

NO. 28604

IN THE SUPREME COURT OF THE STATE OF HAWAII

EMERIMANDO
CLERK APPELLATE COURTS
STATE OF HAWAII

2007 JUL 24 PM 1:53

FILED

KATHLEEN LEIGH HUNTER, Petitioner,

vs.

THE HONORABLE KEITH E. TANAKA, JUDGE OF THE SECOND
CIRCUIT FAMILY COURT, STATE OF HAWAI'I and
DANIEL HOWARD HUNTER, Respondents.

ORIGINAL PROCEEDING
(FC-D NO. 05-1-0507)

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the petition for a writ of prohibition and mandamus filed by petitioner Kathleen Hunter and the papers in support, it appears that the determination whether the exercise of jurisdiction should be declined because of inconvenient forum was within the discretion of the respondent judge, and petitioner fails to demonstrate that the respondent judge flagrantly and manifestly abused his discretion in determining that the exercise of jurisdiction should not be declined. The determination is reviewable on appeal from a final order disposing of the post-decree proceeding in FC-D No. 05-1-0507 and petitioner has an adequate remedy by way of appeal. Accordingly, 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 or prohibition 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.). Therefore,

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

DATED: Honolulu, Hawai'i, July 24, 2007.



Steven H. Levinson

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James E. Duffin Sr.