

NO. 29831

IN THE SUPREME COURT OF THE STATE OF HAWAII

JONEA SCHILLACI-LAVERGNE, Petitioner,

vs.

THE HONORABLE CALVIN K. MURASHIGE, JUDGE OF THE FAMILY COURT OF THE FIFTH CIRCUIT, STATE OF HAWAII, Respondent.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JUN -3 PM 2:02

FILED

ORIGINAL PROCEEDING
(UCCJEA NO. 07-1-0003)

ORDER

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

Upon consideration of the petition for a writ of mandamus and prohibition filed by petitioner Jonea Schillaci-Lavergne and the papers in support, it appears that the question of judicial disqualification is reviewable on appeal from a final order ending the custody modification proceeding in UCCJEA No. 07-1-0003. Petitioner can appeal from a final order pursuant to HRS §§ 571-54 (2006) and 641-1(a) (Supp. 2008). Consequently, petitioner's case is not one in which the question of disqualification cannot otherwise be reviewed and immediate review by way of mandamus and/or prohibition is not warranted. See Peters v. Jamieson, 48 Haw. 247, 257, 397 P.2d 575, 582 (1964) ("[A] writ of prohibition will lie to compel a trial judge to recuse him[] or [her]self because of bias or prejudice which appears from the record, where . . . the case is one in which the question of disqualification cannot otherwise be reviewed.").

It further appears that the matters concerning expert evaluations, discovery, and proof required for custody modification are reviewable on appeal from a final order ending

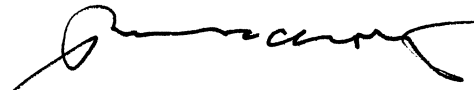
the custody modification proceeding in UCCJEA No. 07-1-0003. Therefore, petitioner is not entitled to extraordinary relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus and/or prohibition is an extraordinary remedy that will not issue unless the petitioner demonstrates 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.). Accordingly,

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

DATED: Honolulu, Hawai'i, June 3, 2009.



Paula A. Takayama



Kanae E. Dobbins

Mam E. Redtenbacher