CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS & MEMORANDUM OPINIONS

September 2020 – August 2021[1]

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has res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	DIGEST
In re AA, No. CAAP-19-0000711, 2020 WL 5796177 (Haw. App. Sep. 29, 2020) (Memo.); *cert. granted* No. SCWC-20-19-0000711, 20 WL 7775542 (Dec. 30, 2020). https://www.courts.state.hi.us/wp-content/uploads/2020/09/CAAP-19-0000711mop.pdf	Facts: Mother stated told the DHS that her live-in boyfriend "John" (on Oahu) was not the child's father and that he did not know she was pregnant, and the unnamed father was in Chuuk. The DHS' petition for temporary foster custody alleged that the child's father was "Unknown." The "Unknown Natural Father" was served by publication in the Star-Advertiser and defaulted. The family court granted the DHS' motion to terminate parental rights, and terminated the parental rights of Mother and the "Unknown Natural Father." Eight months later, the DHS filed a motion to immediate review because Mother's boyfriend told the DHS that he may be the child's father. Prior to the hearing on the DHS' motion, Mother's boyfriend filed a paternity petition. Boyfriend was adjudicated to be the child's father. At the hearing on Boyfriend/Father' motion to intervene in the CPA case, the assigned judge set the matter for trial. At the pretrial conference hearing before a per diem judge, the family court granted Boyfriend/Father's motion, without objection from the DHS and the CASA. During the Resource Caregiver's motion to intervene, the assigned judge set aside the order granting Boyfriend/Father's motion to intervene and directed Boyfriend/Father to file a motion to set aside default, and granted the Resource Caregivers' motion. A trial was held before the assigned judge on Boyfriend/Father's motion to set aside default, and the family court denied the motion. Boyfriend/Father appealed. The ICA affirmed. 1. The service by publication was proper on Boyfriend/Father even though service was on the "Unknown Natural Father" in the State of Hawai'i, instead of Chuuk. The entry of default was proper. 2. The family court did not err by not setting aside the entry of default, and the order terminating Boyfriend/Father's parental rights by default. The order terminating parental rights while Boyfriend/Father was in default is a default judgment. The family court found Boyfriend/Father's testimony that he did not know that Mother was pregnant not to be credible, and should have known that he was the child's father. 3. Boyfriend/Father was not denied Due Process when the family court denied his motion to intervene. He was in default when the family court denied his motion, and the defaults had to be set aside before the family court could grant his motion to intervene. The family court conducted a trial on the motion to set aside default, and was not denied Due Process.

[1] Current to August 9, 2021.

CASE	DIGEST
	4. The assigned judge had cogent reasons to set aside the per diem judge's order granting Boyfriend/Father's motion to intervene, and did not violate the "law of the case" doctrine.
In re KKA, No. CAAP-19-0000600, 2020 WL 7024365 (Haw. App. Nov. 30, 2020) (Memo.). https://www.courts.state.hi.us/wp-content/uploads/2020/11/CAAP-19-0000600mop.pdf	Facts: (Adoptive) Mother adopted the child when the child was two years old in a Hawai'i adoption proceeding. After the Father's death, Mother and the child moved to Virginia when the child was at least fifteen years old. The child was "out of control" and Mother sent the child to live to Hawai'i with the child's adult sister with a power of attorney. While in Hawai'i, the child continually ran away from her sister's home. Mother tried to have the child returned to Virginia, but the child continued to run away. The child was arrested and held at Hale Ho'omalu. The DHS assumed temporary foster custody ("TFC"). The family court adjudicated the DHS' CPA petition. At a review hearing, the family court conducted a colloquy with Mother, and found that the Mother knowingly, willingly and voluntarily consented and agreed to rescind and set aside the adoption decree, and set aside the adoption decree. The order was entered in the CPA case. The family court denied the DHS' motion for reconsideration, and appealed the orders in both cases. The ICA reversed and vacated the orders. 1. The family court erred in setting aside the adoption decree in violation of HRS § 578-12. The family court is only authorized to set aside an adoption decree: (1) within one year after the entry of the adoption decree for good cause, and (2) after one year from the date of the entry of the adoption decree, the decree cannot be attacked on any grounds except for fraud. 2. When the family court set aside the adoption decree during the CPA hearing, it was a collateral attack on the adoption decree, which is expressly prohibited by HRS § 578-12. 3. HRS § 578-12 is a one-year statute of limitations prohibiting direct attacks on the adoption decree except for fraud. 4. The proper procedure was for Mother to relinquish her parental rights.
In re TJ, No. CAAP-19-0000716, 2020 WL 7230768 (Haw. App. Dec. 8, 2020) (SDO). https://www.courts.state.hi.us/wp-content/uploads/2020/12/CAAP-19-0000716sdo.pdf	Facts: The family court modified and limited Maternal Aunt's and Maternal Grandmother's intervenor status and participation in the termination of parental rights proceedings under the CPA. Mother appealed. The ICA affirmed. 1. Mother had standing to appeal the family court's order because Mother was cognitively impaired and needed the support of her sister and mother to safely raise the child. 2. Mother was not denied Due Process. At a prior hearing, the family court stated its intention to limit Maternal Aunt's and Maternal Grandmother's participation if the DHS filed a motion to terminate parental rights. 3. HRS § 587A-4 "Party" gives the family court the authority to limit a party's participation, and therefore did not violate the "law of the case" doctrine. 4. Notwithstanding the family court's order limiting Maternal Aunt's and Maternal Grandmother's participation, Mother could still call them to testify at trial. 5. Mother did not show how Maternal Aunt's and Maternal Aunt's full participation at trial would help her, and that such assistance could not be done by her own attorney.
In re BK, No. CAAP-20-0000619, 2021 WL 1250384 (Haw. App. Apr. 5, 2021) (SDO). https://www.courts.state.hi.us/wp-content/uploads/2021/04/CAAP-20-0000619sdo.pdf	The family court entered the order terminating parental rights approximately nineteen months after awarding foster custody to the DHS. Mother appealed. The ICA affirmed. 1. There was substantial evidence in the record to support the following findings of fact: a. The testimony about Mother's non-participation in services was credible, but Mother's testimony that she participated in services was not credible. b. At the time of trial, Mother was incarcerated for a probation violation, and that her period of incarceration

CASE	DIGEST
	was scheduled to end approximately three months after the trial. c. Mother's substance abuse was so pervasive and that her criminal problems and prior termination of parental rights were not deterrents. 2. Mother admitted that the DHS provided and referred her to services when she was not incarcerated, and therefore, the "reasonable efforts" findings of fact was not clearly erroneous. 3. Based on the credible evidence and the uncontested findings of fact about Mother's history and patterns of behavior, the family court's HRS § 587A-33(a)(2) findings of fact was not clearly erroneous.
In re QH, No. CAAP-20-0000040, 2021 WL 1943258 (Haw. App. May 14, 2021) (SDO). https://www.courts.state.hi.us/wp-content/uploads/2021/05/CAAP-20-0000040sdo.pdf	On January 10, 2020, the family court ordered the then six-month old child, who is in the foster of the DHS, to receive age-appropriate immunizations, without Father's consent and over his objection. Father appealed. The ICA affirmed. 1. The appeal is not moot because the child received the immunizations. The "capable of repetition, yet evading review " exception to the mootness doctrine applies to this case/appeal. The issue will continue to arise as the child ages and continues to be in foster care. 2. Father's reliance on the religious exemption to childhood vaccinations/immunizations to attend public schools does not apply because Father did not claim religious reasons for his objection. He only claimed that the risks outweighed the benefits. 3. When the DHS was awarded foster custody, it was given the right and duty to consent to ordinary medical care pursuant to HRS § 587A-15(b)(5). The rights and duties given to the DHS when it is awarded foster custody supersede the rights of the parents. Father only retained the right to consent to extraordinary medical care. The family court determined that age-appropriate vaccinations/immunizations is ordinary medical care.
In re CH, No. CAAP-20-0000736, 2021 WL 2479305 (Haw. App. Jun. 17, 2021) (SDO). https://www.courts.state.hi.us/wp-content/uploads/2021/06/CAAP-20-0000736sdo.pdf	The family court entered the order terminating parental rights. Father appealed. The ICA affirmed. 1. There was substantial evidence to support the family court's HRS § 587A-33(a)(2) determination. The ICA rejected Father's argument that the DHS and the GAL were looking at reunifying the child with him prior to his relocating to Louisiana: a. Prior to relocating, Father told his service providers that he would be terminating services when he relocates. At that time, Father was not fully participating in services. b. Father did not inform the DHS of his plans to relocate. He also refused the DHS' offer to refer services and for a courtesy worker in Louisiana. He did not ask for a referral for services until approximately eleven months after relocating. c. Father failed to complete the ICPC paperwork for the home study of his home in Louisiana. 2. The ICA rejected Father's argument that there was no substantial evidence that he posed a risk of threatened harm to the child. He stipulated to the adjudication findings, and did not ask the family court to reconsider the adjudication findings and orders. 3. There was substantial evidence in the record to support the family court's "reasonable efforts" and "reasonable opportunity" determinations: a. The DHS CWS worker testified that Father was not fully participating in services before he relocated to Louisiana. b. Father initially declined services after relocating, but later ask for referrals for services. 4. Father cites to no legal authority that Due Process required the DHS to pay for his travel expenses from

CASE	DIGEST
	Louisiana to Hawai'i to personally participate in the trial when he voluntarily left Hawai'i. 5. The family court did not clearly err in making its HRS § 587A-33(a)(3) permanent plan determination where the goal of the permanent plan was adoption. a. The permanent plan goal was adoption by paternal grandmother in Louisiana, with the resource caregivers as back-up. Paternal grandmother failed to complete the ICPC process and the ICPC placement was denied. b. The child was eleven days old when she entered foster care, and the HRS § 587A-33(a)(3)(A) and (B) presumptions are given greater weight.
In re GL and AL, No. CAAP-20-0000742, 2021 WL 3056662 (Haw. App. Jul. 20, 2021) (SDO). https://www.courts.state.hi.us/wp-content/uploads/2021/07/CAAP-20-0000742sdo.pdf	The family court entered the order terminating parental rights. Mother and Father appealed. The ICA affirmed. <u>Mother</u> 1. There was substantial evidence to support the family court's HRS § 587A-33(a)(1) and (2) determinations: a. Mother was absent during the first year of the case, and did not maintain contact with the DHS and the family court. When she "re-appeared, " she did not consistently participate in services. b. Mother had no insight into her role that caused one of the children to be sexually abused by her friends and associates, and the other child witnessing the sexual abuse, which resulted in trauma to both children. Her lack of insight and her defensiveness were barriers to Mother making positive lifestyle changes. c. At the completion of the trial on the DHS' motion to terminate parental rights, the children had been in foster care for over three years, and exceeded the HRS § 587A-33(a)(2) two-year reasonable period of time for mother to provide a safe family home and to reunify with the children. d. Due to the severity of the children's mental health problems arising out of the trauma from the severe abuse, along with Mother's barriers, the children cannot be reunified with Mother in any reasonable point in the future. 2. There is substantial evidence to support the family court's "reasonable efforts" determination: a. Even though Mother expressed the desire to participate in services, she did not participate in services on a timely and consistent manner. b. Mother violated the family court's order that she and Father have no contact with the children. c. The DHS did not want to overwhelm Mother with services. 3. The ICA rejected Mother's argument that she was not provided visits. The children's therapist did not recommend visits, and there was evidence that any contact with Mother and Father would be harmful to the children's emotional and mental health. <u>Father</u> 1. There was substantial evidence to support the family court's HRS § 587A-33(a)(1) and (2) determinations: a. Father's health problems raised concerns about his ability to care for the children, as he was away from the family home due to his problems. He relied on inappropriate substitute caretakers that resulted in the sexual abuse by Mother's friends and by Father's adult son (the children's paternal half-brother). b. Father believed that the children were responsible to care for him. c. Even though Father participated in services, he did not demonstrate his ability to provide a safe home, and continued to pose a risk of harm to the children. 2. There was substantial evidence to support the family court's "reasonable efforts" and "reasonable opportunity" determinations:

CASE	DIGEST
	a. Father's failure to reunify was the result of his own conduct by placing his needs of the needs of the children. b. Father had no insight into the needs of the children, as seen by his violating the DHS' instructions not to discuss the case with the children during visits, and later violating the family court's order not to have any contact with the children. During visits, before they were suspended, Father would not interact with the children, choosing to watch them play from his van. 3. The ICA rejected Father's argument that there were compelling reasons for the DHS not to file its motion to terminate parental rights. The DHS provided timely services for Father, and HRS §§ 587A-30(c)(2) and 587A-21(g)(2) are not applicable. 4. The family court did not clearly err in finding that the permanent plan goal of adoption is in the children's best interests, instead of the permanent plan goal of guardianship. The ICA rejected the argument that resource caregiver's statement that if he were to adopt the children, he would allow the children to have contact with Mother and Father, if approved by their therapist, was a compelling reason why the permanent plan goal should be guardianship.