CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS & MEMORANDUM OPINIONS
August 2016 to August 2017

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has res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 TA, KA, AS, and In re CC	No. CAAP-16-0000016, 2016 WL 4491823, (Haw. App. Aug. 26, 2016) (SDO)	Family court adjudicated the petition and awarded family supervision to DHS. Mother appealed. ICA affirmed. The 18-month old AS suffered a spiral fracture to his left leg by an unidentified perpetrator that was discovered on April 22, 2013. Father cared for AS from April 11, 2013 to April 21, 2013. The child was returned to Mother on April 21, 2013. On appeal, Mother argued that the family court erred by finding that she could not be ruled out as a perpetrator. 1. Mother could not be ruled out as the perpetrator: - According to the pediatric radiologist, based on the x-ray taken on April 22, 2013, AS suffered the injury zero to eleven days prior, but could have been up to fourteen days because there was no signs of healing. It would be very difficult for a child who could not walk to cause this type of injury. - According to the pediatric child abuse expert, due to the lack of an explanation and the lack of a medical reason for the injury, the injury was the result of child abuse. AS could not have caused the injury because a significant amount of force was required to cause the injury. - The child abuse expert testified that she could not determine whether it was more probable than not that the injury occurred before or after AS was returned to Mother. 2. Based on the testimony of the DHS social worker, although Mother completed a substantial amount of services, the youngest child, who was an infant, was particularly vulnerable. Therefore, family supervision of the children was appropriate.
In re TH	No. CAAP-15-000954 & CAAP-15-000955, 2016 WL 4718330, (Haw. App. Sept. 9, 2016) (SDO)	Family court adjudicated the petition and awarded foster custody to DHS. Parents appealed. ICA affirmed: 1. Mother and Father waived challenges to some of the findings of fact and conclusions of law they alleged to be in error because they each failed to present discernible arguments about these points of error in violation of HRAP Rule 28 (b) (7). They are binding on appeal. 2. The family court's finding of fact that prior to DHS' intervention, Parents did not make a good faith effort to reunify with the Child while the Child was in a therapeutic placement, resulting in the Child suffering significant emotional harm because she felt abandoned, rejected and unloved by her family and cut-off from her sisters. This finding was supported by credible expert testimony.

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		3. Mother did not cite to any legal authority and the court found none that she was entitled to a guarantee that the Child's negative behaviors would not re-occur. 4. Rejected Mother's argument that the issue of Mother's willingness to accept the Child back into the home was immaterial due to her being in a therapeutic placement because Mother had previously rejected reunification services. 5. Credible expert testimony and unchallenged findings of fact supported the family court's finding that Parents subjected the Child to psychological harm by their refusal to reunify with the Child and by prohibiting the Child from having contact with her sisters.
In re RC	No. CAAP-16-0000061, 2016 WL 6652767, (Haw. App. Nov. 10, 2016) (SDO)	Family court granted DHS' MTPR. Father appealed and ICA affirmed. The family court did not err in terminating the incarcerated father's parental rights: 1. Although the MTPR hearing (trial) was held 18 months after the child's date of entry into foster care, the earliest that father could start reunification services was three years after the child's date of entry into foster care. Father testified that the he was in the second year of a three year mandatory minimum sentence of incarceration and the earliest he would be released would be in one year, but would have to participate in a 3-month work furlough program after his release. Therefore, he could reunify in a reasonable period of time, not to exceed two years from the child's date of entry into foster care. 2. Father was given a reasonable opportunity to reunify. Before he was incarcerated, he failed to complete services. His probation was revoked and was re-sentenced to a 10-year indeterminate term of incarceration, with a 3-year mandatory minimum. DHS is not required to provide services that are not available in the prison system.
In re R.K.; K.K.	No. CAAP-14-0001091, 2016 WL 6779484 (Haw. App. Nov. 16, 2016) (SDO)	Facts: 3-year old R.K. suffered life-threatening and life-altering brain injury, caused by blunt-force trauma. DHS' medical expert opined that the injury was non-accidental, and occurred within a couple of hours before R.K. started having seizures and lost consciousness. The only adults in the home were mother and her boyfriend. Neither had an explanation for the injury, except that the child hit his head on the stair rail, which DHS' medical expert ruled-out as a possible cause. Mother and boyfriend denied causing the injury, and both did not believe that someone else caused the injury. Mother did not present (expert medical) evidence that was contrary to the expert medical testimony of Dr. Gina French. The family court did not abuse its discretion in adjudicating the petition and awarding foster custody of both children to DHS: 1. The undisputed and credible expert medical testimony of Dr. Gina French was that R.K.'s injuries were non-accidental and the result of blunt-force trauma. This testimony is reflected in the family court's unchallenged findings of fact. Although Mother challenged some of the key findings of fact based on Dr. French's testimony (the injury was not caused by his hitting his head on the stair well, his vomiting was not significant to the injury, and the injury occurred within hours before his having his seizures and lapsing into a coma), Mother did not challenge Dr. French's qualifications, and did not proffer any contrary medical testimony. 2. The family court did not err in finding Dr. French's testimony to be trustworthy, credible and made within a reasonable degree of certainty.

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		3. Based on the entirety of the record, the family court did not err in finding that given the proximity of Mother and her boyfriend to R.K. when he was injured, both are identified as possible perpetrators, both did not provide an adequate explanation, and there was no identified perpetrator. 4. R.K. was injured while in Mother and her boyfriend's care, and neither could be ruled-out as a perpetrator. The KCPC MDT assessed both to be "inadequate" caretakers, and recommended that R.K. and K.K. be removed from the home. 5. Due to the severity of R.K.'s injuries, his young age, and his complete dependence on adults, the 20-month old K.K. could not be returned to Mother and her boyfriend. Judge Reifurt's Dissent. DHS failed to meet its burden: 1. DHS failed to show something in Mother and her boyfriend's character and/or history that raise concerns that would create an inference that Mother and/or her boyfriend caused the harm. 2. Dr. French did not elaborate why R.K.'s injuries was non-accidental.
In re DT	No. CAAP-16-0000415, 2016 WL 7241459 (Haw. App. Dec. 14, 2016) (SDO)	Family court granted DHS' MTPR. Father appealed and ICA affirmed: 1. Despite completing some services, Father was inconsistent in participating in other services, and never demonstrated the ability to apply what he learned services. His major problem was his abuse of alcoholic beverages which led to his other problems such as violent behavior. At the time of trial, he had relapsed twice in the two months before the start of trial, did not demonstrate the ability to bond and to re-direct the child, and failed to gain insight into his problems, especially his problems with alcoholic beverages. 2. The ICA declined to address the family court's findings that parts of the Father's therapist's testimony regarding Father's ability to provide a safe home was not credible. Issues regarding the credibility of witnesses (and the weight of the evidence) is the province of the trial court, not the appellate court. 3. DHS made reasonable efforts to reunify, and Father was given a reasonable opportunity to reunify. a. DHS' failure to increase Father's visitation, as recommended by his therapist, was harmless error because there was no prejudice to Father. Father failed to adequately address his alcohol abuse and related problems. b. Although the psychological evaluation ("PE") did not recommend that Father participate in domestic violence and anger management services, the PE identified them as safety concerns. Father participated in services to address these problems, but could not demonstrate an ability to apply what he learned. The primary basis of the family court's terminating Father's parental rights was his alcohol-use disorder which created the safety issues concerning his parenting such as anger management and domestic violence. 4. Father did not show that he was prejudiced by DHS' failure to provide an MDT conference report, as required by HRS § 587A-18 (c), and failure to provide part of Father's medical records to the MDT for an MDT conference. 5. There was substantial evidence in the record to support the family court's finding that Father's relapses during the two months before the start of trial posed a risk of harm to the Child. 6. The appellate court declined to review the family court's finding that Father's therapists testimony/opinions about the (minimal) risk of harm caused by Father's relapses was not credible.

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		7. Father failed to show how he was prejudiced by the family court's denial of his oral motion to continue the trial because he was arrested on the first day of trial. He did not show how the arrest prevented him from assisting his counsel, substantially impaired his ability to "defend" himself or rendered him unfit to proceed with trial. 8. Father did not show that the family court was wrong, or demonstrate how he was prejudiced by the family court's sustaining DHS' objection to (Father's) questions to his therapist as to whether Father's mental health problems presented safety concerns. There was no foundation about the therapist's expertise in child protection or child custody. If there was error, it was harmless because there was substantial evidence showing that Father's mental health problems created his other problems.
In re K Children	No. CAAP-16-0000199, 2016 WL 7439326 (Haw. App. Dec. 23, 2016) (memo.)	Family Court granted DHS' Motion to Establish a Permanent Plan (with the goal of guardianship). Mother and Father appealed. ICA affirmed: Note: DHS' motion initially asked to order the permanent plan, as to all four children. The family court granted DHS' request to continue the motion as to the oldest children, and to proceed with the other three. 1. Mother and Father have long history of domestic violence and a dysfunctional relationship that affected their ability to provide a safe family home. This behavior continued during the pendency of the case. 2. Despite drug treatment, Father could not maintain a clean and sober lifestyle. Father threatened the DHS social worker. He refused to visit with the children because he refused to go where they were to accommodate their schedules. 3. Mother failed to demonstrate that she could protect the children. She continued to remain in contact with Father. She was not consistent in visits, and did not appear to want to be a full-time parent. 4. At the start of trial, the children were in foster care for two years and nine months. Although they love their parents and want to maintain contact, the children do not want to live with them and want to continue to live with their maternal grandmother. 5. There was substantial evidence to support the HRS § 587A-33 (a) (1) and (2) parental unfitness findings of fact and conclusions of law as to Father. 6. There was substantial evidence in the record to support the HRS § 587A-33 (a) (3) permanent plan findings of fact and conclusions of law as to Father. Although Father questioned the maternal grandmother's ability to care for the children, in light of the maternal grandfather's death, there was sufficient evidence to support the family court's determination that the permanent plan was in the children's best interests. 7. Rejected Mother's argument that, as a matter of law, the family court erred in making the HRS § 587A-33 (a) (1) and (2) parental unfitness findings of fact and conclusions of law because DHS' motion did not ask to terminate her parental rights. Parental unfitness is relevant in determining with the permanent plan, with the goal of guardianship, is in the children's best interest. 8. Even though the oldest child attempted suicide with in the maternal grandmother's care, there was sufficient evidence to support the family court's HRS § 587A-33 (a) (3) permanent plan determination. 9. Although, DHS did not update the proposed permanent plan to reflect "recent" facts, the DHS social worker testified that the goal of guardianship did not change. The family court considered the "recent"

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		facts in making its HRS § 587A-33 (a) (3) permanent plan determination. DHS' failure to update the proposed permanent plan did not provide a basis to overturn the family court's determination. 10. The family court did not abuse its discretion in qualifying the DHS social worker as an expert witness in the fields of social work and child protective and welfare services. Although she did not have a social work degree, the DHS social worker was hired as a social worker, and had experience in her fields of expertise.
In the Interest of IL	No. CAAP-16-0000446, 2017 WL 528240 (Haw. App. Feb. 8, 2017) (SDO)	Family court granted DHS' MTPR. Mother and Father appealed. ICA affirmed. 1. Substantial evidence to support the family court's finding that father was not willing and able to provide a safe family home, at the time of trial and in the reasonable future: -Father did not demonstrate that he resolved his problems: history of anger and violence, history of substance abuse (alcoholic beverages and drugs, and parenting). -Father did not provide proof that he completed a substance abuse treatment program. -Father did not participate in services in Hawai'i and when he moved to Texas. 2. Rejected Father's argument that DHS failed to provide visits. DHS arranged for visits, but Father did not participate in visits. 3. Substantial evidence to support the family court's finding that Mother was not willing and able to provide a safe home, at the time of trial and in the reasonable future: -After DHS returned the child to her care, Mother failed to obtain a restraining order against Father, resulting in DHS assuming foster custody. DHS was justified in assuming foster custody because of Father's violent conduct towards Mother. The ICA focused on the magnitude of the physical abuse Father perpetrated on Mother. -Mother failed to complete domestic violence services, and moved to Texas to be with father.
In the Interest of P Children	No. CAAP-16-0000696, 2017 WL 2829537 (Haw. App. Jun. 29, 2017) (SDO)	Family court granted DHS' MTPR. Mother appealed. ICA affirmed. 1. The family court did not clearly err in making its HRS § 587A-33 (a) (2) determination. Substantial evidence in the record to support the determination. Mother was unable to address her substance abuse problems. During the trial, she failed to participate in a court-ordered urinalysis and failed to participate in a court-ordered hair follicle test, despite being warned that her failure would result in the tests being deem to be presumptively positive. 2. The family court did not err in determining that DHS made reasonable efforts to reunify. The family court granted DHS' request to continue the MTPR trial to give Mother a further opportunity reunify with one of the children. However, Mother failed to participate in the court-ordered drug tests. DHS' request to continue and the family court's granting the request were based on the presumption that Mother would participate in the drug tests. 3. Rejected Mother's argument that if she submitted to the court ordered drug tests, it would expose her to criminal liability if she tested positive. Mother raised the issue for the first time on appeal, and waived this argument; Mother should have raised the issue when the drug tests were ordered. Mother could have asked the family court to invoke the HRS § 587A-20 evidentiary shield when the drug tests were ordered.
In the Interest of LR	No. CAAP-16-0000512, 2017 WL 2829536	Family court dismissed DHS' Petition for Temporary Foster Custody for insufficiency of the evidence. Guardian Ad Litem appealed. ICA affirmed.

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	(Haw. App. Jun.29, 2017) (SDO)	1. Substantial evidence to support the family court's challenged preliminary findings of fact, and its ultimate determination that DHS failed to prove, by the preponderance of the evidence, that the Father subjected the child to harm and threatened harm: sexual harm by exposing the child and the child's half-sibling to S&M and BDSM (sadomasochism, and bondage, discipline and sadomasochism), Father's drug use and domestic violence. The family court relied on the expert testimony of the Father's expert witness who the family court found to be credible. - The appellate court will not address issues regarding the credibility and the weight of the evidence. - Based on the expert testimony of the father's expert, Dr. Marvin Acklin: - The forensic interviews of the child and the half-sibling were flawed, - The half-sibling's disclosure was the product of coaching by the grandmother, and - The half-sibling's disclosure was not reliable.