

Electronically Filed
Supreme Court
30744
28-OCT-2010
09:40 AM

NO. 30744

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SOCRATES WILLIAM BUENGER, Petitioner,

vs.

THE HONORABLE KEITH E. TANAKA, JUDGE OF THE FAMILY
COURT OF THE SECOND CIRCUIT, STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(FC-D No. 05-1-0044)

ORDER

(By: Recktenwald, C.J., Nakayama, Acoba, and Duffy, JJ.
and Circuit Judge Lee, assigned by reason of vacancy)

Upon consideration of petitioner Socrates William Buenger's petition for a writ of mandamus and the papers in support, it appears that: (1) HRS § 571-46.5(d)(1) authorized the respondent judge to require the parties to participate in a parenting program for the purpose of petitioner's March 29, 2010 motion for a timesharing and holiday visitation schedule, and (2) petitioner's inability to participate in the parenting program as of September 15, 2010 provided the respondent judge with a reasonable basis for deferring decision on the March 29, 2010 motion. Therefore, petitioner is not entitled to extraordinary relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and

indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Such writs are not intended to supersede the legal discretionary authority of the lower courts, nor are they intended to serve as legal remedies in lieu of normal appellate procedures. Where a 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.). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, October 28, 2010.

/s/ Mark E. Recktenwald
/s/ Paula A. Nakayama
/s/ Simeon R. Acoba, Jr.
/s/ James E. Duffy, Jr.
/s/ Randal K.O. Lee

