CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS & MEMORANDUM OPINIONS
August 2015 to August 2016

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has res judicata or collateral estoppel effect. 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 DW	No. CAAP-15-00057 (App. Nov. 13, 2015) (SDO)	Family Court granted MTPR. Father appealed and ICA affirmed: 1. Rejected Father's argument that he should be given more time because he was served 6 months after the child's date of entry into foster care (when he was incarcerated), and did not make his first court appearance two months later. DHS tried to serve him 2 months after the DOEFC but Father did not return the ATG investigator's call to make arrangements for service. 2. Father started drug treatment after being released from incarceration, but relapsed. Father did not start another residential drug treatment program until 3 months later. At trial, Father still had not completed all phases of treatment, and needed 3-4 months to complete treatment. 3. At the time of trial, the child was in foster custody for 1 year and 11 months from the date of entry into foster care. 4. DHS social worker testified that Father would need to complete additional services before reunification could be considered.
In re ST	No. CAAP-15-0000074 (App. Nov. 27, 2015) (SDO)	Family Court granted MTPR. Mother and Father appealed and ICA affirmed: 1. Mother: - Mother was inconsistent in participating in services. Her improvements were not enough to support reunification. - DHS' decision to file its MTPR was based on Mother's failure to progress sufficiently, and it was filed long before the GAL's motion to allow the Child to move out of state with his resource caregivers. - Mother was given more than two years to reunify, and, therefore, was given a reasonable opportunity to reunify.

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In re ST (cont.)		2. Father: - Father did not challenge any of the findings of fact supporting the family court's ultimate HRS § 587A-33 (a) findings of fact and conclusions of law, and they are binding on the appellate court. - Father did not make sufficient progress in anger management and sex offender services. - Father was given more than two years to reunify, and, therefore, was given a reasonable opportunity to reunify. - Father did not cite to any authority to support his argument that the family court was required to hold a trial on the GAL's motion to allow the Child to relocate, and the ICA found none. He did not show how he was prejudiced other than arguing that his Constitutional rights were violated. He did not demonstrate any prejudice for DHS' alleged violation of the ICPC.
In re K.P.	No. CAAP-15-0000059 (App. Jan. 19, 2016) (SDO)	Family Court adjudicated the petition and awarded FS to DHS. Mother and Father appealed. ICA affirmed. 1. The family court did not err in finding that child was subject to threatened harm of extreme emotional distress: - Witnessing one or more argument or altercations between Father and Mother's boyfriend. - Drug use by Mother and her boyfriend. Both tested positive for marijuana, and boyfriend tested positive for ICE. 2. Mother and Father essentially asked the ICA to re-evaluate and weight and credibility of the evidence. It is not the role of the appellate court to re-assess the weight and credibility of the evidence. 3. Family court disregarded information regarding the sibling in a supplemental safe family home report. However, the family court was required to consider the Parties' participation in services (as stated in the supplemental report) because it is one of the safe family home factors. Judge Leonard's concurring opinion: 1. Evidence of Mother's marijuana use alone (without evidence of impairment of her ability to care for the child, or using in front of the child) will not support a finding of harm or threatened harm. DHS has to "connect the dots" showing the nexus between the drug use and the harm or threatened harm such as neglect. 2. Evidence of the drug urinalysis without confirmation testing raises questions about the reliability of the urinalysis results.
In re J Children	No. CAAP-15-0000100 (App. Feb. 25, 2016) (SDO)	Family Court granted DHS' MTRP. Mother appealed. ICA affirmed: 1. As a procedural matter, Mother did not allege any of the findings of fact and conclusions of law to be in error. However, she made arguments contesting some of them. The ICA ruled that she waived all of the findings of fact and conclusions of law that were not argued pursuant to HRAP Rule 28 (b) (7). 2. No error when the children were in foster custody for twenty-two months at the time of the TPR trial. Mother incorrectly cited to HRS § 587A-27 (a) (7), Service Plan. HRS § 587A-27 (a) (7) does not state when the TPR hearing may occur. The applicable statute is HRS § 587A-33 (a) (2) that states that the family court must find that it is not reasonably foreseeable that the parents will become willing and able to provide a safe family home in a reasonable period of time which shall not exceed two years from the date of entry into foster care.

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In re J Children (cont.)		3. Rejected Mother's argument that DHS did not give Mother a reasonable opportunity because domestic violence services were not in the service plan. Mother made limited progress in the services in the court-ordered service plans. 4. The family court did not err in qualifying the DHS social worker (who had the title of Human Services Professional) as an expert in social work and child protective services pursuant to HRS § 587A-19. Mother argued HRS § 587A-19 does not apply because the social worker did not have the title of social worker. The evidence showed that she worked as an assessment social worker since 2005, has had extensive training in the fields and has qualified as an expert in at least five previous trials
In re ES	No. CAAP-15-0000474 (App. March 10, 2016) (SDO)	Family Court granted DHS' MTRP. Mother appealed. ICA affirmed: 1. Substantial evidence in the record to support the family court's ultimate HRS § 587A-33 (a) (1) & (2) findings and conclusions. - Mother did not understand the importance of services, and did not acknowledge the (threatened) harm to the child: domestic violence by Father. - Mother did not participate in services. - The family court found Mother's testimony not to be credible, and credibility is not the province of the appellate court. 2. Rejected Mother's argument that DHS did not maintain regular contact. DHS had difficulty locating her because she was constantly moving and changing her phone number. Mother was always with Father, who was violent and the DHS social workers were afraid of him. 3. Mother failed to show that she was prejudiced by DHS' failure to fully assess Mother to obtain information from one of Mother's service providers in violation of HRS § 587-40 (b) (1) (which the ICA noted was repealed in 2010) (now codified in HRS § 587A-18 (a)). No prejudice because Mother did not participate in other services.
In re KB and SY	No. CAAP-15-0000562 (App. April 22, 2016) (SDO)	Family court adjudicated the petition, invoked it subject matter jurisdiction, and awarded foster custody to DHS. Family court also found Mother to be the perpetrator. Mother appealed. ICA affirmed. Note: This is an ICWA and serious harm case. The Children are maternal half-siblings. KD, who is SY's paternal half-sibling and KB's stepsister, suffered life-threatening traumatic brain injuries while under the exclusive care of Mother; SY and KD's father was at work. On appeal, Mother did not challenge any of the ICWA findings, and only challenged the CPA findings. The ICA *sua sponte* addressed the ICWA findings. 1. The family court found DHS' expert witnesses to be credible. The appellate court will not address issues regarding the credibility and the weight of the evidence: - Medical testimony that KD suffered life-threatening subdural hematomas. The injuries were caused by tremendous force such as a car crash or falling off a skateboard going downhill without a helmet. - Medical testimony that that Mother's explanation that KD fell off a couch was not consistent with the injuries. - Medical testimony that the injuries were inflicted and non-accidental due to child abuse. - Testimony by a clinical psychologist that there was no protective person in the home.

CASE	CITATION	DIGEST
In re KB and SY (cont.)		- Testimony of the DHS social worker that Mother and her spouse were not willing and able to provide a safe home. 2. Substantial evidence that Mother was the perpetrator of the harm to KD. Mother was the only adult in the family home when KD was injured. 3. Sufficient evidence to support the family court's 25 U.S.C. § 1912 (e) foster custody (and adjudication) ruling. 4. Sufficient evidence to support the family court's 25 U.S.C. § 1912 (d) active efforts findings. Services were offered to Mother but she did not complete them. 5. Sufficient evidence to support the family court's HRS § 587A-28 (e) adjudication and foster custody ruling. 6. Mother failed to object to (or move to strike) the DHS' social worker's testimony about KB and JD's (KD's full sibling) statements at the Children's Justice Center based on the Best Evidence Rule. Rejected Mother's argument that the family court should have ordered DHS to "produce" the recording. At the conclusion of the social worker's testimony, Mother's counsel asked the court whether it wanted to see the recording because it was the "best evidence" of the statements. The family court stated that it was DHS' decision whether to proffer the recording into evidence. This not an objection.
In re JM	No. CAAP-15-0000675 (App. May 20, 2016) (SDO)	Family Court granted DHS' MTPR. Mother and Father appealed. ICA affirmed: 1. Evidence of Father's attempts and efforts to contact the DHS social worker in his attempts to find and participate services in Arizona were insufficient to overcome the overwhelming evidence and the unchallenged findings of facts supporting the family court's parental unfitness (HRS § 587A-33 (a) (1) & (2)) findings of fact. 2. The family court did not abuse its discretion in not appointing a GAL for Mother who was in a manic state related to her bipolar disorder during trial when -No one made a request to appoint a GAL for Mother, and for Mother to undergo an evaluation to determine the need for a GAL. -Despite Mother being in a manic state during trial, there was no indication that she fit the criteria of an "incapacitated person," and to appoint a GAL pursuant to HRS § 587A-16 (*See* HRS § 587A-4 "Incapacitated person"). -None of the psychological evaluations and the substance abuse assessment of Mother indicated that she would have any difficulty understanding or participating in the TPR hearing (trial).
In re K Children	No. CAAP-15-0000881 (App. June 2, 2016) (SDO)	Family court granted DHS' MTPR. Father appealed, and ICA affirmed. Facts: Father's parental rights to four of his eight children were terminated in a previous CPA case. His safety issues of unresolved substance abuse, domestic violence and inappropriate parenting continued to be his safety issues. Father was incarcerated when DHS intervened in the present case, but was released for an approximately five-month period. He did not participate in services during this five month period. Father was never the primary caretaker of the children and only had 3 contacts with them during this period. 1. The record shows that the family court did not solely rely on Father's incarceration and failure to participate in services in reaching its decision. The family court considered other factors in making its

CASE	CITATION	DIGEST
In re K Children (cont.)		ultimate HRS § 587A-33 (a) (1) and (2) parental unfitness findings. [Note: the issue/argument is by failing to participate in services, the parent has not address his/her safety issues that prevent him/her from providing a safe family home]. 2. The social worker's credible testimony about Father's long history of substance abuse was sufficient to support the challenged finding of fact about Father's substance abuse history. Father's contrary testimony was not credible. 3. There was sufficient evidence to support remainder of the challenged findings of fact. Father failed to make valid arguments why the challenged conclusions of law [ultimate HRS § 587A-33 (a) conclusions of law which are mixed findings of fact and conclusions of law reviewed under the clearly erroneous standard] were erroneous.
In re ES	No. CAAP-15-0000436 (App. Jun 29, 2016) (SDO)	Family Court granted MTPR. Father appealed and ICA affirmed. Mother filed an appeal under a separate appellate case number, and the appeals were not consolidated. This case is unique. The family court conducted a contested hearing on DHS' MTPR, and Father's HFCR Rule 60 (b) motion to set aside the order adjudicating the petition and awarding foster custody to DHS; father filed a motion to reconsider that order and did not appeal that order. It appeared that Father was alleging that HPD improperly took the child into protective custody. 1. The family court did not abuse its discretion in denying the father's HFCR Rule 60 (b) motion - The family court considered evidence and testimony regarding Father's motion; - Father failed to show that there were "cogent reasons" or "exceptional circumstances" to set aside the prior orders, which the family court ruled to be the "law of the case." - Father's motion was untimely: not brought within one year of the order; Father's motion was based on allegations of fraud under HFCR Rule 60 (b) (3). - The motion was rendered moot by the family court granting DHS' MTPR. 2. Rejected Father's arguments that his 14 Amendment rights were violated because there was no probable cause to take the child into protective custody: - HPD had an adequate basis to take protective custody under HRS § 587A-8 (a) - DHS informed HPD that Mother recently tested positive for methamphetamines - DHS informed HPD of previous incidents of domestic violence by father on mother - The DHS social worker observed father's violent behavior. 3. Any error by the family court not compelling a hospital nurse to testify was harmless where the nurse had a restraining order against father, and father failed to depose the nurse in lieu of her testifying at the trial. The family court gave father leave to depose the nurse. 4. Father did not present any discernable argument why the challenged findings of fact and the (mixed) conclusions of law were clearly erroneous.