

CHILD PROTECTIVE ACT

SUMMARY DISPOSITION ORDERS AND MEMORANDUM OPINIONS

(July 27, 2022 to August 4, 2023)

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has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

Case	Digest
<i>In re KH</i> , No. CAAP-21-0000710, 2022 WL 4243693 (Haw. Appl Sep. 15, 2023) (SDO).	<p>The family court granted the DHS' motion to terminate parental rights. Father appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> The DHS made reasonable efforts to reunify and gave father the reasonable opportunity to reunify: <ul style="list-style-type: none"> -The DHS still planned to begin Parent-Child Interactive Therapy ("PCIT") for father, but "changed course" after father's numerous relapses. -The DHS did not hold father's failure to participate in PCIT against him -The DHS' primary basis for its motion to terminate parental rights was father's substance abuse problem. Father demonstrated a pattern of relapsing when under stress, and failed to fully address this problem.
<i>In re AQ</i> , No. CAAP-21-0000584, 2022 WL 12410136 (Haw. App. Oct. 21, 2022) (SDO).	<p>The family court granted the DHS' motion to terminate parental rights. Mother appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> Rejected mother's point of error that the family court focused on her substance abuse problem, and did not consider other factors in HRS § 587A-7 (Safe Family Home Factors). HRS § 587A-7(a)(7) required the family court to consider mother's substance abuse. The family court is not required recite each of the safe family home factors in its findings of fact. It is only required to make brief, definite, pertinent findings of fact and conclusions of law upon the contested matters. There was sufficient evidence that mother's substance abuse problems affected her ability to provide a safe home. Mother failed to preserve the issue on appeal that her substance abuse was a disability and could not terminate her parental rights per HRS § 587A-7.5.

Case	Digest
<p><i>In re QH</i>, No. CAAP-22-0000272, 2022 WL 1684888, (Haw. App. Nov. 10, 2022) (SDO).</p>	<p>The family court granted the DHS’ motion to terminate parental rights. Father appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> 1. The finding of fact regarding father’s inability to acquire basis parenting skills is supported by the unchallenged findings of fact, and the evidence in the record. 2. There was sufficient evidence in the record to support the finding of fact that during a Parent-Child Interactive Therapy session, father gave the child two little balls, and the child put the balls in her mouth and almost choked on them. 3. There was sufficient evidence in the record to support the findings of fact that the DHS made reasonable efforts to reunify and provided father the reasonable opportunity to reunify. The DHS provided parenting education and hands-on parenting to address father’s lack of parenting skills. 4. There was sufficient evidence in the record to support the family court’s ultimate HRS § 587A-33(a)(2) determination.
<p><i>In re JFF</i>, No. CAAP-22-00003000, 2023 WL 355182 (Haw. App. Jan. 23, 2023) (SDO).</p>	<p>The family court granted the DHS’ motion to terminate parental rights. Father appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> 1. Father challenged all of the findings of fact and conclusions of law, but only made arguments regarding some of them. Father waived his challenges to the other findings of fact and conclusions of law. RECPA Rule 11(a)(4). 2. Rejected father’s point of error that the DHS failed to make reasonable efforts to reunify and to provide father with the reasonable opportunity to reunify due to lack of visits and contacts with the child. <ul style="list-style-type: none"> -The DHS referred the child to individual therapy to explore her feelings towards father and potential reunification. The child did not want any contact with father. The therapist recommended no contacts with father until father completed sex offender treatment. -There was a no contact order in the related criminal case. 3. Rejected father’s point of error that the DHS failed to make reasonable efforts to reunify and to provide father with the reasonable opportunity to reunify due to lack of clarity in the service plan regarding father’s required services. <ul style="list-style-type: none"> -The family court did not modify the service that required sex offender and substance abuse related services. An earlier service plan deleted those services because they were not available at OCCC, but was reinstated at subsequent hearings. -Father was given the opportunity to participate in those services when he was released from incarceration. 4. The family court’s HRS § 587A-33(a)(1) and (2) “parental unfitness” determination was supported by the evidence and the unchallenged findings of fact.

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	<p>-Father was a sex offender who was unwilling to complete and incapable of completing sex offender treatment.</p> <p>-The child did not want contact with father.</p>
<p><i>In re EAC</i>, No. CAAP-22-0000381, 2023 WL 1462794 (Haw. App. Feb. 2, 2023)(SDO).</p>	<p>The family court granted the DHS' petition for appointment of a guardian of the person of the minor. In the CPA case, the family court terminated jurisdiction. Father and Mother appealed the CPA case, but did not appeal the guardianship case. The ICA affirmed.</p> <p>1. The family court did not abuse its discretion by allowing the DHS permanency worker, who did not prepare any of the DHS reports, to testify, instead of the DHS worker who prepared the DHS reports.</p> <p>-HRS § 587A-18 gave the parents the right to cross-examine the DHS worker who prepared the DHS reports, but does not require the DHS to call that worker as a witness.</p> <p>-The DHS' pretrial statement did not list the author of DHS reports as a witness.</p> <p>-Neither father or mother subpoenaed or moved to compel the DHS to compel the report writer to testify. <i>Citing In re Doe</i>, 77 Hawai'i 109, 116, 883 P.2d 30, 37 (1994).</p> <p>-The permanency worker was qualified as an expert witness, and was allowed to testify on her expert opinions in the field of child protective or welfare services, and to rely on the DHS reports per HRE Rule 703.</p> <p>2. The challenged findings of fact and conclusions of law (which are mixed findings of fact and conclusions of law) were supported by the evidence and the unchallenged findings of fact.</p>
<p><i>In re SO and E Children</i>, No. CAAP-22-0000247, 2023 WL 1995499 (Haw. App. Feb. 14, 2023) (Memo.).</p>	<p>The family court granted the DHS' motion to terminate parental rights. Father and Mother appealed. The ICA reversed and remanded.</p> <p>1. The DHS made reasonable efforts to reunify.</p> <p>-Mother and father cite to no authority that the DHS is required to assist them in obtaining cell phones. The DHS provided prepaid phones for a time. Regardless, both had the ability to communicate with the DHS and their counsel. Their failure to complete services was not due to their not having cellphones.</p> <p>-Mother does not show where in the record she requested and the DHS failed to assist her in obtaining counseling and housing. Regardless, the DHS made numerous referrals.</p> <p>-Father does not show where in the record showing that monthly home visits were required to monitor mother's and father's progress. The DHS kept in contact with both.</p> <p>-Malama Recovery Services is an outside (non-contract) provider, and the DHS was not legally required to obtain this service for mother. The DHS was willing to work with this provider, provided that mother consent to the release of information. The DHS attempted to obtain the consent.</p>

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	<p>-At mediation, the parties agreed to continue the trial if mother and father entered a residential substance treatment program before trial. Neither entered treatment and it did not appear that their entry into a program was imminent.</p> <p>2. There was sufficient evidence to support the findings of fact, and the family court’s HRS § 587A-33(a)(1) and (2) “parental unfitness” determination.</p> <p>3. The family court’s ultimate HRS § 587A-33(a)(3) permanent plan determination was clearly erroneous.</p> <p>-The permanent plan does not state “adoption of the [c]hildren by the RCG. It merely identifies the RCG’s home as the permanent placement. It did not identify other possible adoptive parents.</p> <p>-The guardian ad litem (“GAL”) for the E Children expressed concerns about the placement of all of the four children with the RCG’s. The family court stated that the children may need to be placed in separate homes.</p> <p>-There was no explicit evidence in the record that the GAL’s stated that they were in agreement with the proposed permanent plan.</p> <p>-There was no explicit testimony by the DHS CWS worker that the proposed permanent plan was in the children’s best interests.</p> <p>-The permanent plan failed to identify the child to which it refers.</p>
<p><i>In re AO</i>, No. CAAP-22-0000054, 2023 WL 2533260 (Haw. App. Mar. 16, 2023) (SDO).</p>	<p>The family court granted the DHS’ motion to terminate parental rights. Father appealed. ICA affirmed.</p> <p>1. Rejected father’s point of error that the family court lacked jurisdiction to hear the DHS’ motion because HRS § 587A-33(i) required the DHS to file its motion no later than fifteen months after the child’s date of entry into foster care, or no later than twenty-two months after the child’s date of entry into foster care, unless there is compelling reason.</p> <p>-HRS § 587A-33(i) is not a jurisdictional statute. The family court’s jurisdiction is governed by HRS §§ 571-11(9) and 587A-5.</p> <p>-The delay in filing the motion benefitted father.</p> <p>2. Rejected father’s point of error that the family court’s ultimate HRS § 587A-33(a)(1) and (2) “parental unfitness” determination was clearly erroneous because father had relatives who could provide a safe family home. This point of error was rejected in <i>In re T Children</i>, 113 Hawai’i 492, 499, 155 P.3d 673, 682 (App. 2007).</p> <p>3. Father failed to cite to any legal authority that HRS § 587A-33(a)(3)(A) required the family court to find that the present RCG’s responsible and competent parents in determining whether the proposed permanent plan is in the child’s best interests.</p>

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<p><i>In re JB</i>, No. SCWC-21-0000283, 2023 WL 2553925 (Haw. Mar. 17, 2023) (Memo.).</p>	<p>The family court granted the DHS' motion to terminate parental rights. Father appealed. The ICA reversed [CAAP-21-0000283] (The family court's discharge of father's court-appointed counsel after father was in default was structural error). The Hawai'i Supreme Court accepted the DHS' and the RCG's application for writ of certiorari. The Hawai'i Supreme Court reversed the ICA and affirmed the family court.</p> <p>[Note: This case was consolidated for oral argument with <i>In re JH</i>, 152 Hawai'i 373, 526 P.3d 350 (2023). Both cases had the same fact pattern and issue before the supreme court. Both decisions were entered on the same day.].</p> <p>1. Based on the supreme court's decision in <i>In re JH</i>, father received a fundamentally fair trial.</p>
<p><i>In re KY</i>, No. CAAP-21-0000557, 2023 WL 3051860 (Haw. App. Apr. 24, 2023) (Memo.). <i>App. for Writ of Cert.</i> filed July 3, 2023.</p>	<p><u>Facts:</u> DHS placed child with maternal grandparents, who later intervened. The DHS' filed its motion to terminate parental rights (with the permanent plan goal of adoption to maternal grandparents). The paternal grandparents filed a motion to establish a permanent plan with the goal of guardianship with a visitation plan. The family court denied the DHS' motion on the grounds that the DHS' permanent plan with the goal of adoption by maternal grandparents was not in the child's best interests. The family court found that it was in the child's best interests to have co-guardians appointed (both set of grandparents), and ordered the DHS to submit a permanent plan with that goal.</p> <p>Maternal grandparents/RCG's appealed. The ICA reversed and remanded.</p> <p>1. Since both parents stipulated to the HRS § 587A-33(a)(1) and (2) "parental unfitness" determination, the only issue is the HRS § 587A-33(a)(3) permanent plan criteria.</p> <p>2. The family court abused its discretion in finding that the DHS failed to prove HRS § 587A-33(a)(4) by clear and convincing evidence because the child had not reached the age of fourteen.</p> <p>3. HRS § 587A-33(a)(3)(A) required the family court to "presume that it is the child's best interests to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home."</p> <p>4. HRS § 587A-33(a)(3)(B) required to give more weight to the subsection (a)(3)(A) presumption due to the child's young age: age two.</p> <p>5. The family court's permanent plan determination "does not align" with the (a)(3) presumptions, and that the family court made no findings of fact and conclusions of law to explain its divergence from these presumptions.</p>
<p><i>In re V Children</i>, No. CAAP-22-0000248, 2023 WL 3093139 (Haw. App. Apr. 26, 2023) (SDO).</p>	<p>The family court granted the DHS' motion to terminate parental rights. Father appealed and mother cross-appealed. The ICA affirmed.</p>

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	<ol style="list-style-type: none"> 1. Rejected mother's and father's point of error that all of the family court's findings of fact and conclusions are clearly because she did not stipulate to the DHS' motion. This point of error does not comply with RECP Rule 11(a)(3) and HRAP Rule 28(b)(4) [requiring argument for each point of error], and therefore this point of error is waived. 2. The record reflects that mother voluntarily stipulated to the DHS' motion to terminate her parental rights. The family court conducted a colloquy of mother to determine that her stipulation was voluntary, knowing and intelligent. 3. Mother did not have standing to claim that father was denied Due Process. 4. Based on the Hawai'i Supreme Court's decision in <i>In re JH</i>, 152 Hawai'i 373, 526 P.3d 350 (2023), the proceedings to terminate father's parental rights were fundamentally fair. He was not denied Due Process when his counsel was discharged after he was defaulted for his failure to appear at court hearings, but counsel was re-appointed. 5. All of father's other points of error lack merit, were waived or are harmless.
<p><i>In re JA</i>, No. CAAP-22-0000525, 2023 WL 3478486 (Haw. App. May 16, 2023) (SDO).</p>	<p>Father's parental rights were terminated in the CPA case. The child was adopted and the family court revoked permanent custody and terminated jurisdiction. The family court denied his motion for post-decree relief asking for contact/communications with the child because the family court no longer had jurisdiction. The ICA affirmed.</p> <ol style="list-style-type: none"> 1. Father's arguments lack merit. 2. The family court no longer had jurisdiction over father's motion. Since the child was legally adopted, the father was no longer the child's family. HRS § 587A-4 "Family".
<p><i>In re KK</i> and <i>In re the Guardianship of KK</i>, Nos. CAAP-22-00162 and CAAP-22-0000675, 2023 WL 3533553 (Haw. App. May 18, 2023) (Memo.).</p>	<p>The family court granted the DHS' guardianship petition, and entered orders in the CPA case revoking foster custody and terminating jurisdiction. The family court also denied mother's motion for family supervision. Mother appealed the CPA case. [Not in the opinion: Since the guardianship case is intimately twined with the CPA case, the ICA gave mother leave to file her notice of appeal in guardianship case].</p> <ol style="list-style-type: none"> 1. Based on the rationale in <i>In re R Children</i>, 145 Hawai'i 477, 454 P.3d 418 (2019), the parallel statutory provisions in the guardianship statute cannot supersede provisions of the CPA. The CPA controls. 2. The family court abused its discretion by proceeding with the hearing on the guardianship petition, without first ordering a permanent plan with the goal of guardianship. 3. The CPA explicitly states that the family court must first order a permanent plan before proceeding with the goal of the permanent plan.

Case	Digest
<p><i>In re AA</i>, No. CAAP-22-0000427, 2023 WL 3619865 (Haw. App. May 24, 2023) (Memo.); <i>App. for Writ of Cert.</i> filed June 29, 2023.</p>	<p>Appeal after remand. <i>In re AA</i>, 150 Hawai'i 270, 500 P.3d 455 (2021). After the family court's order terminating father's parental rights were terminated, the family court granted the adoption petition. The family court denied father's second motion to intervene (based on the supreme court's ruling that father could intervene on the issues of visitation and child support – the post TPR residual parental rights and duties). The ICA affirmed.</p> <ol style="list-style-type: none"> 1. In his second motion to intervene, father asked the family court to address the issue of reunification. This issue was addressed by the Hawai'i Supreme Court and is not an issue. 2. The child's adoption extinguish father's residual rights to visitation (and his residual duty to pay child support). 3. Due to the adoption, father did not have any rights or obligations regarding the child.
<p><i>In re LI</i>, No. CAAP-21-0000509, 2023 WL 3721506 (Haw. App. May 26, 2023) (Memo.).</p>	<p>Competing adoption petitions by the child's paternal aunt and the child's RCG's. (Both previously filed guardianship petitions). Mother stipulated to the DHS' motion to terminate parental rights, but the family court authorized mother to participate in the permanent placement trial. The family court found that the RCG's met its burden by proving, by the preponderance of the evidence, that the DHS assessment and recommendation to permanent place the child with paternal aunt was not in the child's best interests. The family court granted the RCG's adoption petition, and denied paternal aunt's petition. Mother appealed and paternal aunt cross-appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> 1. Rejected mother's point of error that the family court abused its discretion because mother had the right to consent to the guardianship and to the adoption by paternal aunt. Consent is one factor, and the family court is required to consider the child's best interests. 2. The family court found the expert testimony by two psychologist about placement of the child with paternal aunt and the effects on the child, and ethnic identity, not to be credible, and if credible, the court did not give the expert testimony much weight. As the trier of fact, the family court has the discretion to determine the credibility of the evidence and the weight of the evidence. The appellate court shall not "pass" on these issues because they are the sole province of the trial court. 3. The family court considered the child's ethnicity, culture and religion in determining the child's placement and best interests. The ICA rejected paternal aunt's point of error that the family court abused its discretion in not considering these factors. 4. Based on <i>In re AS</i>, 132 Hawai'i 368, 387, 322 P.3d 263, 282 (2014), there is no statutory relative permanent placement preferences in the CPA. 5. The family court did not abuse its discretion when it granted the RCG's request to continue trial because the psychologists' report, with new expert opinions, was given to parties and counsel six days before trial. RCG's counsel need time to review the report and to consult with another expert.

Case	Digest
<p><i>In re NF and AF</i> and <i>In re HG</i>, Nos. CAAP-22-0000470 and CAAP-22-0000471, 2023 WL 3916302 (Haw. App. Jun. 9, 2023) (SDO).</p>	<p>Facts: The DHS intervene to protect the children’s older newborn child. Instead of participating in the voluntary service plan, the parents disappeared with the oldest sibling. The DHS filed its CPA petition. The oldest sibling died while in the parents’ care before the sibling could be taken into custody. Based on the concerns regarding the oldest sibling’s death, the DHS assumed temporary foster custody of NF and AF (collectively, “Twins”), and filed its CPA petition. The ICA affirmed father’s appeal of the adjudicatory findings and orders. The DHS assumed custody of HG and filed its CPA petition. The family court granted the DHS’ motion to terminate parental rights in both cases. Father appealed. The ICA affirmed.</p> <ol style="list-style-type: none"> 1. Father’s opening brief does not comply with RECPA Rule 11. However, whenever possible the ICA attempts to decide a case on its merits. 2. The family court did not clearly err when it determined that the circumstances surrounding the oldest sibling’s death was relevant to the DHS’ assessment of harm and the contested (factual) issues in the termination of parental rights proceedings. This determination was supported by the evidence in the record and the unchallenged findings of fact, and correctly applied the law, such as in termination of parental rights proceedings the family court may look into the past and present conditions of the family home to gain insight into the care the child may receive in the future. [citations omitted]. 3. The family court did not clearly err when it found that father was not able to provide a safe family home. This determination is support by the unchallenged findings of fact detailing father’s lack of housing and inability to supervise children. 4. Father failed to preserve the “reasonable efforts” point of error in the family court, and did not cite where in the record the error allegedly occurred. 5. The family court did not clearly err when if found that father’s mental health subjected the children to threatened harm. The unchallenged findings of fact regarding father’s and mother’s mental health history support this finding of fact.