CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS AND MEMORANDUM OPINIONS
(August 27, 2021 to July 26, 2022)

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has res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.

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In re AB and BB, No CAAP-20-0000717, 2021 WL 3829187 (Haw. App. Aug. 27, 2021) (SDO).	The family court granted the DHS' MTPR. Mother appealed. The ICA affirmed. 1. The ICA emphasized that the Children's date of entry into foster care was January 2015. The family court entered its order terminating parental rights in November 2020, with the TPR proceedings beginning in July 2020: 5 and ½ years in foster care. 2. The family court's ultimate HRS § 587A-33(a)(1) and (2) "parental unfitness" finding was not clearly erroneous because it "lumped" mother and father together in the finding. There was an independent separate basis for the family court enter these findings as to mother and father. 3. Mother completed recommended services but was unable to demonstrate the ability to provide a safe home and to care for the children, with their special needs. 4. Rejected mother's interpretation of HRS § 587A-33(a)(3) that the family court can only enter the finding that permanent plan with the goal of adoption is in the child's best interests only when the child is likely to be adopted, or continued reunification efforts or family supervision is possible. HRS § 587A-33(a)(3) does not have these requirements.
In re KJ-, AKA KKJI and KJ-I, AKA KMKJ-1, No CAAP-20-0000715, 2021 WL 3855772 (Haw. App. Aug. 30, 2021) (SDO).	The family court granted the DHS' MTPR. Mother and father appealed. The ICA affirmed. The Children's date of entry into foster care was December 1, 2017. Trial on the DHS' MTPR was held on October 15, 2020, and the court announced its decision granted the MTPR on October 22, 2020. The court entered the Order Terminating Parental Rights on November 9, 2021. <u>Mother's Arguments</u>. Rejected Mother's reasonable efforts arguments: 1. Mother misstated the record when she argued that according to the final April 20, 2020 SFHR, the DHS social worker's last attempt to contact mother was April 2019. The DHS report stated that the DHS made referrals and attempted to contact mother after the March 2019 hearing, and after the November 2019 hearing. 2. Mother's argument that the DHS failed to refer mother to a "dual diagnosis" treatment program, as recommended in the psychological evaluation did not have a basis in the record. Mother's psychological evaluation did not use the term and did not recommend "dual diagnosis" treatment. Further, the evaluation

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	did not assess mother with suffering from a mental illness. The evaluation recommended substance abuse treatment and individual therapy to address Mother's trauma; the DHS referred mother for both services, but Mother did not participate in these services. Father's Arguments: 1. Rejected father's argument that the family court clearly erred by finding the permanent plan to be in the children's best interests. -The DHS assessed the aunt's home to be safe, notwithstanding her separation from and pending divorce from uncle (who was the children's biological relative). The permanent plan noted the pending divorce between aunt and uncle. -The DHS attempted uncle's home (as a sole placement), but uncle did not cooperate with the DHS.. -The permanent plan was consistent with the HRS § 587A-33(a)(3)(A) and (B) presumptions. -Father's argument that he has the right to consent to an adoption/placement is without merit. Parents only retain that right when the child is in foster custody. HRS § 587A-15(c)(2). Parents do not have that right when their parental rights are terminated and permanent custody is awarded to the DHS. -There is no relative placement preference, even though kinship may be a consideration. (Father advocated placement with uncle). 2. Rejected gather's "reasonable efforts" arguments. -There was no 6-month gap where the DHS did not make reasonable efforts. There was evidence that the DHS social worker attempted to contact father and mother monthly, but they never responded. -Father never made a demand for services while the case was in the review stage, and waived the defense. -The DHS does not have to expend the full two years . 3. Rejected father's other arguments. -Father waived any challenge to the finding of fact that father's substance abuse was "chronic" because the finding was based on the facts stated in the first SFHR. Father stipulated to the adjudication of the petition, and did not appeal. -Father's challenge to the finding that the DHS social worker's testimony was credible is without merit. Issues regarding the credibility and the weight of the evidence is the province of the trier of fact, i.e., the trial judge.
In re K Children, No. CAAP-20-0000737, 2021 WL 4431327 (Haw. App. Sep. 28, 2021) (memo).	The family court granted the DHS MTPR. Mother appealed. ICA reversed and remanded. 1. The family court's parental unfitness HRS § 598A-33(a)(1) and (2) findings and (mixed) conclusions: -Mother and father have a long history of domestic violence. -Mother did not demonstrate the ability to remain away from father.

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	-Mother will continued to be unsafe as long as she was with father. -The finding that the parents did not make progress was partially clearly erroneous because it did not mention that the mother made some progress. 2. The family court's permanent plan HRS § 587A-33(a)(3) mixed findings of fact and conclusions of law were clearly erroneous. -The goal of the permanent plan appeared to be adoption by paternal grandparents. -Mother testified that father was residing in the home of the paternal grandparents/resource caregivers. There was other findings regarding Mother's testimony [the opinion implies that there was no finding regarding the credibility of Mother' testimony or contrary testimony]. -There was no evidence that the paternal grandparents were safe with the Father residing in the home, and that the placement was in the Children's best interests. 3. Therefore, since all of the elements of HRS § 587A-33(a) were not met, the family court erred in terminating parental rights. 4. Case remanded for further determination of whether the paternal grandparents' home is safe, whether the placement is in the Children's best interests, and whether mother's parental rights should be terminated. The family court is given leave to consider change in circumstances.
In re LC, AC, IC and DG, No. CAAP-20-0000728, 2021 WL 4958846 (App. Oct. 26, 2021) (SDO).	The family court adjudicated the petition and awarded foster custody to the DHS. Mother appealed. The ICA affirmed. 1. Mother was not denied due process and the family court did not abuse its discretion when it denied mother's oral motion to order the DHS to provide MPD police reports, and to strike allegations in the petition and the SFHR that mother had drug paraphernalia because the DHS "had no testing "of the paraphernalia indicating a finding of methamphetamine. -The issue of the police report became moot when the granted mother's subsequent request to compel the DHS to produce the police reports. -Mother cited to no authority supporting her argument that the DHS was required to test the paraphernalia for methamphetamines. -Mother had the opportunity to cross-examine the DHS worker regarding the information received by the DHS regarding mother's drug use. 2. There was substantial evidence to support the family court's preliminary/supporting findings of fact that support the ultimate adjudicatory and foster custody determination. Even if the DHS did not substantiate its allegations of mother's drug use and possession of methamphetamine, there was sufficient evidence to support the family court's ultimate decision: unsanitary conditions of the family home as seen in photographs of the family home, and educational neglect of the Children.
In re TC and RC, No. CAAP-21-0000053, 2021 WL 6054831	Facts: The children are in FC. In September 2020, the family court ordered the concurrent permanency plan of reunification with a parent, and if not, placement with paternal grandparents in Idaho. On

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(Haw. App. Dec. 20, 2021) (SDO).	November 10, 2020, the family court approved placement of the Children with paternal grandparents in Idaho. At the November 10, 2020 hearing, mother stated that the December 2020 permanency hearing should be an evidentiary hearing, but the DHS stated that the only evidence would be the DHS report. Later in November 2020, the DHS report for the December 2020 permanency hearing recommended a permanency goal of reunification of the Children with father in Idaho. At the November 2020 hearing, mother objected to the permanency goal of reunification with father and the Title IV-E and permanency hearing findings; requested an evidentiary hearing and to cross-examine the DHS report writer; and made a number of oral motions. The family court directed mother to file written motions. According to mother, she had the right to cross-examine the writer of the DHS report which provided the bases for the family court's findings and orders that she objected to. Mother appealed. The ICA reversed. 1. The order from the permanency hearing is a final appealable order because the finding that the permanency goal of reunification with father infringed on mother's parental rights. 2. The family court erred by requiring mother to file a written motion for an evidentiary hearing and to cross-examine the DHS report writer. Mother made an oral request at the December 2020 permanency hearing. Oral motions are authorized by HFCR Rule 10. *In re AB,* 145 Hawai'i 498, 515, 454 P.3d 439, 456 (2019). 3. The language of HRS § 587A-18 explicitly states that mother should have been given the opportunity to cross-examine the writer of the DHS report that was relied upon by the family court in making its required HRS § 587A-31 permanency hearing findings. [Although not stated, this would include the required Title IV-E findings and periodic review findings]. 4. The family court did not err by receiving the DHS report into evidence. HRS § 587A-18 does not state that cross-examination of the report writer is a pre-condition for admission into evidence. But the report writer is subject to cross examination. 5. Since the family court's December 2020 findings and orders affected mother's parental rights, mother was denied due process when the family court denied her request for an evidentiary hearing and to cross-examine the writer of the DHS report. 6. Mother did not properly preserve the issue of her request that counsel be appointed for the Children and that the Children were not given proper notice of the hearing. 7. Since mother was denied her right to an evidentiary hearing and to cross-examine the writer of the DHS report, all of the findings entered by the family court at the December 2020 permanency hearing that mother raised as points of error on appeal are vacated.
In re Adoption of a Male Child, Born on November 5, 2013, No. CAAP-20-0000099, 2021 WL 6123564	Facts: This is an appeal of the family court's decision regarding two competing adoption petitions arising out of a CPA case. The maternal grandmother filed an adoption petition prior to the order terminating parental rights. The DHS filed its objection to maternal grandmother's petition. Parental rights were

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(Haw. App. Dec. 28, 2021) (memo.).	terminated and the DHS filed an adoption petition on behalf of the non-relative resource caregivers ("RCG's") approximately four months after maternal grandmother filed her petition. The family court denied maternal grandmother's petition, and granted the DHS' petition. Maternal grandmother appealed. The ICA affirmed. 1. Maternal grandmother claimed that she was denied due process when the family court allowed "ex parte" communication with the FC-S case prior to her intervention in the FC-S case by: 1) a letter from the RCG's to the family court that was presented in a hearing in the FC-S case, and 2) "safety concerns" raised about the maternal grandmother by the GAL in the FC-S case. -The letter is not in the record, and there is no indication that the family court considered the letter in the adoption proceedings. -Maternal grandmother did not object to the GAL's concerns, and therefore waived the issue on appeal. -Maternal grandmother did not show whether and how she preserved the due process argument, and therefore waived the issue on appeal. 2. The ICA *sua sponte* ruled that the finding of fact that stated that the DHS acted reasonably in removing the Child from his foster placement in maternal grandmother's home was unnecessary and irrelevant to the HRS § 578-8 adoption criteria and the HRS § 571-46(b) best interests criteria. However, this error is harmless. The ICA rejected maternal grandmother's argument that the family court did not have subject matter jurisdiction to enter this finding of fact. 3. Rejected maternal grandmother's argument that the family court was required to hold a separate hearing on the DHS' withholding of its consent, as the permanent custodian, to maternal grandmother's petition, and that the family court should have conducted a hearing immediately after the DHS filed its objection to maternal grandmother's petition. Maternal grandmother does not show where in the record she raised this issue and the record does not indicate that she raised this issue in the family court, and therefore waived this issue on appeal. 4. The family court erred by invoking "judicial estoppel" when it ruled that maternal grandmother was estopped from challenging the reliability of the custody evaluator's assessment and recommendations based on the parties' stipulation to the appointment of the custody evaluator. The error was harmless because "judicial estoppel" was an alternative legal basis to overrule maternal grandmother's objection to the reliability of the custody evaluator's assessments and recommendations. Also, the stipulation authorized the parties to cross-examine the custody evaluator, and maternal grandmother was given the opportunity during depositions and trial. 5. Rejected maternal grandmother's argument that the family court abused its discretion in denying her HFCR Rule 35 motion for examination of the Child. According to maternal grandmother, the family court rejected the assessments and recommendations of her experts because the experts did not complete their examination of the Child (which was done without court approval). The record reflects that the family court

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	based its ruling on the grounds that one of maternal grandmother's experts did not meet the RCG's, and the other expert relied on the report of the other expert. 6. The family court did not err in accepting the opinions of the custody evaluator and rejecting the opinions of maternal grandmother's experts. Issues of the credibility and the weight of the testimony and evidence is within the broad discretion of the trial court, and the appellate courts will not pass on these issues. 7. Rejected maternal grandmother's arguments that the family court abused its discretion in denying her adoption petition, and granting the DHS' petition on behalf of the RCG's: -Even though maternal grandmother has "strong financial" ability, it does not render the family court's HRS § 578-8(a)(3) finding that the RCG's are fit and proper adoptive parents and financially able to give the child a proper home and education. The family court's ruling was well within the family court's broad discretion. -The family court is given broad discretion in weigh the HRS § 571-46(b) best interests factors in making its custody and visitation determinations. 8. Maternal grandmother misconstrued the concurring opinion in *In re A.S.* which stated that kinship is an "anchoring" factor in determining which placement is in the child's best interests as the Hawai'i Supreme Court's decision. Based on the record, the family court did not err when it ruled that it did not find that kinship placement with maternal grandmother was sufficient to overcome the child's best interests to be placed with the RCG's. Based on the record, kinship did not trump all of the HRS § 571-46(b) best interests factors.
In re J.H., No. CAAP-21-0000316, 2022 WL 277658 (Haw. App. Jan. 31, 2022) (SDO); *app. for writ of cert. granted June 24, 2022.*	The family court granted the DHS' MTPR, Father and Mother appealed. ICA reversed. 1. The indigent mother and father were denied due process when the family court discharged their court-appointed counsel after they were defaulted at the adjudication trial. The discharge was subject to recall, and the discharge order stated that counsel will be re-appointed when an EPM to re-appoint counsel is filed when counsel locates parents. The DHS served both discharge counsel with the MTPR, and both parents had counsel at the return on the MTPR and the MTPR trial. The discharge of counsel was structural error, and parents were not required to show prejudice. Even though the DHS' argument that father's ability to make legal arguments was not severely impacted, the analysis is not subject to the case-by-case approach. 2. The ICA rejected father's other arguments. -Rejected father's reasonable efforts arguments because he did not challenge any of the court-ordered service plans in the family court or make a demand for services. He failed to preserve the issue for appeal. -The family court did not abuse its discretion in denying Father's motion to continue the MTPR trial until after the conclusion of his criminal trial. The U.S. Constitution does not require a stay of civil

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	proceedings pending the outcome of a related criminal case. Father did not cite to any authority to the contrary.
In re H Children, No. CAAP-21-0000310, 2022 WL 420877 (Haw. App. Feb. 11, 2022) (SDO).	The family court adjudicated the petition and awarded foster custody to the DHS. Mother appealed. The ICA affirmed. 1. Mother challenged 4 findings of fact regarding the underlying facts of the case, but presented no arguments. The challenge to these findings of fact on appeal was waived and the ICA rejected these points of error. 2. The findings of fact that found that the Children were subject to threatened harm by mother's failure to visit them was not clearly erroneous. This finding is supported by the evidence and uncontested findings of fact that the Children were distressed when mother failed to visit, mother failed to ensure that the Children's educational needs were met, and failed to provide a power of attorney to the caretaker. 3. The finding of fact that found that the Children were subject to neglect and threatened neglect is supported by the evidence and the uncontested findings of fact that mother failed to provide the Children's caretaker with a power of attorney, failed ensure that the Children's educational needs were met, and failed to ensure that the children's medical needs were met. 4. Even though the family court did not find that the Children were physically abused, they were still subjected to neglect which falls under the definition of "harm."
In re KD1 & KD2 and AW, Nos. CAAP-21-0000010 & CAAP-21-0000011. 2022 WL 538058 (Haw. App. Feb. 23, 2022) (SDO).	The family court granted the DHS' MTPR in both cases. Mother, *pro se,* appealed. 1. The family court did not abuse its discretion in adjudicating the petitions, awarding foster custody. -Rejected the argument that "without having a signed affidavit from a credible witness, any relevant hearsay is inadmissible as evidence in any ruling." Mother did not cite where in the record that she objected to the admission of evidence on the grounds of hearsay, and waived the issue on appeal; no transcripts of the return hearings were in the record on appeal, and there was no indication of any objections in the family court's minutes. -Since the transcripts of the hearings, including the contested hearing, regarding the DHS' assumption of foster custody from family supervision are not in the record on appeal, the ICA was unable to review mother's argument. -The facts do not support mother's argument that there was no investigation to determine whether it was necessary to take KD1 and KD2 into foster custody. The DHS provided mother with a voluntary service plan to address her problems of substance abuse and inappropriate parenting (neglect), but mother continued to use drugs, as seen by her positive and missed urinalyses, her failure to make appointments for the Children's evaluation for Early Intervention services, and one of the Children was wandering unsupervised. 2. Rejected the argument that the DHS did not make reasonable efforts to prevent the Children's removal and to reunify.

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	-The DHS report stated the reasons for the Children's removal: mother was arrested in a drug raid at the family home for dealing meth, the Children were malnourished because the parents were using methamphetamines, and parents fought daily. -Mother did not cite to where in the record that she raised the issue of the DHS' lack of reasonable efforts or requested additional services. Therefore, her argument is without merit. *In re Doe*, 100 Hawai'i 335 (a claim for services must be timely made). 3. The "record supports the conclusion" that there was clear and convincing evidence that Mother was not presently willing and able to provide a safe family home, even with the assistance of a service plan pursuant to HRS § 587A-33(a). -At the time of the TPR trial, mother's drug abuse problems continued to exist. 4. There was clear and convincing evidence to support the family court's HRS § 587A-33(a) determination. -At the time of the TPR trial, the Children were in foster care for over two years from their date of entry into foster care. -According to the DHS SW, mother would need an additional six months to be ready to create a safe home due to her substance abuse problem. 5. Mother was not denied due process when the family court did not appointment counsel to represent her. The record clearly states that mother was initially appointed counsel. At each subsequent hearings, mother chose to proceed *pro se*, and after the family court encouraged mother to be represented by counsel, and engaged in a colloquy with mother, the family court found that knowingly and voluntarily waived her right to be represented by counsel.
In re SJ and EJ, No. CAAP-21-0000416, 2022 WL 590682 (Haw. App. Feb.28, 2022). (SDO).	The family court granted the DHS' MTPR. Father appealed. The ICA affirmed. [*The appellant is the father of EJ. Mother and the other father stipulated to DHS' MTPR*]. Note: This the first case where the ICA is used the "highly probable" standard of review for all determinations required to be made by clear and convincing evidence. *Matter of JK*, 149 Hawai'i 400, 409-10, 491 P.3d 1179, 1188-89 (App. 2021). In its discussion about the standard of review, the ICA cites to the "highly probable" *JK* standard and then states the HRS § 587A-33(a) determination are mixed findings of fact and conclusions of law that are reviewed under the clearly erroneous standard. SDO at 4-5. At the conclusion of its analysis the ICA states: Thus, the record contains substantial evidence from which the Family Court could find that it was highly probable that it was "not reasonably foreseeable" that Father would become able to provide a safe family home within a reasonable period of time not exceeding two years. See HRS § 587A-33(a)(2); *Matter of JK*, 149 Hawai'i at 409-10, 491 P.3d at 1188-89. Therefore, FOFs 72 and 81 were supported by substantial evidence and were not clearly erroneous. See *In re Doe*, 95 Hawai'i at 190, 20 P.3d at 623.

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	1. Father waived any challenges to the change in the CASA/GAL and the CASA social worker because father failed to object to preserve the issue on appeal. 2. There was substantial evidence in the record for the family court to find that it was highly probable that father will not become willing and able to provide a safe family home, even with the assistance of a service plan: -The Children entered foster care on December 3, 2018, and the TPR trial was held in June/July 2021: approximately 33 months. -Father did not fully participate in services to address the safety issues of instability, domestic violence and drug use. 3. There was substantial evidence in the record for the family court to conclude that it was highly probable that the permanent plan, with the goal of adoption, is in the Child's best interests: -The Child was three months old when s/he entered foster care, and greater weight was placed on the HRS § 587A-33(a)(3)(A) presumption that it is in the child's best interests to be promptly and permanently placed with responsible and competent substitute parents. -Rejected father's argument that adoption was not in the Child's best interests. -There was only one incident of favoritism of SJ by the RCG who is SJ's paternal grandmother, and there no further incidents of favoritism. A single incident is not a compelling reason why guardianship instead of adoption is in the child's best interests. -Rejected the argument that the new CASA, who was appointed five weeks before the trial, did not prepare a report, but testified at trial, should not have been allowed to testify about the CASA's recommendation. Father did not cite to anywhere in the record that the CASA was not capable of making the recommendation when the CASA reviewed the case and had sufficient knowledge to make a recommendation. This argument goes to the weight of the evidence which is the province of the trial (family) court. -There was no evidence to rebut the HRS §587A-33(a)(3)(A) presumption.
In re JB, No. CAAP-21-0000283, 2022 WL 833166 (Haw. App. Mar. 21, 2022) (SDO); *app. for writ of cert. granted Jun. 22, 2022.*	The family court granted the DHS' MTPR. Mother and father appealed. ICA reversed and remanded. 1. The family court's discharge of the court-appointed counsel for the indigent father, after the entry of his default, was a violation of due process, and structural error requiring the order terminating parental rights to be vacated. 2. Father did not raise his argument that he was not served with the MTPR in the family court proceedings, and waived this issue on appeal. [Note: Father's argument is based on the TPR provisions of HRS § 571-61 *et seq.* Per *In re R Children,* the provisions of HRS Chapter 571 termination of parental rights statute do not apply to CPA cases]. 3. Rejected mother's argument that the family court abused its discretion by allowing the resource caregivers to intervene for the limited purpose of observing the TPR trial. Mother did not challenge the

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	family court giving the resource caregivers party status. Rejected mother's argument that allowing the resource caregivers to observe the trial would violate HIPAA because Mother failed to cite to which provision of HIPAA supported her argument.