NO. 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, et. al., Respondents.	)	ORIGINAL PROCEEDING 1FFM-24-0000018 1FFM-24-0000019 PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAI‘I The Honorable Matthew J. Viola, Family Court of the First Circuit, State of Hawai’i

RESPONDENT DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI‘I’S RESPONSE TO PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

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RESPONDENT DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI'I'S RESPONSE TO PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

I. INTRODUCTION

In January 2024, Petitioner Public First Law Center (formerly known as the Civil Beat Law Center) sought access to confidential Child Protective Act and Adoption case files from the Family Court. Petitioner filed a document styled as a motion in both cases. The Family Court docketed those motions as separate causes of action with Petitioner as the initiating party. After extensive briefing, the Honorable Matthew J. Viola (Judge Viola), on June 10, 2024, issued decisions denying most of the requests in Petitioner's motions. Petitioner, despite being a party to a Family Court case, chose not to appeal Judge Viola's decisions. Instead, it petitioned this Court for two extraordinary writs—a Writ of Prohibition and a Writ of Mandamus. But "[e]xtraordinary writs are appropriate" only in "extraordinary circumstances," Womble Bond Dickinson (US) LLP v. Kim, 153 Hawai'i 307, 319, 537 P.3d 1154, 1166 (2023), and Petitioner has not demonstrated that such circumstances exist here. It has failed to show "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." Id. (internal citations omitted). Because Petitioner cannot meet its burden, an extraordinary writ is not warranted.

II. STATEMENT OF CASE

On November 17, 2021, Lehua Kalua and Isaac Kalua, III were indicted for murder in the second degree, hindering prosecution in the first degree, abuse of family or household members, persistent nonsupport, and endangering the welfare of a minor. [DHS's Exhibit "A" to Dkt. 53 in 1FFM-24-0000018 and Dkt. 47 in 1FFM-24-0000019]. The Indictment alleges that sometime between August 18, 2021 and September 13, 2021, Ms. Kalua intentionally and knowingly

caused the death of I.P.K. (2014), her adopted daughter, by intentionally or knowingly inflicting injury upon her and/or by intentionally or knowingly omitting to perform a duty imposed by law, specifically failing to obtain aid for I.P.K. Mr. Kalua, during the same time period, is alleged to have intentionally or knowingly omitted to obtain aid for his injured adopted daughter. In addition to the charges involving I.P.K. (2014), Ms. Kalua and Mr. Kalua are charged with failing to support and endangering the welfare of I.M.K. (2009), I.P.K. (2014)'s older sister.

On January 12, 2024, more than two years after the criminal case was filed and approximately two and a half years after I.P.K. (2014) was reported missing, Petitioner filed a Motion to Unseal Portions of Child Protective Act Proceeding of [I.P.K. (2014)] and a Motion to Unseal Court Adoption Records of [I.P.K. (2014)] (Motions to Unseal). [Dkt. 1 in 1FFM-24-0000018 and Dkt. 1 in 1FFM-24-0000019]. Although the Motions to Unseal were styled as motions in the underlying causes of action, the Family Court docketed them as initiating documents for separate proceedings. The Family Court issued an order in each of the separate proceedings requiring Petitioner to serve interested parties and setting out a briefing schedule for the case. [Dkt. 7 in 1FFM-24-0000018 and Dkt. 6 in 1FFM-24-0000019].

On June 10, 2024, the Family Court issued a Decision and Order Re: Motion to Unseal Court Adoption Records of [I.P.K. (2014)], Filed January 12, 2024 and a Decision and Order Re: Motion to Unseal Portions of Child Protective Act Proceeding of [I.P.K. (2014)], Filed January 12, 2024 (Decisions). [Dkt. 65 in 1FFM-24-0000018 and Dkt. 59 in 1FFM-24-0000019]. The Decisions ordered the release of a redacted copy of a report prepared by the former Special Master in the case, but denied the release of any records in the Child Protective Act case or the Adoption case after making numerous findings regarding the best interests of the surviving

siblings of I.P.K. (2014). Petitioner did not appeal the Decisions. It instead filed the instant case with this Court seeking a writ of prohibition and writ of mandamus.

III. STANDARD OF REVIEW

A. Writ of Mandamus and Writ of Prohibition

> 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. *Straub Clinic & Hospital v. Kochi*, 81 Hawai‘i 410, 414, 917 P.2d 1284, 1288 (1996). 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. *Id*. 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. *Id.*

Kema v. Gaddis, 91 Hawai‘i 200, 204–05, 982 P.2d 334, 338–39 (1999) (emphases added).[1]

Hawai‘i Court Records Rule (HCRR) 10.15 states that an entity "may" request a writ from this Court if its request for access to a court record is denied. The rule does not articulate a different standard for the issuance of an extraordinary writ in those cases; the ordinary legal burden for the issuance of such a writ must still be satisfied.

B. Supervisory Power

The Hawai‘i Supreme Court exercises supervisory power over the lower courts pursuant to Hawai‘i Revised Statutes (HRS) § 602-4 which provides in part:

[1] Petitioner cites to a decision on public access to pending criminal cases in support of its request for access to records in this case. See Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 580 P.2d 49 (1978). The case does not apply here. Petitioner is not seeking access to ongoing proceedings in an open case. Petitioner is also not seeking access to a criminal proceeding; access which is uniquely protected by the First Amendment. Oahu Publications Inc. v. Ahn, 133 Hawai‘i 482, 531 P.3d 460 (2014). Petitioner in this action is seeking confidential family court records from a case that Petitioner acknowledges has been closed for years. The immediacy of the need for an extraordinary writ in a closed case is less than in a pending action.

> The supreme court shall have the general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law.

(emphasis added).

IV. ARGUMENT

A. Petitioner Cannot Obtain an Extraordinary Writ in Lieu of Appeal

As explained above, Petitioner's Motions to Unseal were docketed as the originating documents in separate causes of action in the Family Court. Petitioner became the filing party of those separate causes of action and was ordered to serve a series of interested respondents, most of whom had not been parties to the original Child Protective Act and Adoption cases. The cases were truly original causes of action and Petitioner was the initiating party. After extensive briefing, Judge Viola issued his Decisions, laying out in detail the reasoning behind his eventual order for release of a redacted copy of the report of the former Special Master in the case and his denial of Petitioner's motions in all other respects.

Petitioner, as the filing party of the action, had a right to appeal. "An interested party, aggrieved by any order or decree 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, and review shall be governed by chapter 602, except as hereinafter provided." HRS§571-54. Petitioner filed the cause of action. It was clearly an interested party and the Decisions did not grant the bulk of the relief sought. Petitioner, therefore, had a right to appeal and they chose not to exercise that right.

Petitioner argues, citing to the case of Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 580 P.2d 49 (1978), that mandamus is the appropriate remedy "when a nonparty raises legal concerns unrelated to the merits of an underlying proceeding and that cannot be appealed." That is not the case here. As explained above, Petitioner was the initiating party of its own cause of

action that was devoted solely to the issue of unsealing confidential Family Court records raised by Petitioner in its Motions to Unseal. The Decisions were the final order of the Family Court focused entirely on the issues raised in Petitioner's Motions to Unseal. Petitioner was a party and its concerns were the merits of the proceeding. Petitioner could have, and should have, appealed if it wished to obtain further review of the Family Court's Decisions. Because Petitioner had that remedy available, it is not entitled to extraordinary relief in this Court.

B. Petitioner Fails to Demonstrate a Clear and Indisputable Right to the Relief Requested

1. The Family Court Followed this Court's Precedent in *Kema v. Gaddis*

The controlling case on the issue of public disclosure of Child Protective Act case records is Kema v. Gaddis. 91 Hawai‘i 200, 982 P.2d 334 (1999). Judge Viola was bound by the holding in that case in considering Petitioner's Motions to Unseal, and he faithfully followed this Court's precedent.

In 1998, Peter Kema, Jr. (Peter Boy) went missing, like I.P.K. (2014) did twenty-three years later. Id. at 203 and 337. Like Petitioner in this case, a newspaper asked a Family Court Judge, specifically Judge Ben H. Gaddis, for access to a closed Child Protective Act case involving the missing boy's family for the purpose of helping the community understand what transpired in the case. Id. at 202 and 336. When the newspaper made its initial request, Judge Gaddis ordered the release of a summary of the facts of the case and a description of Peter Boy. Id. at 202-203 and 336-337. Judge Gaddis did not release any additional records. Id. at 203 and 337.

After the release of the summary, the newspaper asked again for release of the underlying court records, citing to ongoing discussions in the State Legislature regarding the case in support of the need for release of additional information and records. Id. at 203 and 337. Judge Gaddis

found that the newspaper articulated a legitimate purpose for disclosure of the records, as required by the then-version of the Child Protective Act. Judge Gaddis ordered the release of the records of the Child Protective Act case involving the Kema family, redacted to protect the privacy of the surviving siblings. Id. at 204 and 338. This Court disagreed and issued an extraordinary writ preventing that release. Id. at 207 and 341.

This Court recognized that the "release of further family court documents to the media might serve *some* legitimate purpose," but that "the overriding concern of the Child Protective Act in determining whether to release such information remains the best interest of the children involved," and "[u]nder the Child Protective Act, the interests of other parties or non-parties seeking information are not as compelling as the interests of the children involved." Id. at 205-206 and 339-340. And critically, the Court held:

> Here, when assessing the best interests of the other children involved, Judge Gaddis found that "additional publicity about these children would be potentially harmful and would not be in their best interest." He recognized that the old file contained a great deal of material relating to Peter Boy's siblings and attempted to redact the record in order to delete personal information relating to them. Although Judge Gaddis made a determined effort to redact all information relating to the siblings, review of the redacted file reveals that the cases are 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 HRS chapter 587. Because the cases are so interrelated and release of information would be harmful to Peter Boy's siblings, granting the Advertiser access to the family court's record is not in their best interest. Inasmuch as the redactions do not delete all information related to the other children, we conclude that Judge Gaddis's ruling violated the applicable legal standard in allowing access to even a redacted version of the old file.

Id. at 206, 982 P.2d at 340 (emphasis added).

The very same analysis is applicable here, and Judge Viola did exactly what Kema required him to do. He recognized the important interests of I.P.K.'s siblings. See 1FFM-24-0000018, Dkt. 65 at PDF 11 ("[I.P.K. (2014)], however, has several siblings who were subjects

of the CPA and adoption cases. Their interests remain paramount."); see also 1FFM-24-0000019, Dkt. 59 at PDF 10. He, like Judge Gaddis and this Court in Kema, recognized the harm that would result to I.P.K.'s siblings from public disclosure. See 1FFM-24-0000018, Dkt. 65 at PDF 11-12 ("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. . . . Public disclosure of information related to the Siblings, especially information that is not yet public, would be harmful to them and contrary to their best interests."); see also 1FFM-24-0000019, Dkt. 59 at PDF 10. And he attempted in good faith to redact the siblings' information, but found—as this Court did in Kema—that the information is inextricably intertwined, such that denial of Petitioner's motions was required. See 1FFM-24-0000018, Dkt. 65 at PDF 12 ("The court has made a determined effort to redact information in the court's file relating to the Siblings. However, information in the court's file pertaining to [I.P.K. (2014)] is inextricably intertwined with information regarding the Siblings."); see also 1FFM-24-0000019, Dkt. 59 at PDF 11. Judge Viola, therefore, closely hewed to the analysis set forth in Kema. Petitioner cannot possibly have a "clear and indisputable right" to relief that is inconsistent with this Court's binding precedent.

Rather than acknowledging Judge Viola's conscious effort to follow Kema precedent, Petitioner misconstrues his Decisions as being based on his concern with how the Family Court would allegedly be perceived. Petitioner argues that "[t]he family court held that the redacted record could not be disclosed because of the impression of DHS and the family court that it

might create—*not* because it would harm the privacy interests of Isabella's siblings." See Dkt. 1 at PDF 17. That is flatly contrary to the plain text of Judge Viola's rulings:

> 52. Public disclosure of information related to the Siblings, especially information that is not yet public, would be harmful to them and contrary to their best interests.
> 53. If possible, redaction of information in the adoption file related to the Siblings could eliminate the harm that would result from public disclosure of such information.
> 54. The court has made a determined effort to redact information in the court's file relating to the Siblings. However, information in the court's file pertaining to [I.P.K.] is inextricably intertwined with information regarding the Siblings.
> 55. Redaction of information regarding the Siblings is not possible, at least in a manner that would serve the legitimate purpose proffered.
> 56. There are documents in the adoption case file that contain statements and information that pertain to the Siblings. In order to protect the best interests of the Siblings, the entire statements would have to be redacted if the file were opened for inspection.

1FFM-24-0000018, Dkt. 65 at PDF 12; see also 1FFM-24-0000019, Dkt. 59 at PDF 10-11. Nowhere do Judge Viola's Decisions state that a redacted record cannot be disclosed "because of the impression of DHS and the family court that it might create." Dkt. 1 at PDF 17; see also Dkt. 1 at PDF 2 (Petitioner also contending: "If concern for how DHS and the family court will be perceived by the public is an exception to public accountability after the death of a child, that exception swallows the legitimate purpose.").

Instead, Judge Viola, consistent with a proper Kema analysis, recognized that the legitimate purpose argued by Petitioner in its Motions to Unseal was the right of the public to access "[r]ecords sufficient to understand that factual and legal record . . .." Taking that argument in good faith, Judge Viola, on top of the findings quoted above regarding the best interests of the surviving siblings, found that the alleged legitimate purpose of release would not be served through release even with the redactions required because it would, at best, be an "incomplete and misleading record." 1FFM-24-0000018, Dkt. 65 at PDF 12-13; see also 1FFM-

24-0000019, Dkt. 59 at PDF 11. There is no evidence that Judge Viola was trying to protect the image of the Family Court. There is ample evidence that Judge Viola considered Petitioner's request very seriously, consistent with his obligations under the Kema precedent.

Fundamentally, the story told in the records of the Child Protective Act case is a story that belongs to the surviving siblings. One of those siblings will be old enough, in about three years, to decide if, when, where, and how she wants to tell that story. She will be entitled to seek a copy of these documents and she can choose to release them, or not, based on her own adult assessment of what is best for her.

2. The Relevant Legislative History of the Adoption Statute is Contrary to Petitioner's Position

Petitioner argues that the Family Court should have released I.P.K.'s adoption records based on a statute titled "Secrecy of proceedings and records." HRS §578-15. Ignoring the title, Petitioner focuses in on one phrase in HRS §578-15(b)(1), which provides that the seal of secrecy for adoption records can be broken "[u]pon order of the family court upon a showing of good cause." Although Petitioner acknowledges that "good cause" depends on context, citing to Chen v. Mah, 146 Hawai'i 157, 457 P.3d 796 (2020), Petitioner does not provide a complete picture of the relevant context.

Petitioner acknowledges that the current version of HRS §578-15(b)(1) became part of the statute in 1990. The phrase "upon showing of good cause" was added to the statute in 1990 by Act 338. 1990 Reg. Sess. Haw. Sess. Laws Act 338, §§1-8 at 1036-1040. Act 338 built on a decades-long tradition, reaching back before Statehood, that adoption records were secret and could not be released, even to the parties to the adoption, except by Court order.

The right of adoptees, adoptive parents, and birth parents to keep adoption records private has been recognized in Hawai'i law from the time that Hawai'i was a territory and not yet a state

in the United States. The Revised Laws of Hawaii (RLH) from 1955 recognized this right in §331-15, RLH. The law specifically directed that "the clerk of the court shall seal all records in the proceedings" related to adoptions. The law made clear that even the parties to the adoption could not unseal the records and would have to get an order from a judge in the adoption proceeding to review the adoption records.

The understanding that adoption records are private, and even the parties to the adoption proceedings have limited access to those records, has been and continues to be a feature of Hawai‘i adoption law. In the legislative session in 1976, Act 194 made substantial changes to Hawai‘i's adoption law. 1976 Reg. Sess. Haw. Sess. Laws Act 194, §§1-3 at 353-360. The provision regarding privacy of the records did not change substantially in 1976, although it did acquire its current statutory section number, HRS §587A-15. Id. at 359. There was a technical change in the language regarding what is necessary, even for parties, to get access to an adoption record after the adoption was granted. Rather than saying, as the original statute did, that the record "may be inspected only by order of the judge exercising jurisdiction in adoption proceedings," the language was changed to "[t]he seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except upon order of the family court." Id. This is the origin of the phrase "upon order of the family court" that is the first part of HRS §578-15(b)(1). It was not added to the statute to make adoption records more accessible. It was added to the statute to replace the phrase "judge exercising jurisdiction in adoption proceedings." The secrecy of the proceedings was still presumed, and protected, by the statute.

The legislative history for Act 338, which added the phrase "upon showing of good cause" to HRS §578-15(b)(1), shows a clear purpose. That purpose was not to give the general

public access to adoption records. The Legislature wanted to make it easier for adoptees, adoptive parents, and natural parents to access the record. Act 338 originated as H.B. No. 2089. The committee report in the House, on H.B. No. 2089, states that "[t]he purpose of this bill is to allow adoptees, adoptive parents, and natural parents to inspect adoption records, including the adoption decree and the original certificate of birth, upon request." H. Stand. Comm. Rep. No. 632-90 in 1990 House Journal, at 1076 (emphasis added). The report goes on to say that "[t]he current law allows inspection only upon order of the court, which order is often difficult, if not impossible to obtain." Id. at 1077.

The language regarding the purpose of the act was echoed in the Senate. The committee report included "[t]he purpose of this bill is to allow the members of the adoption triad (the adoptees, adoptive parents, and natural parents) to inspect adoption records, including the adoption decree and the original certificate of birth, upon request after the adopted individual has attained the age of majority." S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. (emphasis added). The report notes that "[y]our Committee received extensive testimony on the issue of opening adoption records to members of the adoption triad, most of which were in favor of the concept." Id. (emphasis added). The report went on to include that "your Committee also is sensitive to the concerns of those in the triad who wish to maintain confidentiality. Your Committee believes 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 in the triad." Id.

Petitioner acknowledges that the purpose of Act 338 was to make it easier for the parties to an adoption to access the adoption record. Petitioner then suggests that the specific purpose of Act 338 should not "limit" the Court's existing authority to release records, implying that

somehow, prior to Act 338, the Court had unlimited authority to release records for any reason. The history of the adoption statute, going back to before statehood, shows how misleading that suggestion is. Adoption records were always understood to be secret, even to the parties to the action. Petitioner's implication that the Family Court had any different understanding of its authority is without merit.

Petitioner then quotes from the legislative history acknowledging that Act 338 "may be just the first step to more liberal access to adoption records in the future." Nothing in that quote suggests that it would be an individual Family Court Judge, rather than the Legislature, that would bring about this future liberal access. Judge Viola's order correctly recognizes that it has to be the Legislature that redefines "good cause" to include members of the public for a public information purpose. A Family Court Judge does not have that authority. Absent a change in the law, the context for the phrase "good cause" does not support Petitioner's request for release of the records in this case.

Petitioner admits, in its Supplemental Memorandum, that even its expansive reading of the phrase "upon order of the family court upon a showing of good cause" requires an exercise of judicial discretion. An exercise of judicial discretion is not a proper subject of an extraordinary writ. As quoted from Kema above:

> 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.

Kema, 91 Hawai‘i at 204–05, 982 P.2d at 338–39 (internal citation omitted). Petitioner's acknowledgment that Judge Viola had discretion in determining good cause to release adoption records is an implicit acknowledgment that it is not entitled to a writ of mandamus.

In addition to the clear legislative history of the adoption statute described above, the adoption records in this case, as found by Judge Viola, are "inextricably intertwined with the CPA case." 1FFM-24-0000019, Dkt. 59 at PDF 9. He noted that the adoption petition was titled "Petition for Adoption Pursuant to the Child Protective Act." Id. He also reported that several pleadings filed in the Child Protective Act case were also filed in the Adoption case and the cases were heard together. Id. As a result, Judge Viola rightly concluded that his analysis of Petitioner's request to unseal this particular adoption record must be done consistent with his analysis of the request to unseal the Child Protective Act case pursuant to this Court's Kema precedent.

V. CONCLUSION

For the reasons stated above, this Honorable Court should deny the Petition for Writ of Prohibition and Writ of Mandamus.

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

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DEPARTMENT OF HUMAN SERVICES
STATE OF HAWAI‘I

NO. SCPW-24-0000464

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was duly served this date by JEFS/electronic filing to the following at the address listed below:

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