CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS & MEMORANDUM OPINIONS
August 2017 to October 2018

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CASE	DIGEST
In re CH; MM (1) and In the Interest of MM (2), Nos. CAAP-16-0000661 and CAAP-16-0000662, 2017 WL 4339430 (Haw. App. Sep. 29, 2017) (SDO)	Family court granted DHS' MTPR as to MM1 and MM2. Father and Mother appeared. ICA affirmed. [Father is only the father of MM1 and MM2. Mother is the mother of all three children. Mother stipulated to TPR of CH.] 1. Family court did not clearly err in making its HRS § 587A-33 (a) (1) and (2) determination as to father. -Father gave a number of questionable excuses for not participating in services while mother was incarcerated. He wanted to focus on mother's release, and caring for his daughters. He did not ask the DHS social worker for a copy of the service plan because talking to the social worker made him angry. -Father's failure to protect CH from mother's physical abuse showed that he did not have the ability to protect MM1 and MM2 from harm. -Father was not forthcoming and truthful to DHS during the course of the case and tried to cover-up for mother. He lied about his substance abuse even though he had positive drug tests. -Although father participated in services, he denied that he had problems, and had no insight into his problems. He also denied that mother had a substance abuse problem. -Although father argued that he should have been given more visits with MM1 and MM2, he never requested additional visits. -Rejected father's argument that DHS contributed to his failure to reunify with MM1 and MM2 because DHS failed to include conjunct therapy between mother and CH. The DHS social worker admitted to this omission. This error is harmless because father failed to show how this omission contributed to his failure to reunify with his children. 2. Rejected father's argument that the permanent plan was not in the Children's best interests because they were placed with maternal grandmother. In her psychological evaluation, mother alleged that maternal grandmother's husband drove while drunk. DHS was aware of the allegation, but DHS believed maternal grandmother was providing appropriate care. 3. Family court did not clearly err in in making its HRS § 587A-33 (a) (1) and (2) determination as to mother. -MM2 tested positive at birth for methamphetamines. The hospital social worker told the investigating DHS social worker that mother and MM2 tested positive and a lab confirmed the results. Mother did not provide any legal authority and the court did not find one that DHS is required to additional evidence regarding the validity of the drug test. This issue goes to the weight of the evidence which is the province of the trial court.

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	-Mother failed to preserve the issue that she was not provided services while incarcerated because they were unavailable, and waived it on appeal. [Note: DHS is not required to provide services that are not available in the prison system. *Doe*, 101 Hawai'i 335]. -Although Mother completed services, DHS still had concerns about mother's parenting ability; she physically abused CH after completing a parenting education program. She failed to demonstrate what she learned and had no insight into her problems. -Rejected mother's "vague" argument that the family court erred by unfairly considering the Children in general, instead of individually. There was a direct link between the harm mother caused to CH and the threatened harm to the MM1 and MM2. Mother failed to acknowledge her problems and how they posed a risk of harm to MM1 and MM2. -DHS' failure to arrange conjunct therapy for mother and CH is harmless. She failed to show how it contributed to her parental rights being terminated. She failed to show progress in addressing her problems. 4. The family court's finding that permanent plan is in the Children's best interests does not contradict the family court's order that visits should continue.
In re LLR, No. CAAP-16-0000562, 2017 WL 5256206 (Haw. App. Nov. 13, 2017) (SDO) [Related to In the Interest of LR, No. CAAP-16-0000512, 2017, WL 2829536 (Haw. App. Jun.29, 2017) (SDO)]	Mother and RN were in a relationship that produced LR. LLR is Mother's older child from another relationship. DHS removed LR and LLR from the family home, and filed petitions for temporary foster custody. The petition alleged sexual harm of LLR by RN, and harm and threatened harm based on domestic violence between RN and mother, drug use by RN, and exposing LLR (and LR) to sadomasochism ("S&M"), or bondage, discipline and sadomasochism ("BDSM"). Mother stipulated to jurisdiction and foster custody. RN contested the petition in both cases. During the pendency of the trial, RN filed a petition to appoint him the guardian of LLR. At trial, the family court found that DHS did not meet its burden because the court found RN's expert testimony that LLR's sexual abuse allegations were not credible. At the same time, the family court denied RN's guardianship petition. In the guardianship case, the family court granted RN's motion for reconsideration and granted RN's guardianship petition. Based on the granting of the guardianship petition, the family court revoked foster custody and terminated jurisdiction. The GAL appealed. [None of the record in the related FC-G case were made part of the record on appeal]. The ICA affirmed. 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 RN subjected the LLR to sexual harm and threatened harm: sexual harm by exposing LLR and LR to S&M and BDSM, RN's drug use and domestic violence. The family court relied on the expert testimony of the RN'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 LLR and LR were flawed - LLR's disclosure was the product of coaching by the grandmother - LLR's disclosure was not reliable. As a result, the assessments of DHS and other service providers regarding the sexual harm were not reliable. 2. Sufficient evidence in the record to show that DHS did not meet its burden by proving by the preponderance of the evidence that LLR was harmed or subject to threatened harm based on allegations of domestic violence, drug use and exposure to S&M and BDSM.

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	3. Sufficient evidence in the record to support the family court's conclusion of law that the appointment of RN as LLR's guardian was in LLR's Judge Ginoza's Concurring and Dissenting Opinion 1. Agrees with the majority's ruling regarding the family court's determination that LLR's allegations of sexual harm by RN was not reliable based on the family court finding RN's expert witness to be credible. 2. Disagrees with the majority's ruling regarding the allegations of domestic violence, drug use and exposure to S&M and BDSM. The family court did not make specific findings regarding these allegations, i.e. that these allegations were not credible. 3. Since the record of the related FC-G case were not made part of the record on appeal, the appellate court could not adequately review the basis for the family court to find that the appoint of RN as LLR's guardian is in LLR's best interests. It was important to know the basis of the family court's ruling in the FC-G case because it was the basis for the family court's decision to revoke foster custody and to terminate jurisdiction.
In re PC and AC, No. CAAP-17-0000172, 2018 WL 1225247 (Haw. App. Mar. 9, 2018) (SDO)	Family court granted DHS' MTPR. Father appealed. ICA affirmed. 1. Rejected father's argument that the family court erred in finding mother's therapist's expert testimony regarding father's efforts and that his cognitive deficits could be overcome not to be credible. Mother's therapist could not fully assess father because he was not hers patient, and that her assessment was based on her therapeutic relationship with the mother. The appellate courts will not address issues regarding the credibility of witnesses. 2. Rejected father's argument that family court erred by finding the testimony of the Catholic Charities outreach worker to be credible. Rejected the argument that the witness failed to take into account father's cognitive weaknesses. Again, the appellate courts will not address issues regarding the credibility of witnesses.
In re L Children, No. CAAP-17-0000463, 2018 WL 1417833 (Haw. App. Mar. 22, 2018) (SDO)	Family court granted DHS' MTPR. Mother and Father appealed. ICA affirmed. 1. Rejected mother's argument that there was insufficient evidence showing that mother's substance abuse problems posed a safety risk to the Children. The family court is required to consider the parent's history of substance abuse in determining whether a parent can provide a safe family using the safe family home factors specifically HRS § 587A-7 (a) (7). As a matter of law, based on the plain meaning of this statute, a parent's substance abuse is a safety concern. [This is contrary to Judge Leonard's concurring opinion in another SDO where, in dicta, she stated that DHS must show a relationship between the parent's substance abuse and the parent's ability to provide a safe family home]. 2. Mother (through her counsel) did not present a discernible argument that DHS did not give her a reasonable opportunity to reunify, and waived this point of error per HRAP Rule 28 (b) (7). 3. The family court did not err in making its HRS § 587A-33 (a) (1) and (2) parental unfitness determination as to mother. 4. Father (through her counsel) did not present discernible arguments on some the findings of fact that he listed to be erroneous, and waived these points of error per HRAP Rule 28 (b) (7). 5. Rejected father's argument that the family court erred in finding that father had an unresolved alcohol abused problem because he admitted driving the Children a short distance while under the influence of alcohol because there was no evidence that he was intoxicated. The incident showed that he still had an alcohol abuse problem. He missed 2 urinalysis which were deemed to be positive. 6. Rejected father's argument that the family court erred because he completed all services except domestic violence, which he believed to be inappropriate because it was not recommended in the psychological

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	evaluation. The record shows that the psychological evaluation stated that father needed to address his domestic violence issue. The family court found that his refusal to participate in domestic violence services compromised his ability to provide a safe home. 7. Rejected father's argument that the family court erred in terminating his parental rights because the family court did not provide him with the transcripts of the court's *in camera* interview with the Children. Father and his counsel were present at the hearing when the court set the *in camera* interview with the Children, and did not object. Father did not show his efforts to obtain the transcripts of the interview. Father failed to preserve this issue for appeal and waived this issue per HRAP Rule 28 (b) (4). 8. Rejected father's argument that the family court erred in terminating his parental rights because the court failed to wait for the outcome of his criminal trial before ruling on DHS' MTPR. Father failed to explain how the outcome of the criminal trial would show that he is presently willing and able to provide a safe family home and the reasonably foreseeable future. Therefore, he waived this issue per HRAP Rule 28 (b) (7). Even if erroneous, the error is harmless.
In re SA, JA, SAA, JKH, and JKHA, No. CAAP-17-0000547, 2018 WL 1525760 (Haw. App. Mar. 28, 2018) (SDO)	Appellant is the father of JKH and KJHA. He is the boyfriend of the mother of all 5 children. DHS confirmed sexual harm of SAA by Appellant. While the trial was pending, Appellant was charged with sexually assaulting another child, who was not one of the 5 children in this case. At the adjudication trial, the family court found Appellant to be the perpetrator of sexual harm to SAA, adjudicated the petition and awarded foster custody of the 5 children to DHS. Appellant appealed the award of foster custody of all 5 children. ICA affirmed. 1. Appellant had no standing to appeal the award of foster custody of SA, JA, and SAA because he is not these children's father, legal guardian or legal custodian. 2. The family court did not abuse its discretion in denying Appellant's motion to continue the trial because the CWS case may impair his defense in the criminal case; his theory was that SAA and the victim in the criminal case "talked about coming-up with the allegations against [Appellant]." -The family court's main concern was the best interests of the children. It would take up to a year before Appellant went to trial in the criminal case. This would delay reunification efforts with Mother and would not be in the Children's best interests. -Appellant (through his counsel Mr. Hamada) did not ask the family court to invoke HRS § 587A-20 which would have allowed him to testify in this case without his testimony being admissible in the criminal case. HRS § 587A-20 would have provided adequate protection. 3. The family court did not (clearly) err in finding that Appellant subjected SAA to sexual harm based on the credible testimony of SAA's father, the medical expert (who performed the sexual abuse medical examination) and the DHS social worker, and the recording of SAA's forensic interview that the family court found to be credible and reliable. The appellate courts will decline to address issues about the trial court's determination of the credibility and the weight of the evidence.
In re HK, Nos. CAAP-17-0000085 and CAAP-17-0000096, 2018 WL 3201647 (Haw. App. Jun. 29, 2018) (SDO).	Family court granted DHS' MTPR. Mother and Father appealed. ICA affirmed. Father 1. The family court did not clearly err in making the ultimate HRS § 587A-33 (a) (2) determination: -The child was 2 months old when she entered foster care (DOEFC) because the mother was incarcerated; the child was 2 days old when she was removed from the mother's care. At that time, the father was caring for the child's older toddler full sibling and the child's teenage paternal half-sibling. DHS's primary safety concern was the father's inability to care for all three children.

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	-When the child was placed with the maternal uncle and aunt, the father stated that he did not want to visit. After visits were resumed, the father told DHS that he was not able to care for the child and wanted the maternal uncle and aunt to adopt the child. -The court-ordered assessments of the father's parenting ability raised concerns about the father's ability to care for all three children. -Rejected the father's argument that the family court gave undue weight to the child's attachment to her resource caregivers, and did not consider the other HRS § 587A-7 safe family home factors. The Record shows that the family court (implicitly and explicitly) considered the other factors. 2. The family court did not clearly err in finding that DHS made reasonable efforts to reunify, and that the father was given a reasonable opportunity to reunify: -Even though the court ordered one service plan, the service plan was clear on the father's requirements. -The trial on DHS' MTPR was continued a number of times to give both parents the opportunity to participate in services and to reunify with the child. Therefore, the father's argument that he should have been given more time because he was on the waiting list for some of the services is without merit. -The father failed to show in the Record where he requested more visits and unsupervised visits, and waived this argument (did not preserve this issue on appeal). Regardless, a therapist recommended against increasing the number of visits due to the child's anxiety. 3. The family court did not err in admitting a report about one of the assessments about the father and mother's parenting ability during the course of the trial, and there was no prejudice to the father: -HRS § 587A-18 (2) authorizes DHS to submit "late" reports if DHS makes a showing of good cause that the report could not be submitted no later than 15 days before the hearing. The report was not made available to DHS until after the 15-day deadline. -The prior DHS social worker did not refer to the report during her testimony. -The father's counsel was given the opportunity to cross-examine the report writer during the trial proceeding that was held 6 months after the report was received into evidence. -The father's counsel did not question the current DHS social worker about DHS' reliance on the letter. 4. The father did not object to the family court's ordering assessments of his parenting ability during the course of trial, therefore waived this issue on appeal. 5. The family court did not clearly err in finding that DHS did not abuse its placement discretion in placing the child with the maternal uncle and aunt, and that DHS did not promise them that they could adopt the child when the child was placed with them. -During the course of the case, the father did not object to the placement, and therefore, did not preserve this issue for appeal; the issue was waived. -There was no evidence in the Record showing that DHS made the promise when the child was first placed with the maternal uncle and aunt. 6. Rejected the father's argument that the goal of the permanent plan should have been guardianship instead of adoption to allow the parents to continue to visit with the child. -The child was 2 days old when she was first removed from mother's care. Based on HRS § 587A-33 (a)(3)(B), given the child's age when she first entered foster care, greater weight is given to the presumption that the permanent plan goal of adoption is in the child's best interests.

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	-The father did not present any evidence that guardianship, instead of adoption, is in the child's best interests. -The family court's statement that adoption is in the child's best interests, and that adoption with continued visits by parents are in the child's best interests does not rebut the presumption that goal of adoption is in the child's best interests. Mother 1. The family court did not clearly err in making its ultimate HRS § 587A-33 (a)(1) determination: -The previous DHS social worker testified that the mother had prior CWS cases where substance abuse was her primary safety concern, and that her parental to her 4 oldest children were terminated. The mother had a history of completing substance abuse treatment programs, but relapsed. -The mother had a history of doing well in structured environments, but not outside a structure environment. -DHS had concerns about the mother's ability to care the child and her full sibling. -Although one parenting assessment stated that the mother could safely care for these 2 children, the family court gave more weight to the assessment that stated that the mother could not. The appellate courts will not address issues of the credibility and the weight of the evidence. 2. Rejected the mother's argument that she was not provided a reasonable opportunity to reunify because she was ordered to leave transitional housing and was not provided expanded visits. -The family court acted reasonably in delaying its ruling on the mother's motion for expanded visits until it received all of the evidence about the mother's ability to safely care for both children. -Per the testimony of the current DHS social worker, visits do not stop when the case is in (concurrent) permanency (and reunification) mode. The mother's visits were not expanded because DHS did not want to make too many changes. 3. Rejected the mother's argument that the family court terminated the mother's parental rights because the child would be subject to threatened harm if she were to be removed from her placement with maternal uncle and aunt. The child's condition is just one of the HRS § 587A-7 factors that the family court must consider whether the parent can provide a safe family home. 4. The mother did not object to the multiple trial settings, and continuances, and conducting the trial over a period of 1 year. Again, issue is waived.
In re EG, No. CAAP-17-0000003 (Haw. App. Sep. 4, 2018) (SDO)	Family court granted DHS' MTPR. ICA affirmed. 1. Rejected the father's argument that the family court erred in relying on the testimony of the DHS CWS/CPS worker's expert testimony in finding that the father did not have insight of his mental health problems because mental health was not within the DHS worker's expertise. The family court did not base its finding solely on the DHS worker's testimony. The DHS worker's expert testimony was corroborated by the assessment/opinion of the multidisciplinary team, and other medical evidence of the father's mental health. Also, the father denied having mental health problems. The ICA stated that the DHS worker's expert opinion did not involve a medical or psychological diagnosis. The father's reliance on the testimony of his therapist was misplaced because the family court found the testimony not to be credible (the appellate courts will not address issues regarding the credibility of witnesses). 2. Rejected the father's argument that DHS did not make reasonable efforts because DHS did not obtain written reports about the father's progress from his therapist. The father's therapist did not see the father with the child, and

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	the purpose of therapy was not to help with reunification. Services were provided to the father, but he not show the ability to safely parent the child, based on the credible expert testimony of the DHS worker. 3. The father never had stable housing. Per the DHS worker's credible testimony, the father had to remain in a safe housing for at least one year. The longest period was five months. 4. At the time of the trial, the child had been in foster care for approximately three years from the Date of Entry into Foster Care. Accordingly, and based on the above, the family court did not err in making its ultimate HRS § 587A-33 (a) findings.
In re R Children, No CAAP-16-0000441 (Haw. App. Sep. 12, 2018) (SDO)	At the MTPR trial, the family court entered the HRS § 587A-33 (a) (1) and (2) findings as to the father and, terminated his parental rights. The family court found that the proposed permanent plan, with the goal of adoption was not in the children's best interests, and did not entered the HRS § 587A-33 (a) (3) permanent plan findings. Also, the family court did not terminate the mother's parental rights. Father appealed. ICA affirmed. 1. Under the 1983 version of the Child Protective Act, there was no provision to terminate parental rights, and parental rights were terminated in a separate HRS § 571-61 proceeding. In enacting the permanent custody and termination of parental rights provisions in now repealed HRS § 587-73 (now codified as HRS § 587A-33 (a)) in 1986, the legislature did not intend for the termination of parental rights provisions in the Child Protective Act to be the exclusive way of terminating parental rights. Although the family court did not have the legal basis to terminate the father's parental rights under HRS § 587A-33, the family court still had the authority to terminate the father's parental pursuant to HRS § 571-61. The provisions of HRS § 587A-33 (a) (1) and (2) are similar to the provisions of HRS § 571-63 (b) (1) (E). 2. There was sufficient evidence in the record to support the family court's ultimate HRS § 587A-33 (a) (1) and (2). Father has not addressed his problems of physical violence and drug use since the children's April 24, 2014 date of entry into foster care.