

CPA SDO'S & MEMO OPINIONS

August 2014 to August 2015

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only.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 KG	No. CAAP-13-0004805 (App. Aug. 29, 2014) (SDO)	<p>Family court granted MTPR. Father appealed and ICA affirmed:</p> <ol style="list-style-type: none"> 1. The situation is similar to <i>In re T.H. and K.H.</i>, 112 Hawai'i 331, 145 P.3d 874 (App. 2006). Father was incarcerated and counsel made arrangements for Father to participate in the TPR trial by telephone. At trial, the family court was unsuccessful in getting Father by telephone, and entered a default against Father. The family court's error in defaulting Father was harmless error because the record shows that he could not provide a safe home at trial and in the reasonable future. This is the same rationale as in <i>T.H.</i> 2. Father failed to participate in any services. His earliest possible release date from incarceration exceeded the two-year period from the date of the child's date of entry into foster care. 3. The family court's decision to terminate Father's parental rights was not based solely on his incarceration.
In re U Children	No. CAAP-13-0006028 (App. Sept. 19, 2014) (SDO)	<p>Note: Same case as <i>In re AU, MI</i>, No. 30676 (App. Mar. 30, 2011) (SDO) (affirming adjudication and foster custody).</p> <p>Family court granted MTPR. Mother and Father appealed and ICA affirmed:</p> <ol style="list-style-type: none"> 1. Father could not independently care for the Children. He could not compensate for Mother's deficiencies, primarily her mental health problems, and could not control Mother. 2. Father could not rebut the presumption that the permanent plan's goal of adoption was in the Children's best interests. The Children's therapist testified that the Children needed a stable permanent home. As a result, the permanent plan was in the Children's best interests. 3. Mother had long-standing mental health problems for which she refused to seek treatment, and had subjected the Children to neglect: medical and dental neglect, and improper supervision. 4. Rejected Mother's reasonable efforts arguments: <ul style="list-style-type: none"> - The family court only requested that DHS look into Parent-Child Interactive Therapy (PCIT). According to the DHS social worker, PCIT was only appropriate after Mother completed hands-on parenting which she did not complete.

Case Name	Citation	Digest
		<ul style="list-style-type: none"> - Rejected Mother's arguments that her having separate visits (from Father) with the Children would give her the opportunity to demonstrate her ability to care for the Children. Her behavior in combined visits with Father showed that she cannot care for the Children because she acted inappropriately, and negatively impacted Father's progress. - Mother did not make sufficient progress to justify in-home visits.
In re AA	No. CAAP-14-000596 (App. Mar. 6, 2015); <i>Cert. Rejected</i> June 29, 2015	<p>Family court granted MTPR. Mother appealed and ICA affirmed:</p> <ol style="list-style-type: none"> 1. Rejected Mother's argument that she was denied Due Process because she was not represented by counsel from the first hearing on June 30, 2011 to October 4, 2011. The family court advised Mother about her right to be represented by counsel, and that if she were indigent, counsel would be appointed for her. She needed to submit an application for court-appointed counsel. She was advised at each hearing where she was not represented by counsel. And she waived her right to be represented by counsel. Mother was appointed counsel on October 4, 2011, after she submitted her application on October 3, 2011. Mother was only entitled to court-appointed counsel after the family court determined her to be indigent. 2. Mother was unfit. The Child entered foster care on July 7, 2011. Parental rights were terminated on February 6, 2014. During the case, Mother was arrested and convicted for a drug charge, and sentenced to two years incarceration beginning on April 17, 2012. At trial, the DHS social worker testified that it would take at least an additional six months after Mother's release from incarceration for Mother to demonstrate the ability to provide a safe home. The case would have been opened for 3 and 1/2 to four years. 3. Rejected Mother's argument that DHS did not make a good faith effort to consider guardianship. The termination of parental rights trial was continued to consider guardianship. Note: Parental rights are only terminated when the goal of the permanent plan is either adoption or permanent custody. HRS § 587A-33 (b). If the permanent plan goal is guardianship, then the custodial status remains foster custody.
In re TS	No. CAAP-14-0001223 (App. May 26, 2015) (SDO)	<p>Family court granted MTPR. Father appealed and ICA affirmed:</p> <ol style="list-style-type: none"> 1. DHS was awarded foster custody in January 2012, and DHS filed its MTPR in January 2014: 2 years. 2. At the MTPR trial, Father admitted to using methamphetamines and to relapsing more than two times since January 2012. 3. Father was removed from the Hina Mauka drug-testing program 11 times, and had 26 "no shows," which were presumptively positive. 4. Father failed to complete services and told the DHS social worker that he would not participate in further services. 5. Father was given the reasonable opportunity to reunify. In August 2014, the family court gave Father an additional 2 months to demonstrate that he wanted to reunify by showing progress in services. He failed to participate in services and testified that he would not participate in services.

Case Name	Citation	Digest
		<p>6. Father was not denied Due Process when he was represented by "private counsel," who later withdrew from the case in December 2012. The family court informed Father of his right to be represented by counsel. In December 2012, Father elected to proceed without counsel. Counsel was appointed when Father requested counsel in February 2014.</p> <p>7. <i>In re T.M.</i>, 131 Hawai'i 419, 146 P.3d 338 (2014) only applies to cases after the date of the decision on January 6, 2014.</p>