

NO. SCPW-11-0000077

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CHRIS GRINDLING, Petitioner,

vs.

CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAI'I,
Respondent.

ORIGINAL PROCEEDING

(S.P. No. 09-1-0080; S.P. No. 09-1-0081; Civil No. 05-1-0249;
S.P.P. No. 09-1-0027; S.P.P. No. 09-1-0029; S.P.P. No. 10-1-0011)

ORDER

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

Upon consideration of the motion for reconsideration of the February 23, 2011 order denying the petition for a writ of mandamus, it appears that petitioner fails to demonstrate that the circuit court is refusing to rule on the motion for summary judgment filed in Civil No. 05-1-0249. See Kema v. Gaddis, 91 Hawai'i 200, 205, 982 P.2d 334, 339 (1999) (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 refused to act on a subject properly before the court under circumstances in which it has a legal duty to act.). Therefore,

IT IS HEREBY ORDERED that the motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, March 16, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ James E. Duffy, Jr.

/s/ Richard W. Pollack



DISSENT BY ACOBA, J.

I respectfully dissent and would grant the motion for reconsideration as to the pending January 11, 2010 motion for summary judgment in Civil No. 05-1-0249.

/s/ Simeon R. Acoba, Jr.

Associate Justice

