the proposed permanent plan that did not specify the Child's prospective adoptive placement (proposed permanent placement). At the initial permanent plan hearing (trial), the family court cannot approve a permanent plan that specifies the Child's prospective adoptive parent because it is contrary to HRS § 587A-33 (b) (3). The family court can only approve a permanent plan specifying the prospective adoptive parents after parental rights have been terminated. 2. The issue of the Child's prospective adoptive parent can only be addressed at the first permanency hearing after parental rights have been terminated. Note: In this case the family court rejected DHS' first permanent plan that specified the Child's relatives in another state. The second permanent plan did not specify anyone, but the DHS social worker testified that DHS planned to place the Child with relatives who resided in another state pursuant to DHS' kinship policy. [This policy was rejected in *In re AS*].

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In re CD	No. CAAP-13-0003337 (App. May 9, 2014) (SDO); *pet. for cert. filed* (July 17, 2014)	Family Court granted MTPR. Father appealed and ICA affirmed: 1. Rejected Father's argument that the family court terminated his parental rights because he sexually abused another child. Although he denied the sexual harm, he agreed to participate in a psychosexual evaluation and failed to do so. Per HRS § 587A-7 (a) (5), the family court was required to consider the results of the psychological, psychiatric or developmental evaluations of alleged perpetrators. Per HRS § 587A-7 (a) (12), the family court was required to consider whether the child's family demonstrated an understanding of and involvement in services to provide a safe home. 2. There was sufficient evidence to support the family court's findings that Father suffered from mental illnesses that affected his ability to provide a safe home. 3. There was sufficient evidence to support the family court's findings that: a. Mother suffered from mental illnesses and Father refused to leave her. b. Father had unaddressed domestic violence issues. c. Father had prior involvement with child protective services in Nevada. Per HRS § 587A-7 (a) (6), the family court must consider whether there is a history of abusive or assaultive conduct in a child's family.