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 Isabella P. Kalua formerly known as Ariel Sellers; 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,

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

(*Caption continued on the next page*)

Respondents.

RESPONDENT COURT APPOINTED SPECIAL ADVOCATES PROGRAM'S ANSWER TO PETITIONER PUBLIC FIRST LAW CENTER'S "PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS" FILED JULY 8, 2024, AND "SUPPLEMENTAL MEMORANDUM" FILED JULY 25, 2024

DECLARATION OF EMILY D. KAUWE

DECLARATION OF LINDA KIM

DECLARATION OF STEPHEN N. HAYNES

APPENDICIES "A" – "D"

CERTIFICATE OF SERVICE

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RESPONDENT COURT APPOINTED SPECIAL ADVOCATES PROGRAM'S ANSWER TO PETITIONER PUBLIC FIRST LAW CENTER'S "PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS" FILED JULY 8, 2024, AND "SUPPLEMENTAL MEMORANDUM" FILED JULY 25, 2024

I. INTRODUCTION

This Petition arises from two family court proceedings in which Public First requested that the Honorable Matthew J. Viola unseal I.P.K. (2014)'s:[1] (1) Child Protective Act ("CPA") proceeding records under Hawaii Revised Statutes ("HRS") § 587A-40(a); and (2) adoption proceeding records under HRS § 578-15(b). Judge Viola carefully considered and, within the sound exercise of his discretion, rejected Public First's arguments raised in support of these requests.

Judge Viola did, however, grant Public First's request to inspect a redacted version of a report by Special Master Stephen W. Lane in a separate family court proceeding. This report did not satisfy Public First. To further its desire to access these confidential records, Public First filed its Petition to compel Judge Viola to grant them access to I.P.K. (2014)'s CPA proceeding and adoption proceeding records, despite Judge Viola's responsibility to safeguard the interests of the adoption triad in maintaining confidentiality of these records and the best interest of all children involved in these proceedings.

The Petition must be denied because Public First fails to demonstrate a clear and indisputable right to the requested relief – access to I.P.K. (2014)'s CPA proceeding records under HRS § 587A-40(a) and adoption proceeding records under HRS § 578-15(b). Indeed, as Public First acknowledges, Judge Viola is vested with discretion to decide whether to release

[1] To ensure confidentiality of the subject child's identity related to the requested adoption and Child Protective Act proceeding records, she is referred to herein by her initials and year of birth instead of by her name.

CPA and adoption proceeding records. Far from shirking a legal duty to give Public First access to the records, Judge Viola soundly exercised his discretion in denying Public First's requests. Public First also fails to recognize, or even argue, that any extraordinary circumstances warrant the requested extraordinary writs. The Petition fails for these reasons alone.

Public First's quarrel with Judge Viola's rulings also fails under the ordinary legal requirements for unsealing CPA proceeding and adoption proceeding records.

First, Judge Viola properly exercised his discretion when he determined that I.P.K. (2014)'s CPA proceeding records could not be released unredacted nor could the records be redacted because that would result in a large number of documents related to I.P.K. (2014)'s minor siblings also being released as they are inextricably intertwined, which is a result, while unintended, runs contrary to the intent and purpose of the CPA.

Second, Judge Viola properly exercised his discretion by considering the needs and best interests of I.P.K. (2014)'s minor siblings – as members of the adoption triad – which comports with the plain meaning and legislative intent of HRS § 578-15(b). Although Judge Viola's decision and order in the adoption proceeding mentions the "legitimate purpose" standard, he clearly found that Public First failed to make the requisite showing of "good cause" to release the records given the circumstances and important interests at stake in this case.

Public First's arguments, if accepted, would also have a potential chilling effect on volunteers for the Court Appointed Special Advocates (CASA) Program, which advocate on behalf of the best interest of neglected and abused children in Hawai‘i.

For these reasons, CASA requests that the Petition be denied in its entirety.

II. STATEMENT OF RELEVANT FACTS

A. Overview of the Court-Appointed Special Advocates Program

Both federal and state law provide for the appointment of a court-appointed special advocate. *See, e.g.*, HRS § 587A-4 (2018); HRS § 587A-3.1(b)(3) (2018); 34 U.S.C. § 20321(1); 34 U.S.C. § 20322. A "court-appointed special advocate" is defined as "a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem." HRS § 587A-4.

The court-appointed special advocate, as an appointed officer of the court, functions as a fact-finder for the judge in the proceeding. In this capacity, they are in contact with the children to which they are appointed to represent,[2] the CASA social worker, DHS, the parents (adoptive and natural), relatives, therapists, doctors and teachers (among others). The court-appointed special advocates use all the gathered information to advocate for the best interest of neglected and abused children, which is primarily accomplished through submitting a written report and recommendation before any hearings in the case. The court-appointed special advocate remains involved in the case until its conclusion, providing a consistent figure in the proceeding and continuity for the children.

The Hawai‘i CASA program, which is funded through the State, provides the court-appointed special advocates with the necessary training and support to carry-out their responsibilities. While there are other child advocacy organizations, the CASA program is the

[2] A child in foster care, like I.P.K. (2014), is entitled "[t]o have regular in-person contact with [their] . . . court appointed special advocate[.]" HRS § 587A-3.1.

only program in which volunteers are appointed by the court to represent and advocate for a child's best interest.

B. Procedural History

On January 12, 2024, Public First filed its: (1) "Motion to Unseal Court Adoption Records of [I.P.K. (2014)] F.K.A. [A.S.]" ("Adoption Motion to Unseal"), initiating 1FFM-24-0000018 ("Adoption Records Proceeding"); and (2) "Motion to Unseal Portions of Child Protective Act Proceeding of [I.P.K. (2014)] F.K.A. [A.S.]" ("CPA Motion to Unseal"), initiating 1FFM-24-0000019 ("CPA Records Proceeding"). 1FFM-24-18 Dkt. 1; 1FFM-24-19 Dkt. 1.

A hearing was held before Judge Viola on February 21, 2024; however, Judge Viola continued the hearing to allow interested parties and entities – including, CASA and DHS – with notice and the opportunity to be heard. 1FFM-24-18 Dkt. 53; 1FFM-24-19 Dkt. 6.

On April 1, 2024, DHS filed its memorandum in opposition to Public First's Adoption Motion to Unseal and CPA Motion to Unseal. 1FFM-24-18 Dkt. 1; 1FFM-24-19 Dkt. 47. CASA filed substantive joinders to DHS's oppositions. 1FFM-24-18 Dkt. 58; 1FFM-24-19 Dkt. 52. Pubic First filed separate reply memoranda to DHS's memoranda in opposition and CASA's substantive joinders. 1FFM-24-18 Dkts. 55, 56, 63; 1FFM-24-19 Dkts. 49, 50, 57.

On June 10, 2024, Judge Viola entered a separate decision and order in each of the proceedings. 1FFM-24-18 Dkt. 65; 1FFM-24-19 Dkt. 59.

In the Adoption Records Proceeding, Judge Viola recognized that "there is good cause to allow [Public First] to inspect the adoption records insofar as it would serve a legitimate purpose" – it would "'contribute to public understanding and awareness' of the response of agencies and the family court to problems of child abuse and neglect ([*Kema v. Gaddis*, 91

Hawai‘i 200, 204, 982 P.2d 334, 338 (1999)])[.]" 1FFM-24-18 Dkt. 65 at PDF 10 in ¶¶43-44. However, after "a determined effort to redact information in the court's file relating to [I.P.K. (2014)]'s Siblings[,]" Judge Viola determined that "the information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with information regarding [her] Siblings." 1FFM-24-18 Dkt. 65 at PDF 12 in ¶54. Accordingly, Judge Viola denied Public First's request to access the adoption proceeding, along with the case docket, because release of the requested records would not be in I.P.K. (2014)'s siblings' best interest. 1FFM-24-18 Dkt. 65 at PDF 13 in ¶59; see also 1FFM-24-18 at PDF 12 in ¶52.

In the CPA Records Proceeding, Judge Viola recognized that "even though the court finds that permitting . . . [Public First] access to the court's records would serve a legitimate purpose, such access must be denied if it would be contrary to the best interests of any of the children involved in the case[,]" citing *Kema*, 91 Hawai‘i at 206, 982 P.2d at 340. 1FFM-24-19 Dkt. 59 at PDF 9 in ¶37; *see also* 1FFM-24-19 Dkt. 59 at PDF 9 in ¶35. Similar to the conclusion in the Adoption Decision and Order, Judge Viola, after "a determined effort to redact information in the court's file relating to [I.P.K. (2014)]'s Siblings[,]" determined that "the information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with information regarding [her] Siblings." 1FFM-24-19 Dkt. 59 at PDF 11 in ¶44. Judge Viola, on this basis, denied Public First's request to access the CPA proceeding records, along with the case docket, because release of the requested records would not be in I.P.K. (2014)'s siblings' best interest. 1FFM-24-19 Dkt. 59 at PDF 11 in ¶49; *see also* 1FFM-24-19 Dkt. 59 at PDF 11 in ¶45.

Judge Viola did grant Public First access to a redacted version of the Special Master Report of Stephen W. Lane, along with the exhibits attached to the report. 1FFM-24-18 Dkt. 65

at PDF 17 in ¶90; 1FFM-24-19 Dkt. 69. The redacted report[3] was released in both proceedings on June 10, 2024. 1FFM-24-18 Dkt. 75; 1FFM-24-19 Dkt. 59 at PDF 15 in ¶80.

On July 8, 2024, Public First filed its "Petition for Writ of Prohibition and Writ of Mandamus[,]" requesting:

> [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 child protective act 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 family court to disclose redacted records for those cases, with appropriate redaction to protect the privacy of [I.P.K. (2014)]'s siblings.

SCPW-24-464 Dkt. 1 at PDF 11. This Court ordered Respondents to answer the Petition and Petitioner's supplemental brief on footnote 7 of the Petition. SCPW-24-464 Dkt. 5 at PDF 2.

III. STANDARD OF REVIEW

A. Writs of Mandamus and Prohibition

With respect to writs of mandamus or prohibition, this Court has stated:

> A writ of mandamus and/or prohibition is an extraordinary remedy that *will not issue unless the petitioner demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action*. Such writs are not meant to supersede the legal discretionary authority of the lower court, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. Where a trial court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, 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*.

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[3] As clarified by Judge Viola in the decisions and order, the following information was redacted from the version of the report released for inspection:

> [I]nformation regarding the Siblings, information that is irrelevant to the basis of the determinations regarding appropriateness of the Kaluas as a placement for the Children, personal and confidential information, including the names and contact information, of third parties, and post-adoption documents and information.

1FFM-24-18 Dkt. 65 at PDF 17 in ¶90; 1FFM-24-19 Dkt. 59 at PDF 15 in ¶80.

Kema v. Gaddis, 91 Hawai‘i 200, 204-05, 982 P.2d 334, 338-39 (1999) (cleaned up) (emphasis added).

IV. ARGUMENT

A. Public First failed to properly apply the relevant standard for reviewing writs of mandamus and prohibition

Public First flouts the extraordinarily high standard for issuing writs of mandamus and prohibition, especially given the discretion vested in Judge Viola to determine whether to unseal I.P.K. (2014)'s CPA proceeding records under HRS § 587A-40(a) and adoption proceeding records under HRS § 578-15(b).

A writ-seeking party has a heavy burden. As Public First correctly sets forth in its Petition, "[a] writ of mandamus and/or prohibition . . . will not issue unless the petitioner demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action."[4] *Kema*, 91 Hawai‘i at

[4] Public First must demonstrate that there is "a lack of other means to redress adequately the alleged wrong or to obtain the requested action." *Kema*, 91 Hawai‘i at 204, 982 P.2d at 338. In this case, Public First had adequate means to redress the relief requested in their Petition by timely appealing the: (1) CPA Decision and Order; and (2) Adoption Decision and Order. *See Torres v. Torres*, 100 Hawai‘i 397, 406 n.8, 60 P.3d 798, 807 n.8 (2002) (holding an order in a divorce proceeding that conclusively determined the disputed issue met the "requisite degree of finality of an appealable order." (citation omitted)); *see also* HRS § 571-54 (2018) ("An interested party, aggrieved by any order . . . of the 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[.]").

However, Public First decided to allow their time to appeal lapse and instead filed its Petition in lieu of following normal appellate procedures. "Such writs 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. The requested writs are therefore not warranted. *See Medeiros v. Rouse*, SCPW-23-0000442, 2023 WL 6389618, at *1 (Haw. Oct. 2, 2023) (Order Denying Petition) (denying petition for writ of mandamus because the petitioner had adequate means to redress the relief requested through an appeal), attached hereto as Appendix "A."

204, 982 P.2d at 338. "These conditions operate to preserve a case's usual progression." *Womble Bond Dickinson (US) LLP v. Kim*, 153 Hawai'i 307, 319, 537 P.3d 1154, 1166 (2023).

However, even if the petitioner satisfies these conditions, they still have the burden to establish the extraordinary circumstances that warrant the issuance of such a writ. *See, e.g.*, *Yang v. Drewyer*, SCPW-24-0000086, 2024 WL 1475548, at *1 (Haw. Apr. 5, 2024) (Order Denying Petition for Writ of Mandamus), attached hereto as Appendix "B"; *Shyne v. Watanabe*, SCPW-23-0000586, 2023 WL 6938269, at *1 (Haw. Oct. 20, 2023) (Order Denying Petition for Writ of Mandamus), attached hereto as Appendix "C"; *Fernandes v. Kubota*, SCPW-23-0000086, 2023 WL 4676062, at *2 (Haw. July 21, 2023) (Order Denying Petition for Writ of Mandamus), attached hereto as Appendix "D."

This Court has made clear: "[E]xtraordinary writs are appropriate in extraordinary circumstances. Exceeding jurisdiction, committing a flagrant and manifest abuse of discretion, or refusing to act on a subject properly before the court under circumstances in which it has a legal duty to act, are court actions and inaction that may constitute extraordinary circumstances to issue a writ." *Womble Bond Dickinson (US) LLP*, 153 Hawai'i at 319, 537 P.3d at 1166. Requiring the presence of extraordinary circumstances before the issuance of such writs 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 204-05, 982 P.2d at 338-39.

As Public First acknowledges in its supplemental brief, the relevant statutes – HRS § 587A-40(a) and HRS § 578-15(b) – vest the family court with discretion to determine whether to unseal records in CPA proceedings and adoption proceedings. *See* SCPW-24-464 Dkt. 16 at PDF 3 ("The Legislature intended to provide judicial discretion to disclose adoption records

when it enacted the good cause standard."), 7 (recognizing "the discretion afforded by 'good cause[.]'"). Specifically, HRS § 587A-40(a) provides that the family court "may" unseal adoption proceeding records upon a determination that "such access . . . serves some other legitimate purpose." HRS § 578-15(b), likewise, provides that the family court "may" unseal CPA proceeding records "upon a showing of good cause[.]" "The term 'may' is generally construed to render optional, permissive, or discretionary the provision in which it is embodied[.]" *In re CM*, 141 Hawai'i 348, 353, 409 P.3d 752, 757 (2017) (quoting *State v. Kahawai*, 103 Hawai'i 462, 465, 83 P.3d 725, 728 (2004)).

Public First's Petition and Supplemental Brief fail to demonstrate, or even argue, that Public First has "a clear and indisputable right to the relief requested" – a right to inspect I.P.K. (2014)'s CPA proceeding and adoption proceeding records – and that any of the above-mentioned extraordinary circumstances are present to warrant the issuance of the requested writs. Instead, Public First merely regurgitates the very same arguments that Judge Viola carefully considered and rejected while exercising his sound discretion. On this basis alone, this Court should deny this Petition. *See Fernandes*, 2023 WL 4676062, at *2 (denying petition for writ of mandamus because the petitioner failed to establish extraordinary circumstances to warrant such relief).

B. Judge Viola properly exercised his discretion in denying the CPA Motion to Unseal

As to the CPA Motion to Unseal, Public First appears to assert that Judge Viola erred by considering the possibility that disclosing a redacted version of I.P.K. (2014)'s CPA proceeding records could create a "distorted and misleading picture[,]" despite there being a purported "legitimate purpose" for unsealing these records under HRS § 587A-40(a). SCPW-24-464 Dkt. 1 at PDF 11-22. This argument, which is based upon a narrow and selective reading of Judge

Viola's CPA Decision and Order, fails because Judge Viola's concern that a redacted version of the CPA proceeding records would create a "distorted and misleading picture of the contents of the court record" was exactly that, a concern. 1FFM-24-19 Dkt. 59 at PDF 11 in ¶47. The actual basis upon which Judge Viola denied Public First's request to inspect I.P.K. (2014)'s CPA proceeding records was squarely based on this Court's binding decision in *Kema*.

HRS § 587A-40(a) (2018) provides, in relevant part:

> (a) The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, *only upon an order of the court*. The court may issue this order upon determining that such access is in the best interests of the child or *serves some other legitimate purpose.*

(Emphasis added.) Public First maintains that there is a significant "legitimate purpose" in disclosing as much as possible about court records for children who die in foster care and adoption through state officials, citing *Kema* in support. SCPW-24-464 Dkt. 1 at PDF 13. *Kema*, instead of supporting Public First, supports Judge Viola's determination that I.P.K. (2014)'s CPA proceeding records should remain sealed to protect the best interest of her minor siblings.

In *Kema*, a reporter from the Honolulu Advertiser wrote to the family court seeking information about the disappearance of Peter Kema, Jr. (Peter Boy). 91 Hawai'i at 202, 982 P.2d at 336. Judge Gaddis granted the limited release of information through an ordered synopsis[5]

[5] Judge Gaddis required that the synopsis include the following:

> (1) the injuries suffered by Peter Boy when he first came to the attention of DHS; (2) the circumstances and allegations that caused Peter Boy once again to come to the attention of DHS; (3) all known accounts provided to the DHS and law enforcement authorities regarding the disappearance of Peter Boy, including (a) the location of the child when last seen, (b) the names of persons the child was alleged to have been with, (c) the date the child was last seen, (d) a photograph of

completed by DHS, but denied the release of all other court records. *Id.* at 202-03, 982 P.2d at 336-37. Judge Gaddis, in applying the predecessor to HRS § 587A-40,[6] determined that the limited release of information was in the "best interests of [Peter Boy]" and served the legitimate interest of potentially "assist[ing] authorities in locating [him]." *Id.* at 202, 982 P.2d at 336.

About a month later, the Honolulu Advertiser petitioned the family court for access to all confidential records in the child protective matter involving Peter Boy. *Kema*, 91 Hawai'i at 203, 982 P.2d at 337. The Honolulu Advertiser argued that unsealing the child protective matter record served two legitimate purposes: (1) to "advance and protect the welfare of [Peter Boy]"; and (2) "assist[] the community in understanding what had transpired in Peter Boy's case." *Id.* Judge Gaddis granted, in part, Honolulu Advertiser's petition, ordering a redacted version of the closed child protective matter to be open for public inspection. *Id.* at 204, 982 P.2d at 338. In so ordering, Judge Gaddis acknowledged "the impact that additional media exposure [could] have on the other children in the family[,]" *id.* at 203, 982 P.2d at 337; and recognized that "[i]t seems

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> Peter Boy, and (e) any other information or allegations that might help the public locate Peter Boy.

Kema, 91 Hawai'i at 202-03, 982 P.2d at 336-37.

[6] The version of HRS § 587-81 (1993) to which the *Kema* court applied provided, in relevant part:

> The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon order of the court after the court has determined that such access is in the best interest of the child or serves some other legitimate purpose[.]

Kema, 91 Hawai'i at 202 n.2, 982 P.2d at 336 n.2 (quoting HRS § 587-81 (1993)). This language remained largely unchanged through the recodification of the CPA in 2010. *Compare* HRS § 587A-40(a) *with* HRS § 587-81.

likely that additional publicity about these children would be potentially harmful and would not be in their best interest[,]" *id.* (emphasis omitted).

In the mandamus proceeding that followed, this Court was tasked with interpreting and applying the "legitimate purpose" standard, as used in HRS § 587A-40(a), for the first time. *See Kema*, 91 Hawai'i at 205, 982 P.2d at 339 ("[HRS § 587A-40(a)] and its legislative history do not define "legitimate purpose," and this court has not previously had occasion to apply the statute."). This Court, in conducting its analysis, recognized that while the release of further information to the media might serve some legitimate purpose, "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. "The interests of other parties and non-parties seeking information[,]" this Court stated, "is *not as compelling* as the interests of the children involved." *Id.* at 206, 982 P.2d at 340 (emphasis added). Despite Judge Gaddis's effort to redact all information relating to Peter Boy's siblings, this Court determined that the "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 CPA]." *Id.* Because the cases were "inextricably intertwined" and release of redacted information was not in the best interest of Peter Boy's siblings, this Court enjoined Judge Gaddis from releasing the requested information. *Id.*

In this case, Public First confirmed that unlike in *Kema*, "[t]he purpose of disclosure is not to help find a missing child." 1FFM-24-19 Dkt. 1 at PDF 13; *see also* 1FFM-24-19 Dkt. 49 at PDF 4 ("The purpose here is not to help find [I.P.K. (2014)]."). Instead, it claims that unsealing the requested portions of the CPA proceeding records will allow the public to examine how I.P.K. (2014)'s case was handled. *See* SCPW-24-464 Dkt. 1 at PDF 13; 1FFM-24-19 Dkt. 1

at PDF 13; 1FFM-24-19 Dkt. 49 at PDF 4. Even if this could potentially be a legitimate interest, it does not outweigh "the best interest of the children involved[,]" which are paramount to the interests of non-parties, like Public First or the public in general.[7] *See Kema*, 91 Hawai'i at 205-06, 982 P.2d at 339-40.

The requested CPA proceeding records in this case, like the second set of records requested in *Kema*, involve a substantial amount of information pertaining to each of I.P.K. (2014)'s minor siblings that were also adopted by the Kaluas. This is confirmed by Judge Viola's finding in the CPA Decision and Order, which provides:

> The court has closely reviewed the entire CPA case file. *The file contains a great deal of information relating to the Siblings* – information that is relevant to the purposes for which access is sought. Some of the information relates to: detailed allegations of the abuse and neglect they suffered and the trauma they experienced; their physical, emotional, and behavioral health diagnoses and needs; their medical treatment and histories; their therapy; their behaviors, including challenging behaviors; and their interactions with each other and others, including the Kaluas.

1FFM-24-19 Dkt. 59 at PDF 10 in ¶39 (emphasis added). The information regarding I.P.K. (2014)'s minor siblings is, as Judge Viola concluded, "inextricably intertwined" with I.P.K. (2014)'s CPA proceeding records. 1FFM-24-19 Dkt. 59 at PDF 11 in ¶44.

As such, the release of I.P.K. (2014)'s CPA proceeding records – even if redacted – will ultimately result in the release of a large number of documents related to I.P.K. (2014)'s minor siblings. Consistent with Judge Viola's conclusion, this result, while unintended, "will be harmful to [I.P.K. (2014)'s minor siblings] and contrary to their best interests[,]" 1FFM-24-19 Dkt. 59 at PDF 10 in ¶42. *Kema*, 91 Hawai'i at 206, 982 P.2d at 340 (noting additional publicity

[7] This Court has recognized that "the interests of the press are no different from the interests of the general public." *Kema*, 91 Hawai'i at 205 n.6, 982 P.2d at 339 n.6 (citing *Gannett Pac. Corp. v. Richardson*, 59 Haw. 224, 229-30, 580 P.2d 49, 54-55 (1978)).

about Peter Boy's siblings would be potentially harmful and would not be in their best interest). This result also runs contrary to the intent and purpose of the CPA ascertained by this Court in *Kema*. *See id.* ("[T]he overriding concern of the Child Protective Act In determining whether to release such information remains the best interest of the children involved."); *see also In re FG*, 142 Hawai'i 497, 505, 421 P.3d 1267, 1275 (2018) (noting the purpose of the CPA is to serve the best interests of the children affected) (citing HRS § 587A-2 (Supp. 2016)).[8]

This Court's foremost obligation in this case is to "ascertain and give effect to the intention of the legislature" in enacting HRS § 587A-40(a), which has already been clearly set forth by this Court in *Kema*. *See Seki ex rel. Louie v. Hawaii Government Employees Association, AFSCME Local 152*, 133 Hawai'i 385, 400, 328 P.3d 394, 409 (2014) (citation omitted). Accepting Public First's position would effectively require this Court abrogate *Kema*. And ultimately, the proper forum for vindication of Public First's concern – ensuring public oversight of state-sponsored adoptions – is in the legislature or the executive branch, and not the

[8] The supreme court also recognized the existence of extensive statutory protections of the confidentiality of CPA records:

> The CPA provides for the confidentiality of records, and requires that its proceedings be closed to the general public and held without a jury. HRS § 587A-40; HRS § 587A-25 (Supp. 2016). Further, family court records in many types of cases involving children are not available for public inspection. HRS § 571-84 (Supp. 2016). Hawai'i also provides for the confidentiality of DHS records regarding reports and investigations of child abuse or neglect, and the intentional unauthorized disclosure of a report or record of a report to DHS constitutes a misdemeanor. HRS § 350-1.4 (Supp. 2016).

In re FG, 142 Hawai'i at 505, 421 P.3d at 1275.

judiciary.[9] *See Hawaii's Thousand Friends v. Anderson*, 70 Haw. 276, 283, 768 P.2d 1293, 1299 (1989).

Public First has therefore failed to demonstrate a clear and indisputable right to inspect I.P.K. (2014)'s CPA proceeding records under HRS § 587A-40(a). In turn, it is clear that Judge Viola did not commit, and could not have committed, a flagrant and manifest abuse of discretion in denying Public First's request to inspect I.P.K. (2014)'s CPA proceeding records. Thus, Public First has failed to satisfy its burden to warrant the issuance of the requested extraordinary writs.[10]

C. Judge Viola properly exercised his discretion in denying Public First's Adoption Motion to Unseal

As to the Adoption Motion to Unseal, Public First argues that Judge Viola erred by refusing to release I.P.K. (2014)'s adoption proceeding records despite a clear showing of good cause. This argument, which is again based on a narrow and selective reading of the Adoption Decision and Order, is meritless because Judge Viola, consistent with a plain reading and the legislative history of HRS § 578-15(b), properly exercised his discretion in denying Public

[9] Public First appears to acknowledge that the legislature, not the judiciary, is the proper forum in which to effect its desired change following I.P.K. (2014)'s determination of death. Public First highlights that "[t]he Legislature has entertained multiple bill proposals prompted by her death and, among other steps, enacted Act 86 (2023) to have a working group 'recommend transformative changes to the State's existing child welfare system." SCPW-24-464 Dkt. 1 at PDF 15 (citing 2022 Haw. Sess. Laws Act 86, § 1).

[10] Public First also asserts that the four "legitimate state purposes" set forth in Hawai'i Administrative Rule ("HAR") § 17-1601-6(16) support its request to unseal portions of I.P.K. (2014)'s CPA proceeding records. SCPW-24-464 Dkt. 1 at PDF 14-15 & 15 n.10. However, HAR § 17-1601-6, unlike HRS § 587A-40(a), does not control or even relate to the disclosure of CPA proceeding records in possession of the family court; instead, this rule controls only the disclosure of DHS's records – defined as "all written, oral, electronic information gathered and maintained by the department [of human services] in its State central registry or in physical records[,]" HAR § 17-1601-2.

First's Motion to Unseal. A thorough reading of the entire Adoption Decision and Order shows that Judge Viola carefully considered the facts and circumstances of the adoption case, including the potential harm to I.P.K. (2014)'s minor siblings from release of the records. Judge Viola then exercised his discretion and determined that, in the context of the adoption proceeding, "good cause" required the same showing as the "legitimate purpose" standard, and properly denied Public First's request.

HRS § 578-15(b) (Supp. 2023) provides:

> (b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:
>
> (1) Upon order of the family court upon a showing of *good cause*[.]

(Emphasis added.)

Any potential issue in "the intersection of the 'legitimate purpose' standard for disclosure of child protective act (CPA) case records [HRS] § 587A-40, and the 'good cause' standard for disclosure of adoption case records, HRS § 578-15(b)(1), when a CPA case leads to adoption[,]" SCPW-24-464 Dkt. 16 at PDF 2, is immaterial to this Court's determination of whether Public First is entitled to the requested extraordinary writs. The crux of this second issue presented is whether Public First has demonstrated "a clear and indisputable right to the relief requested" – the right to inspect I.P.K. (2014)'s sealed adoption proceeding records under HRS § 578-15(b). Public First, however, has failed to demonstrate that it has a clear and indisputable right to inspect I.P.K. (2014)'s adoption proceeding records because it failed to show "good cause," as required by HRS § 578-15(b).

1. The "good cause" requirement in HRS § 578-15(b) protects the interests of adoptees, adoptive parents, and natural parents

At the outset of this analysis, this Court must first interpret the meaning of the phrase "good cause," as used in HRS § 578-15(b), which is vital in determining whether Public First has a clear and indisputable right to the relief requested. When construing a statute, we start with the statute's language; "implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." *Barker v. Young*, 153 Hawai'i 144, 148, 528 P.3d 217, 221 (2023) (citation omitted).

Black's Law Dictionary defines "good cause" as: "A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused." *Chen v. Mah*, 146 Hawai'i 157, 178 n.22, 457 P.3d 796, 817 n.22 (2020) (quoting *Good Cause*, *Black's Law Dictionary* (11th ed. 2019)). The "good cause" standard is not automatically easier to establish than the "legitimate purpose" test as Public First presumes. Rather, this Court has recognized that "'good cause' is a relative and highly abstract term, and its meaning must be determined not only by verbal context of the statute in which the term is employed, but also by context of action and procedures involved in the type of case presented." *Doe v. Doe*, 98 Hawai'i 144, 154, 44 P.3d 1085, 1095 (2002) (cleaned up).

Legislative history is useful to "discern the underlying policy which the legislature seeks to promulgate and, thus, . . . determine if a literal construction would produce an absurd or unjust result, inconsistent with the policies of the statute." *Survivors of Medeiros v. Maui Land & Pineapple Co.*, 66 Haw. 290, 297, 660 P.2d 1316, 1321 (1983).

In 1945, the legislature enacted Act 40, which provided in relevant part:

> **Secrecy of Records.** The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of the department of public welfare or his agent, or by any proper person on a showing of good cause therefor, upon order of court. Upon the entry of the decree the clerk of the court shall seal all records in the proceedings. Such seal shall not be broken and such records shall not be inspected by any person, including the parties to the proceedings, except upon order of court.
>
> The clerk of the court shall keep a docket of all adoption proceedings, which may only be inspected by order of the court.

1945 Laws of Territory of Hawaii Act 40, § 2 at 302. This portion of Act 40 was codified as Revised Laws of Hawaii ("RLH") § 12276.02 – a predecessor to HRS § 578-15(b). The House Committee on Judiciary confirmed that RLH § 12276.02 functioned to ensure "complete secrecy of the proceedings both before the entry of the decree" "so that, after adoption, all public records will indicate that the child is the natural child of the adopting parents." S. Stand. Comm. Rep. No. 90, in 1945 Senate Journal, at 276. The Committee on Conference, in accordance with this stated intent, agreed to amend the Senate's draft of the bill to include this "secrecy of records" provision in the Conference Committee draft, which was the version ultimately enacted as Act 40. Conf. Comm. Rep. No. 9, in 1945 Sente Journal, at 726.

The legislature enacted Act 338 in 1990, which, for the first time, added the "upon a showing of good cause" requirement for unsealing confidential adoption proceeding records for inspection. Act 338 provides, in relevant part:

> (b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:
>
> (1) Upon order of the family court *upon a showing of good cause*[.]

1990 Haw. Sess. Laws Act 338, § 5 at 1038 (emphasis added). Both the House and Senate stated that the purpose of the bill was to allow the members of the adoption triad – the adoptees, adoptive parents, and natural parents – to inspect adoption records. S. Stand. Comm. Rep. No 3056, in 1990 Senate Journal, at 1241; H. Stand. Comm. Rep. No. 632-90, in 1990 House Journal, at 1076.

The House Committee on Judiciary expressed, however, that "access to adoption records cannot be allowed without sufficient safeguards which will protect those individuals and maintain a balance in the exercise of rights by the members of the triad." S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. One of these safeguards included the insertion of "[l]anguage . . . to clarify that the opening of adoption records can occur upon order of the family court upon a showing of good cause." *Id.* This amendment, the Committee stated, "is necessary to ensure that this procedure, which is currently available, will still be available in addition to the other procedures established in this bill as amended." *Id.*

2. Public First misreads the legislative history behind the "good cause" requirement

Public First misinterprets the legislature's intentions in enacting Act 338 in 1990, which was codified in HRS § 578-15(b).

First, Public First contends that "[t]he Legislature intended the 1990 amendments to make it less difficult for parties to the adoption to obtain certain records[,]" citing 1FFM-24-18 Dkt. 56 at PDF 14, 17-18. SCPW-24-464 Dkt. 16 at PDF 4. However, a review of these pages of the House Committee on Judiciary and Conference Committee reports do not even mention that this was the legislature's intent in enacting Act 338.

Second, Public First contends that "[t]he Legislature did not intend to limit a court's existing authority to disclose records[,]" citing 1FFM-24-18 Dkt. 56 at PDF 14. SCPW-24-464 Dkt. 16 at PDF 4. The cited portion of the House Committee on Judiciary's report, again, does not confirm this intent. To the contrary, the Legislature, in enacting Act 338, inserted language "to clarify that the opening of adoption records can occur upon order of the family court upon a showing of good cause[,]" S. Stand. Comm. Rep. No 3056, in 1990 Senate Journal, at 1241, because there was no clear standard governing the unsealing of adoption proceeding records under RLH § 12276.02.

Third, the House Committee on Judiciary did not "recognize the need for flexibility to address broader access to adoption records[.]" SCPW-24-464 Dkt. 16 at PDF 4. Instead, the House Committee on Judiciary recognized that "there are compelling arguments for fully opening up adoption records"; it did not express an intent to provide more flexibility to address broader access to adoption records beyond the adoption triad. The House Committee on Judiciary actually noted that it is "sensitive to the concerns of those in the triad who wish to maintain confidentiality[,]" S. Stand. Comm. Rep. No 3056, in 1990 Senate Journal, at 1241, which directly contradicts any intent to provide broader access to adoption records.

3. Judge Viola properly determined that "good cause" in this case did not allow the release of I.P.K. (2014)'s adoption proceeding records

Public First argues there is "good cause" to unseal I.P.K. (2014)'s adoption proceeding records because: "adoption secrecy here no longer serves its purpose"; "[t]he identities of the child, birthparents, and adoptive parents are widely known"; "the adopted child is dead"; and "her adoptive parents are charged with her murder."[11] SCPW-24-464 Dkt. 16 at PDF 7. This

[11] The "good cause" proffered in this proceeding differs from the relied-upon good cause before Judge Viola in the Adoption Proceeding. Before Judge Viola, the "good cause" upon which

claimed "good cause," however, is inconsistent with the purpose of and policies behind HRS § 578-15(b) and its predecessor RLH § 12276.02.

While it is clear that the family court is vested with discretion to determine what constitutes "good cause," *see Chen*, 146 Hawai'i at 178, 457 P.3d at 817, this determination must be consistent with the plain language and legislative intent behind HRS § 578-15(b). As stated, the predecessor to HRS § 578-15(b) was originally enacted to ensure "complete secrecy of the proceedings both before the entry of the decree[,]" unless otherwise ordered by the court. S. Stand. Comm. Rep. No. 90, in 1945 Senate Journal, at 276.

The "upon a showing of good cause" requirement, as enacted in 1990, functioned, and continues to function, as a safeguard to "members of the triad who wish to maintain confidentiality." S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. Judge Viola was therefore tasked with making a determination of "good cause" that safeguards not only I.P.K. (2014)'s statutory right to confidentiality – which survives the probate court's suggestion of death, *see cf. Swindler & Berlin v. United States*, 524 U.S. 399, 405 (1998) ("[P]rivilege continues after the individual's death.") – but safeguards I.P.K. (2014)'s minor siblings' interest in the confidentiality of the requested adoption proceeding records.

Under Public First's interpretation of HRS § 578-15(b), all family court judges would be permitted to unseal confidential adoption proceeding records to "ensure public oversight when a child dies in the care of a state-sponsored adoption." 1FFM-24-18 at PDF 7; *see also* SCPW-24-464 Dkt. 1 at PDF 15, 21-22. As confirmed by the legislative history of HRS § 578-15, the

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Public First relied included only: (1) "confidentiality is no longer needed to protect the integrity of the adoption process"; and (2) "the specific facts of this case demand openness to ensure public oversight when a child dies in the care of a state-sponsored adoption." 1FFM-24-18 Dkt. 1 at PDF 7.

public's interest in ensuring oversight over the state-sponsored adoption process *does not* take priority over the interest of the adoption triad – namely I.P.K. (2014) and her minor siblings – in preserving the confidentiality of the adoption proceeding records. Public First's request that adoption confidentiality yield to protect and promote the integrity of the adoption process through public understanding completely disregards the safeguards specifically enacted by the legislature to protect the confidentiality interests of the adoption triad. S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241.

Judge Viola appropriately exercised his discretion to protect the confidentiality interests of the adoption triad by denying Public First's request to unseal I.P.K. (2014)'s adoption proceeding records. In reviewing I.P.K. (2014)'s adoption proceeding file, in its entirety, Judge Viola found:

> The file contains a great deal of information relating to the Siblings, including information contained in reports that were filed in the CPA case. Some of the information relates to: detailed allegations of the abuse and neglect they suffered and the trauma they experienced; their physical, emotional, and behavioral health diagnoses and needs; their medical treatment and histories; their therapy; their behaviors, including challenging behaviors; and their interactions with each other and others, including the Kaluas.

1FFM-24-18 Dkt. 65 at PDF 11 in ¶49. While Judge Viola recognized that "there is good cause to allow [Public First] to inspect the adoption records insofar as it would serve a legitimate purpose[,]" 1FFM-24-18 Dkt. 65 at PDF 10 in ¶44, he concluded that "[r]edaction of information regarding the Siblings is not possible" because "the information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with the information regarding the Siblings[,]" 1FFM-24-18 Dkt. 65 at PDF 12 in ¶54-55. Thus, Judge Viola denied Public First access to I.P.K. (2014)'s adoption proceeding records because public disclosure of these records "would be harmful to [the Siblings] and contrary to their best interests." 1FFM-24-18 Dkt. 65 at PDF 12 in

¶52, PDF 13 in ¶59. This determination is in accord with the plain meaning and legislative history of HRS § 578-15(b) – namely the legislature's intent to protect the confidentiality interests of the adoption triad. *See* S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241.

Judge Viola therefore reached the right result. His conclusion was supported by his findings and reflects an application of the correct rule of law. *See Est. of Klink ex rel. Klink v. State*, 113 Hawai'i 332, 351, 152 P.3d 504, 523 (2007) (noting a conclusion of law supported by the trial court's findings of fact and applying the correct rule of law will not be overturned"). Accordingly, Public First failed to demonstrate a clear and indisputable right to access I.P.K. (2014)'s adoption proceeding records under HRS § 578-15(b), and Judge Viola did not commit, and could not have committed, a flagrant and manifest abuse of discretion in denying Public First's Adoption Motion to Unseal.

D. Potential Downstream Consequences From the Extraordinary Writs Requested

CASA requests that this Court consider the potential downstream consequences that the CASA program may encounter if it compels Judge Viola to release I.S.K. (2014)'s adoption and CPA proceeding records. Under Public First's proposal for increased accessibility of adoption proceeding and CPA proceeding records, all reports and recommendations filed by the CASA program's court-appointed special advocates will be subject to inspection by the public to ensure oversight when a child dies in the care of state-sponsored adoptions. Implementation of this proposal, however, overlooks the severe ramifications to those who matter most to the abused and neglected children involved in these proceedings – the CASA program volunteers.

The CASA program was created to provide neglected and abused children with a voice in their court proceedings through the advocacy of trained volunteers. Decl. of Emily D. Kauwe

at PDF 3 in ¶8. These volunteers, many of which whom come from the same communities as these children, have the time it takes and passion it requires to fulfill this purpose. *Id.* If this Court makes it easier for the public to access adoption and CPA proceeding records (which include the reports of CASA program volunteers), the volunteers may not feel comfortable providing the family court judges with their candid observations as to the child's situation, the adoptive home, adoptive parents, and other factors considered in recommending what is in the best interest of the children involved in those proceedings. Decl. of Stephen N. Haynes at PDF 3 in ¶7.

Mr. Haynes, a long-time volunteer for the CASA program, explained that his concerns stem from the fear of "potential backlash or public retaliation against me and my family regarding my assessments of the families involved or the situation." Decl. of Stephen N. Haynes at PDF 3 in ¶7. He attested that, "[a]s a result, I may not feel comfortable in continuing to volunteer for the CASA program." *Id.* Ms. Kim, another volunteer with the CASA program, attested that "[d]ue to the nature of the work we do, having our names and other identifiable information released could leave us vulnerable to negative public retaliation which I am not willing to risk as a volunteer." Decl. of Linda Kim at PDF 3 in ¶7. And, as a result, she also "would consider not continuing to volunteer for the CASA program." *Id.* Their fears are "magnified by how fast information can spread over the internet and through social media." Decl. of Stephen N. Haynes at PDF 3 in ¶7. As a result, the abused and neglected children may no longer have CASA program volunteers, as figures of continuity in often-difficult proceedings, to advocate for their best interest. Decl. of Emily D. Kauwe at PDF 3 in ¶8.

Releasing the records and potentially weakening the CASA program would put the interests of Public First first – and ignores the interests of the children that are served by the CASA program's dedicated volunteers.

V. CONCLUSION

For the foregoing reasons, as well as those raised by DHS in their response to the Petition and supplemental brief, CASA requests that this Court deny the relief requested by the Petition *in toto*.

DATED: Honolulu, Hawaii, September 3, 2024.

STATE OF HAWAII

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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 Isabella P. Kalua formerly known as Ariel Sellers; 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)

DECLARATION OF EMILY D. KAUWE

DECLARATION OF EMILY D. KAUWE

I, EMILY D. KAUWE, under penalty of perjury, declare the following to be true and correct based on my personal knowledge:

1. I am the Court Appointed Special Advocates (CASA) Program Manager for the First Circuit of the State of Hawai‘i.

2. I have been the First Circuit's CASA Program Manager since July 2022.

3. In this position, I manage the CASA program staff and volunteers. I oversee all aspects of the proceedings to which our staff and volunteers are assigned. I also ensure that our volunteers receive adequate training and support from the CASA program to enable them to effectively advocate for the best interest of the abused and neglected children in the first circuit.

4. We currently have 117 active volunteers in the CASA program for the first circuit. The First Circuit CASA Program has the largest number of volunteers in the state due to the amount of children requiring court-appointed special advocates.

5. Our volunteers are appointed by First Circuit Family Court judges to advocate for the best interest of children involved in adoption and Child Protective Act proceedings.

6. As appointed officers of the court, our volunteers are tasked with gathering all the necessary information to draft a report for the presiding judge in these proceedings. The volunteers: (1) review all records pertaining to the children; (2) communicate with those knowledgeable about the children's current situation and the children's history; and (3) remain in constant contact with the children throughout the proceeding.

7. These reports are filed before each hearing in the adoption and Child Protective Act proceedings to provide the presiding judge with a summary of the volunteer's findings and

recommendations as to what is in the best interest of the child or children involved. I review the volunteers' reports before they are filed.

8. Without our volunteers, the CASA program would not be able to properly function. The CASA program was created to provide neglected and abused children with a voice in their court proceedings through the advocacy of our trained volunteers. Our volunteers have the time it takes and the passion it requires to fulfill this purpose. I worry about the potential ramifications that the issuance of the requested extraordinary writs may have on not only the CASA program, but on the abused and neglected children of Hawai'i because they may no longer have our volunteers advocating for their best interest.

DATED: Honolulu, Hawai'i, August 30, 2024.

EMILY D. KAUWE

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 Isabella P. Kalua formerly known as Ariel Sellers; 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)

DECLARATION OF LINDA KIM

DECLARATION OF LINDA KIM

I, LINDA KIM, under penalty of perjury, declare the following to be true and correct based on my personal knowledge:

1. I am a volunteer with the Court Appointed Special Advocates (CASA) program in the First Circuit of the State of Hawai‘i.

2. I have been a Hawai‘i CASA program volunteer since April 2021.

3. The CASA program has provided me with extensive training, which includes (but is not limited to): in-class training; court observations; and background screening.

4. As a CASA program volunteer, I am appointed by Hawai‘i Family Court judges to advocate for the best interests of children involved in adoption and Child Protective Act proceedings.

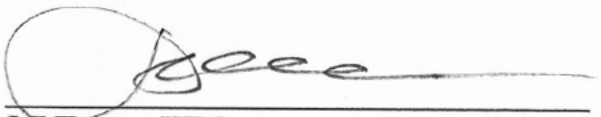
5. In my capacity as an appointed officer of the court, I am tasked with (among other things) gathering all necessary information to be able to provide the presiding judge with a recommendation as to what is in the best interest of the children involved in the proceedings. I review all records pertaining to the children, like school, medical, case worker reports, and any other relevant documents. I communicate with the assigned CASA program social worker, the Hawai‘i Department of Human Services, the parents (adoptive and natural), relatives, therapists, doctors, and teachers (among others). And most importantly, I remain in constant contact with the children throughout the proceedings, which ensures that the children – many of which are victims of child abuse and neglect – have a consistent figure to guide them through the often-difficult proceedings.

6. After gathering all the necessary information, I draft a report for the presiding judge in each of the proceedings. I file this report before each hearing in the adoption and Child

Protective Act proceedings to provide the presiding judge with a summary of my findings and candid recommendations as to what is in the best interest of the child or children involved.

7. If this Court makes it easier for the public to access the now-sealed adoption and Child Protective Act proceeding records (many of which include the reports of CASA program volunteers like myself), I worry that my identity would be disclosed. I take my responsibilities as a CASA volunteer very seriously and, although I am fully committed to serve as an advocate for children in need, I am not comfortable with my personal information being made public. Due to the nature of the work we do, having our names and other identifiable information released could leave us vulnerable to negative public retaliation which I am not willing to risk as a volunteer. As a result, I would consider not continuing to volunteer for the CASA program.

DATED: Honolulu, Hawai'i, August 30, 2024.



LINDA KIM

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 Isabella P. Kalua formerly known as Ariel Sellers; 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)

DECLARATION OF STEPHEN N. HAYNES

DECLARATION OF STEPHEN N. HAYNES

I, STEPHEN N. HAYNES, under penalty of perjury, declare the following to be true and correct based on my personal knowledge:

1. I am a volunteer with the Court Appointed Special Advocates (CASA) program in the First Circuit of the State of Hawai'i.

2. I have been a Hawai'i CASA program volunteer since 2004.

3. The CASA program has provided me with extensive training, which includes (but is not limited to): in-class training; court observations; and background screening.

4. As a CASA program volunteer, I am appointed by Hawai'i Family Court judges to advocate for the best interests of children involved in adoption and Child Protective Act proceedings.

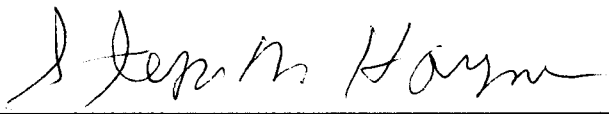
5. In my capacity as an appointed officer of the court, I am tasked with (among other things) gathering all necessary information to be able to provide the presiding judge with a recommendation as to what is in the best interest of the children involved in the proceedings. I review all records pertaining to the children, like school, medical, case worker reports, and any other relevant documents. I communicate with the assigned CASA program social worker, the Hawai'i Department of Human Services, the parents (adoptive and natural), relatives, therapists, doctors, and teachers (among others). And most importantly, I remain in constant contact with the children throughout the proceedings, which ensures that the children – many of which are victims of child abuse and neglect – have a consistent figure to guide them through the often-difficult proceedings.

6. After gathering all the necessary information, I draft a report for the presiding judge in each of the proceedings. I file this report before each hearing in the adoption and Child

Protective Act proceedings to provide the presiding judge with a summary of my findings and candid recommendations as to what is in the best interest of the child or children involved.

7. If this Court makes it easier for the public to access the now-sealed adoption and Child Protective Act proceeding records (many of which include the reports of CASA program volunteers like myself), then I may not feel comfortable providing the Family Court judges my candid observations as to the child's situation, the adoptive home, the adoptive parents, and other factors that I consider in recommending what is in the best interest of the children involved in these proceedings. I would be afraid of potential backlash or public retaliation against me and my family regarding my assessments of the families or the situation. This fear is magnified by how fast information can spread over the internet and through social media. As a result, I may not feel comfortable in continuing to volunteer for the CASA program.

DATED: Honolulu, Hawai'i, 8/31/2024.



STEPHEN N. HAYNES

APPENDIX “A”

2023 WL 6389618
Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai‘i.

Shawn J. MEDEIROS, Petitioner,
v.
The Honorable James R. ROUSE, Presiding Judge of the Circuit Court of the Second Circuit, State of Hawai‘i, Respondent Judge,
and
State of Hawai‘i, Respondent.

SCPW-23-0000442
|
October 2, 2023

ORIGINAL PROCEEDING (CASE NO. 2CPC-22-0000677)

(By: Recktenwald, C.J., McKenna, and Eddins, JJ., Circuit Judge Kubota and Circuit Judge Morikone, assigned by reason of vacancies)

ORDER DENYING PETITION

***1** Upon consideration of petitioner Shawn J. Medeiros's letters filed on July 25, 2023 as a petition for writ of mandamus, and the record, the court declines to entertain the petition and, as set forth herein, the petition is denied. See Hawai‘i Rules of Appellate Procedure 21(c) (eff. 2010).

Under Hawai‘i Revised Statutes (HRS) § 804-9 (Supp. 2021), the trial court has broad discretion to establish a reasonable bail amount based on a balance of factors. Accordingly, Medeiros's grievances related to the denial of his motion to reduce bail are without merit to the extent a writ of mandamus is not meant to be used to supersede a judge's discretionary authority. See Kema v. Gaddis, 91 Hawai‘i 200, 204, 982 P.2d 334, 338 (1999).

As for Medeiros's grievances related to the findings of fact, conclusions of law, and order denying Medeiros's motion to suppress evidence, Medeiros has adequate means to redress the relief requested by appeal from the judgment entered in 2CPC-22-0000677. See HRS § 641-11 (2016). Accordingly, denial of the petition as to this ground is warranted because a writ of mandamus is not "meant to serve as legal remedies in lieu of normal appellate procedures" and such a writ will not issue unless the petitioner establishes a "lack of other means to redress adequately the alleged wrong or obtain the requested action." See Kema, 91 Hawai‘i at 204, 982 P.2d at 338. Medeiros failed to carry this burden.

Finally, it cannot be said that the respondent judge committed a flagrant and manifest abuse of discretion in denying Medeiros's motion to reduce bail, motion for temporary release, and motion to suppress evidence. See id. at 205, 982 P.2d at 339.

In conclusion, the court finds that all arguments made by Medeiros to support his petition are without merit. See id.

It is ordered:

1. The petition is denied without prejudice;

2. The clerk of the appellate court shall process the petition without payment of the filing fee.

3. In response to Medeiros's request to initiate a formal complaint against the respondent judge, the appellate clerk shall transmit a copy of the petition to the Commission on Judicial Conduct (CJC) for such action as the CJC deems appropriate, with a copy transmitted to Medeiros's last known address at Maui Community Correctional Center, 600 Waiale Drive, Wailuku, HI 96793.

All Citations

Not Reported in Pac. Rptr., 2023 WL 6389618

End of Document

APPENDIX “B”

2024 WL 1475548
Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai‘i.

Jin Quan YANG, Petitioner,
v.
The Honorable Michelle L. DREWYER,
Judge of the Circuit Court of the Second
Circuit, State of Hawai‘i, Respondent Judge,
and
Pacific Hawaii Food Service LLC, Respondent.

SCPW-24-0000086
|
April 5, 2024.

ORIGINAL PROCEEDING, (CASE NO. 2CCV-22-0000181)

(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

***1** Upon consideration of petitioner Jin Quan Yang's February 12, 2024 petition for writ of mandamus (Petition) to recuse the respondent judge from Civil No. 2CCV-22-0000181, and the record, we conclude that mandamus relief is not warranted.

Here, Petitioner by timely appeal may raise this same grievance. See Hawai‘i Revised Statutes § 641-1(a) (2016). Consequently, Petitioner's case is not one in which the question of disqualification cannot otherwise be reviewed, and immediate review by way of mandamus is not warranted. See Womble Bond Dickinson (US) LLP v. Kim, 153 Hawai‘i 307, 319, 537 P.3d 1154, 1166 (2023) (requiring a petitioner seeking an extraordinary writ to “demonstrate a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action” (cleaned up)); Peters v. Jamieson, 48 Haw. 247, 257, 397 P.2d 575, 582-83 (1964) (“[A] writ of prohibition will lie to compel a trial judge to recuse ... because of bias or prejudice which appears from the record, where ... the case is one in which the question of disqualifications cannot otherwise be reviewed.”).

The Petition made several other requests for relief, none of which we find warrant further review by mandamus. In sum, none of Petitioner's arguments support the issuance of the requested writ. In so holding, we do not decide any question as to the merits.

The burden was on Petitioner to establish the extraordinary circumstances to warrant mandamus. We find that Petitioner failed to carry this burden. See Hawai‘i Rules of Appellate Procedure, Rule 21(c) (“If the court is of the opinion that the writ should not be entertained, it shall deny the petition.”). Petitioner's grievances may be pursued by appeal, rather than by resort to this court's original jurisdiction for extraordinary writs.

It is ordered that the Petition is denied.

Mark E. Recktenwald

Sabrina S. McKenna

Todd W. Eddins

Lisa M. Ginoza

Vladimir P. Devens

All Citations

Not Reported in Pac. Rptr., 2024 WL 1475548

APPENDIX “C”

2023 WL 6938269
Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai‘i.

Catherine M. SHYNE, Petitioner,
v.
The Honorable Kathleen N.A. WATANABE,
Judge of the Circuit Court of the Fifth
Circuit, State of Hawai‘i, Respondent Judge,
and
TBC Koloa Town LLC, Respondent.

SCPW-23-0000586
|
October 20, 2023

ORIGINAL PROCEEDING (CASE NO. 5CCV-21-0000032)

(By: Recktenwald, C.J., McKenna, and Eddins, JJ., Circuit Judge Remigio and Circuit Judge Souza, assigned by reason of vacancies)

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

***1** Upon consideration of the petition for a writ of mandamus, filed on October 16, 2023 (Petition), the documents attached and submitted in support, and the record, Petitioner Catherine M. Shyne failed to establish a "clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action." See Kema v. Gaddis, 91 Hawai‘i 200, 204, 982 P.2d 334, 338 (1999).

Here, depending on the outcome of the hearings in the underlying post-judgment proceeding it appears Petitioner could pursue normal appellate procedures to challenge any purported error by the circuit court. See e.g., Ditto v. McCurdy, 103 Hawai‘i 153, 157, 80 P.3d 974, 978 (2003) (discussing post-judgment orders and when they may be appealed); Harada v. Ellis, 60 Haw. 467, 480, 591 P.2d 1060, 1070 (1979) (discussing the collateral order doctrine and contempt). It is well-established that a petition for writ of mandamus is not meant to serve as a legal remedy in lieu of normal appellate procedure. See Kema, 91 Hawai‘i at 204, 982 P.2d at 338.

Next, based on a review of the record it cannot be said that the circuit court committed a flagrant and manifest abuse of discretion in scheduling the hearing dates at the same time. Here, a number of hearings related to the debtor examination occurred before the upcoming October 25, 2023 hearing, yet despite receiving notice of these hearings through the Judiciary Electronic Filing System (JEFS), counsel for Petitioner failed to appear. See Rules of the Circuit Courts of the State of Hawai‘i, Rule 15(b) ("Expedition of Court Business"); see also Electronic Filing and Service Rules, Rule 6 ("The Notice of Electronic Filing automatically generated by JEFS and JIMS constitutes service of the electronically filed document to JEFS Users."). In short, as to this ground and based on the circumstances raised by Petitioner, we decline to entertain the petition.

In sum, none of the arguments made by Petitioner support the issuance of the requested writ. In so holding, we do not decide any question as to the merits.

The burden was on Petitioner to establish the extraordinary circumstances to warrant mandamus. We find that Petitioner failed to carry this burden.

It is ordered that the Petition is denied.

All Citations

Not Reported in Pac. Rptr., 2023 WL 6938269

APPENDIX “D”

2023 WL 4676062
Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai‘i.

Eleanor P. FERNANDES, Petitioner,
v.
The Honorable Peter K. KUBOTA, Judge
of the Circuit Court of the Third Circuit,
State of Hawai‘i, Respondent Judge,
and
James B. Nutter & Company, Respondent.

SCPW-23-0000086
|
July 21, 2023

ORIGINAL PROCEEDING (CIV. NO. 3CC161000329)

(By: Recktenwald, C.J., McKenna, and Eddins, JJ., Circuit Judge To‘oto‘o and Circuit Judge Crabtree, assigned by reason of vacancies)

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

***1** Upon consideration of the petition for a writ of mandamus, filed on February 22, 2023 (Petition), the documents attached and submitted in support, and the record, Petitioner Eleanor P. Fernandes failed to establish a "clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action." See Kema v. Gaddis, 91 Hawai‘i 200, 204, 982 P.2d 334, 338 (1999).

In the Petition, Petitioner challenged the circuit court's decision to uphold a claim of attorney-client privilege, the circuit court's subsequent refusal to reconsider this decision, and the Respondent Judge's refusal to recuse.

Here, Petitioner is a party to the underlying foreclosure and by timely appeal may raise these grievances. See Hawai‘i Revised Statutes § 667-51(a)(1); Bank of Am., N.A. v. Reyes-Toledo, 139 Hawai‘i 361, 372, 390 P.3d 1248, 1259 (2017); see also Anastasi v. Fid. Nat. Title Ins. Co., 137 Hawai‘i 104, 106, 366 P.3d 160, 162 (2016) (reviewing an order that upheld the attorney-client privilege); Cho v. State, 115 Hawai‘i 373, 384-386, 168 P.3d 17, 28-30 (2007) (reviewing order on motion for reconsideration); Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawai‘i 159, 165, 172 P.3d 471, 477 (2007) (reviewing an order related to recusal). We find that mandamus to address these grievances is not warranted because "[s]uch writs are not meant to supersede the legal discretionary authority of the lower court, nor are they meant to serve as legal remedies in lieu of normal appellate procedures." Kema, 91 Hawai‘i at 204, 982 P.2d at 338.

We turn now to the Petitioner's contention that the Respondent Judge has failed to rule on a motion for reconsideration of a discovery order that upheld, in part, the claim of attorney-client privilege. We are not persuaded that the circumstances raised in the Petition established that the circuit court "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 205, 982 P.2d at 339.

"Generally, in the absence of an extreme, compelling situation, a trial court that has jurisdiction over an action lacks authority to refuse to consider a litigant's motions." 56 Am. Jur. 2d Motions, Rules, and Orders § 38 (2023); see also In re Sch. Asbestos Litig., 977 F.2d 764, 793-795 (3d Cir. 1992) (discussing when a federal district court may refuse to consider a motion for summary judgment). But counterposed is the "general proposition, [that] a party is prohibited from filing repetitive motions for the same relief, or asserting the same basis[.]" 56 Am. Jur. 2d Motions, Rules, and Orders § 5 (2023) (footnote omitted).

Here, the circuit court did address and resolve, by order, the discovery dispute between the parties. In response to a motion to compel, the circuit court reviewed records in camera that the party withheld under a claim of attorney-client privilege, and entered an order that upheld the privilege, in part. Petitioner was not satisfied with the circuit court's decision to uphold the privilege and filed multiple successive motions which, in substance, moved the circuit court to reconsider its prior decision on discovery.

***2** Next, the circuit court addressed and resolved Petitioner's first motion for reconsideration, styled a "motion to clarify," and then later resolved Petitioner's "third motion to compel" that sought similar relief. Both of these motions filed by Petitioner had sought, in substance, reconsideration of the

circuit court's decision to uphold the privilege. While the circuit court entered at least two orders denying the requested relief, the Respondent Judge failed to enter an order disposing of Petitioner's non-hearing motion filed on April 13, 2020 (Subject Motion). In the Subject Motion, the Petitioner again sought reconsideration of the circuit court's decision to uphold the privilege. Yet because the decision to consider the Subject Motion, which was a repeat motion for reconsideration of a discovery order, was committed to the discretion of the circuit court, it cannot be said that Petitioner's right to have the Respondent Judge resolve the Subject Motion is "clear and indisputable." See Kema, 91 Hawai'i at 204, 982 P.2d at 338.

The Petition made several other requests for relief, none of which we find warrant further review by mandamus. In sum, none of the arguments made by Petitioner support the issuance of the requested writ. In so holding, we do not decide any question as to the merits.

The burden was on Petitioner to establish the extraordinary circumstances to warrant mandamus. We find that Petitioner failed to carry this burden. See Hawai'i Rules of Appellate Procedure, Rule 21(c) ("If the court is of the opinion that the writ should not be entertained, it shall deny the petition."). Petitioner's grievances may be pursued by appeal, rather than by resort to this court's original jurisdiction for extraordinary writs.

It is hereby ordered that the Petition is denied.

All Citations

Not Reported in Pac. Rptr., 2023 WL 4676062

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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 Isabella P. Kalua formerly known as Ariel Sellers; 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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PUBLIC FIRST LAW CENTER

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Respondent NICOLE CUMMINGS, in her capacity as guardian ad litem for interested minor children and person representative of the estate of I.S.K. 2014 formerly known as [A.S.]

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Respondent Arlene Harada-Brown, in her capacity as guardian ad litem for interested minor children

Brett Alan Ritter baresq@outlook.com

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

STATE OF HAWAII

ANNE E. LOPEZ
Attorney General of Hawaii

/s/ Chase S.L. Suzumoto
CHASE S.L. SUZUMOTO
CRAIG Y. IHA
Deputy Attorneys General

Attorneys for Respondent
COURT APPOINTED SPECIAL
ADVOCATES PROGRAM