SCPW-24-0000464

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Petitioner,

vs.

THE HONORABLE MATTHEW J. VIOLA, Senior Judge of the Family Court of the First Circuit, State of Hawai‘i

Respondent Judge,

and

THE DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI‘I; NICOLE CUMMINGS, in her capacity as guardian ad litem for interested minor children and person representative of the estate of [I.P.K. (2014)] formerly known as [A.S.]; LEHUA KALUA; ISAAC KALUA III; STEPHEN LANE in his capacity as court appointed special master; DEAN NAGAMINE, ESQ., in his capacity as guardian ad litem for interested minor children; ARLENE A. HARADA-BROWN in her capacity as guardian ad litem for interested minor children; MELANIE JOSEPH also known as MELANIE SELLERS; ADAM SELLERS; and, COURT APPOINTED SPECIAL ADVOCATES PROGRAM,

Respondents.

ORIGINAL PROCEEDING
(CASE NOS. 1FFM-24-0000018, 1FFM-24-0000019, FC-S 18-00280, FC-A 21-2-6010)

RESPONDENT JUDGE THE HONORABLE MATTHEW J. VIOLA’S **RESPONSE TO THE PETITION** FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS; CERTIFICATE OF SERVICE

RESPONDENT JUDGE THE HONORABLE MATTHEW J. VIOLA'S RESPONSE TO PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

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RESPONDENT JUDGE THE HONORABLE MATTHEW J. VIOLA'S RESPONSE TO PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

I. INTRODUCTION

Pursuant to the July 16, 2024 Order issued by the Hawai'i Supreme Court, this Response is submitted on behalf of the Honorable Matthew J. Viola in response to Petitioner Public First Law Center's *Petition for Writ of Prohibition and Writ of Mandamus*. Petitioner requests that this Court "issue a writ of prohibition prohibiting the family court from enforcing any order to maintain the entirety of (1) Case No. FC-S 18-00280 ([I.P.K. (2014)'s] [C]hild [P]rotective [A]ct case) and (2) Case No. FC-A No. 21-1-6010 ([I.P.K. (2014)'s] adoption case) under seal; and a writ of mandamus ordering the [F]amily [C]ourt to disclose redacted records for those cases, with appropriate redactions to protect the privacy of [I.P.K. (2014)]'s siblings." *Public First Law Ctr. v. The Honorable Matthew J. Viola*, SCPW-24-0000464, Dkt. No. 1, PDF at p. 7 (July 8, 2024).

The Family Court's reasoning to deny Petitioner's underlying motions to unseal is contained in the orders issued in Case No. 1FFM-24-0000018 and Case No. 1FFM-24-0000019. Judge Viola's response is limited to two points: (1) Petitioners have not demonstrated a lack of another means of potential redress, as required to obtain the extraordinary relief they seek; and (2) if the Court nonetheless grants Petitioner's requests, he respectfully seeks specific instructions regarding redactions.

II. STANDARD OF REVIEW

A writ of mandamus "is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action." *Kema v. Gaddis*, 91 Hawai'i 200,

204, 982 P.2d 334, 338 (1999). "Mandamus is an appropriate remedy where…a court acts in contravention of statute and the petitioner has no appropriate remedy by way of appeal." *Pelekai v. White*, 75 Haw. 357, 362, 861 P.2d 1205, 1208 (1993) (emphasis added).

Writs are appropriate in extraordinary circumstances. Requiring the presence of extraordinary circumstances ensures that this Court does not "supersede the legal discretionary authority of the lower court" and "interfere with or control the exercise of that discretion[.]" *Kema*, 91 Hawai'i at 204-205, 982 P.2d at 338-339 (1999). Where the trial court has discretion to decide an issue, mandamus is not appropriate "even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act." *Id*. at 204, 982 P.2d at 338.

III. ANALYSIS

A. The Extraordinary Relief of Mandamus Should Not Issue When an Appeal is Available.

If a party has a right to an appeal, a writ of mandamus is not available. Hawai'i appellate courts have consistently held that "mandamus may not be used to perform the office of an appeal." *State ex rel. Marsland v. Ames*, 71 Haw. 304, 306, 788 P.2d 1281, 1283 (1990). Writs of mandamus are not "meant to serve as legal remedies in lieu of normal appellate procedures." *Kema*, 91 Hawai'i at 204, 982 P.2d at 338.

In *Kema*, media organizations requested access to confidential family court records of Peter Kema, Jr. ("Peter Boy"), a seven-year-old minor who was reported missing, as well as two of his minor siblings. *Id.* at 202, 982 P.2d at 336. In response, Judge Gaddis held that a file of redacted documents should be disclosed and issued an order staying the release of the documents

for a period of time to permit further review. In its review, this Court stated that mandamus is an extraordinary remedy and is only appropriate where: (1) the Family Court issues an order that is not immediately appealable or related to the merits of Child Protective Act proceedings; and (2) the order releases confidential files in Child Protective Act proceedings to the media. *Id.* at 205, 982 P.2d at 339. Given that Judge Gaddis' order *released* confidential closed Child Protective Act records to the media, this Court granted the petition for writ of mandamus. *Id.* at 206, 982 P.2d at 340.

The Court should not issue a writ of mandamus because mandamus is an extraordinary remedy and is not meant to serve as a legal remedy in lieu of normal appellate procedures. First, the Family Court issued an order that is immediately appealable and is related to the merits of a Child Protective Act proceedings. Second, the Family Court did not issue an order that released confidential files in I.P.K. (2014)'s adoption proceeding or Child Protective Act proceeding.

1. The Family Court Issued an Order that is Immediately Appealable.

Petitioner claims that there is no other remedy other than the issuance of a writ of mandamus to review the Family Court's decision to unseal otherwise confidential records.[1] This Court should not issue a writ of mandamus because an appeal was available to the Petitioner.

The Family Court is provided with the discretion to unseal records for adoption proceedings and Child Protective Act proceedings. HRS §§ 587A-40(a), 578-15(b). This Petition was initiated in the Family Court under Rule 1.3(a)(18) of the Hawai‘i Family Court Rules for

[1] Petitioner cites to Rule 10.15 of the Hawaii Court Records Rules in alleging that it has no other remedy other than a writ of mandamus. *Public First Law Ctr. v. The Honorable Matthew J. Viola*, SCPW-24-0000464, Dkt. No. 1, PDF at p. 18 (July 8, 2024). In relevant part, HCRR Rule 10.15 states that "[a] person or entity *may* seek review of a denial or grant of access to a record by petitioning the supreme court, *in accordance* with Rule 21 of the Hawai‘i Rules of Appellate Procedure." HCRR 10.15 (emphasis added). While HCRR 10.15 permits a petitioner to file a writ of mandamus, the petitioner is still required to exhaust its appellate remedies.

any "other miscellaneous action over which the Family Court has jurisdiction." HFCR 1.3(a)(18). Pursuant to Rule 81(a)(16) of the Hawai'i Family Court Rules, these rules apply to any other civil action over which the Family Court has jurisdiction." HFCR 81(a)(16).On June 10, 2024, the Family Court issued its *Decision and Order Re: Motion to Unseal Court Adoption Records of [I.P.K. (2014)] f.k.a. [A.S.], Filed January 12, 2024* and its *Decision and Order Re: Motion to Unseal Court Adoption Records of [I.P.K. (2014)] f.k.a. [A.S.], Filed January 12, 2024* in the underlying cases 1FFM-24-0000018 and 1FFM-24-0000019. *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000018, Dkt. No. 65 (June 10, 2024); *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000019, Dkt. No. 59 (June 10, 2024).

HRS § 571-54 governs appeals from family court proceedings and provides that "[a]n interested party, aggrieved by *any* order or decree of the [Family Court], may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court."[2] HRS § 641-1 does not allow an appeal "from any decision which is tentative, informal[,] or incomplete." *In re Doe*, 102 Hawai'i 246, 249, 74 P.3d 998, 1001 (2003) (citations omitted). This court has construed this language as indicating that HRS § 641-1, which defines the limits of appeals in civil actions and proceedings, defines the limits of judgments, orders, or decrees in family court proceedings from which an appeal may lie.

HRS §§ 571-54 and 641-1 authorize appeals only from "final judgments" of the Family Court. *Bocalbos v. Kapiolani Medical Ctr. for Women & Children*, 89 Hawai'i 436, 441, 974 P.2d 1026, 1031 (1999). Specifically, this Court held that they "may hear appeals from only final

[2] In Child Protective Act cases, an interested party aggrieved by any order or decree of the Family Court may appeal as provided in HRS § 571-54. HRS [§ 587A-36].

orders, or decrees except otherwise provided by law." *In re Doe*, 77 Hawai‘i 109, 114, 883 P.2d 30, 35. (1994). An order possesses the requisite finality if it "determines the ultimate rights of the parties, with respect to disinct matters which have no bearing on other matters left for future consideration." *Bocalbos*, 89 Hawai‘i at 441, 974 P.2d at 1031 (quoting *Cleveland v. Cleveland*, 57 Haw. 519, 522, 559 P.2d 744, 747 (1977) (citations omitted)). In other words, *"[w]hat determines the finality of an order or decree is the nature and effect of the order or decree." In re Doe*, 77 Hawai‘i at 114, 883 P.2d at 35 (quotations and citations omitted) (emphasis in original)

However, in light of the Family Court's continuing jurisdiction over a child, "the standard for a final judgment in a juvenile matter differs from that under general civil law [because t]he very nature of a juvenile proceeding entails an on-going case which does not result in a final order, as that term is generally defined." *Id.* Thus, to determine whether there would be appellate jurisdiction over the Family Court's orders, this Court must first examine the underlying assumption that the orders possess the degree of finality required for purposes of perfecting the right to appeal under HRS § 571-54.

In the instant case, the Petition requested the Family Court to unseal records from I.P.K. (2014)'s adoption proceeding and Child Protective Act proceeding, including: "(1) [t]he case docket – *i.e.*, the index of pleadings; (2) [r]ecords sufficient to understand the factual and legal record on which the Court approved [I.P.K. (2014)'s] foster placement with Isaac K. Kalua, III and Lehua Kalua (together, the Kaluas); (3) [r]ecord sufficient to understand the factual record presented to the Court by the Department of Human Services (DHS) and any other person or party regarding the Kaluas' fitness as foster parents; and (4) [a]ny reports filed in this matter by Special Master Stephen W. Lane." *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-

0000018, Dkt. No. 1 (Jan. 12, 2024); *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000019, Dkt. No. 1 (Jan. 12, 2024) (emphasis in original). The Family Court orders conclusively determined the disputed issues at the heart of this litigation when it *denied* the Petitioner's request for access to I.P.K. (2014)'s records. *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000018, Dkt. No. 65, PDF at p. 13, ¶ 59 (June 10, 2024); *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000019, Dkt. No. 59, PDF at p. 11, ¶ 49 (June 10, 2024). Thus, the Family Court's orders constitute final orders for the purpose of appealability because it denied all the relief sought in the Petition and disposed of the proceeding.

As a party to the original proceedings, Petitioner could have filed a Notice of Appeal to the Intermediate Court of Appeals to raise the same issues on appeal that it raises here. *See* HRS § 571-54. Rule 81(f) of the Hawai'i Family Court Rules states that "Rule 4 of the Hawai'i Rules of Appellate Procedure shall apply to appeals from a family court in proceedings listed in subdivision (a) of this Rule 81. HFCR 81(f). "When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." Hawaii Rules of Appellate Procedure Rule 4(a). Petitioner did not file a Notice of Appeal by July 10, 2024, thirty days after entry of Judge Viola's orders. Nor did Petitioner file a request for extensions of time to file a notice of appeal as prescribed by Hawaii Rules of Appellate Procedure 4(a)(4)(A).

Essentially, the Petitioner seeks to vacate the Family Court's orders that maintained the entirety of I.P.K. (2014)'s adoption and CPA proceedings under seal and seeks to remand the original action to the Family Court for further actions in disclosing redacted records. The relief that Petitioner effectively seeks in its Petition is not mandamus relief at all; it is appellate relief. *See* Hawai'i Rules of Appellate Procedure Rule 35(e). Therefore, this Court cannot issue a writ

of mandamus because appellate procedures is the proper vehicle for Resolving Petitioner's claims of error.

2. The Family Court Did Not Issue Orders That Would Release Confidential Files in the Adoption Proceeding or the CPA Proceeding.

In *Kema*, this Court determined that a petition for writ of mandamus was the appropriate remedy given Judge Gaddis' order would have released confidential, closed Child Protective Act records to the media, despite Judge Gaddis' own recognition that "additional publicity about these children would be potentially harmful and would not be in their best interest." *Kema*, 91 Hawai‘i at 203, 205, 982 P.2d at 338, 339. This Court determined that release of Peter Boy's file would ultimately result in the release of many documents related to Peter Boy's siblings, "a result unintended by Judge Gaddis and contrary to the intent and purpose of HRS chapter 587." *Id.* at 206, 982 P.2d at 340.

Here, unlike in *Kema*, there are no urgent circumstances or irreversible consequences that arise from the Family Court's denial of Petitioner's request to release records from I.P.K. (2014)'s adoption proceeding and Child Protective Act proceeding. The Family Court did not issue an order to release confidential files in the adoption proceeding and the Child Protective Act proceeding to the media. Rather, the Family Court *denied* Petitioner's request to access the records because "the information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with information regarding [her] Siblings." *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000018, Dkt. No. 65, PDF at p.12 at ¶ 54. In the Child Protective Act proceeding decision and order, the Family Court also *denied* Petitioner's request, finding that "the information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with

information regarding [her] Siblings." *Special Proc. to Unseal Adoption Recs.*, Case No. 1FFM-24-0000019, Dkt. No. 59, PDF at p.11 at ¶ 44 (June 10, 2024).

In *Kema,* urgent circumstances and irreversible consequences arose out of Judge Gaddis' order releasing records despite his recognition that "additional publicity about these children would be potentially harmful and would not be in their best interest." *Kema*, 91 Hawai'i at 203, 982 P.2d at 338. Petitioner has not identified any harmful or immediate consequences that arise from the Family Court's orders that would result in their denial of Petitioner's request to release records from I.P.K. (2014)'s adoption proceeding and Child Protective Act proceeding. Because Petitioner had a procedural alternative available to address the unsealing of the Family Court records through an appeal and it simply chose not to pursue it, this Court should not issue a writ of prohibition or mandamus.

B. If This Court Intends to Address the Petition on its Merits and Remands the Matter to the Family Court, the Family Court Requests Specific Instructions on Redactions.

If this Court addresses the merits of this Petition and issues a writ of mandamus and a writ of prohibition ordering the Family Court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of I.P.K. (2014)'s siblings, the Family Court respectfully seeks specific instructions regarding redactions in Case No. FC-S 18-00280 and Case No. FC-A No. 21-6010.

Kema is the only case where Hawai'i appellate courts have addressed the release of records of proceedings under the Child Protective Act. In *Kema*, this Court recognized "the overriding concern of the Child Protective Act in determining whether to release such information remains the best interest of the children involved." *Id.* at 205-06, 982 P.2d at 339-40. When assessing the best interests of the other children involved, Judge Gaddis recognized that

the records from Peter Boy's Child Protective Act proceeding contained a great deal of material relating to Peter Boy's siblings. Although Judge Gaddis attempted to redact all information relating to the siblings, this Court's review of the redacted file revealed that the cases were "inextricably intertwined" and that "release of Peter Boy's file would ultimately result in the release of a large number of documents related to the other children, a result unintended by Judge Gaddis and contrary to the intent and purpose of [the Child Protective Act]." *Id*. at 206, 982 P.2d at 340. Thus, this Court enjoined Judge Gaddis from releasing the requested information.

The Family Court heavily relied on *Kema* in attempting to redact information in the records of I.P.K. (2014)'s adoption proceeding and CPA proceeding and adoption proceeding records. The Family Court engaged in a determined effort to redact all information relating to I.P.K. (2014)'s siblings, which it determined would be harmful and not in their best interests to release. Therefore, the Family Court came to the same conclusion as this Court in *Kema*: information about I.P.K. (2014) is inextricably intertwined with that of her minor siblings. If this Court abrogates *Kema* or otherwise determines that the Family Court committed a flagrant and manifest abuse of discretion, the Family Court respectfully requests specific instructions regarding redactions, given that disclosure of information relating to I.P.K. (2014)'s minor siblings would be contrary to the intent and purpose of the Child Protective Act and the sealing of adoption records.

IV. CONCLUSION

In conclusion, the extraordinary relief of mandamus should not issue here because an appeal is available to the Petitioner. If this Court considers the Petition on the merits nonetheless

and disagrees with the Family Court's orders, the Family Court respectfully seeks specific instructions regarding redactions in Case No. FC-S 18-00280 and Case No. FC-A No. 21-6010.

DATED: Honolulu, Hawai'i, September 3, 2024.

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SCPW-24-0000464

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER, Petitioner, vs. THE HONORABLE MATTHEW J. VIOLA, Senior Judge of the Family Court of the First Circuit, State of Hawai‘i Respondent Judge, and THE DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI‘I; NICOLE CUMMINGS, in her capacity as guardian ad litem for interested minor children and person representative of the estate of [I.P.K. (2014)] formerly known as [A.S.]; LEHUA KALUA; ISAAC KALUA III; STEPHEN LANE in his capacity as court appointed special master; DEAN NAGAMINE, ESQ., in his capacity as guardian ad litem for interested minor children; ARLENE A. HARADA-BROWN in her capacity as guardian ad litem for interested minor children; MELANIE JOSEPH also known as MELANIE SELLERS; ADAM SELLERS; and, COURT APPOINTED SPECIAL ADVOCATES PROGRAM, Respondents.	ORIGINAL PROCEEDING (CASE NOS. 1FFM-24-0000018, 1FFM-24-0000019, FC-S 18-00280, FC-A 21-2-6010) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the date indicated below, a true and correct copy of the foregoing document was duly served upon the following parties through the US Mail, postage prepaid, or electronically by the Judiciary Electronic Filing System:

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