

NO. 30165

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ERIC L. DAVIES and MIRELLA M. DAVIES, Petitioners,

vs.

THE HONORABLE PHILIP DOI, JUDGE OF THE DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I; THE HONORABLE DERRICK H.M. CHAN, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I; DAVID T. MOYSA; and JANE F. MOYSA, Respondents.

ORIGINAL PROCEEDING
(CIV. NO. 1SS06-1-01393)
(CR. NOS. 07-1-1665 and 07-1-1762)

ORDER

(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJ. and Circuit Judge Trader, in place of Recktenwald, J., recused)

Upon consideration of the petition for a writ of mandamus filed by petitioners Eric Davies and Mirella Davies and the papers in support, it appears that petitioners' failure to secure appellate review of the July 31, 2007 amended injunction due to counsel's failure to file a timely appeal does not entitle petitioners to mandamus relief inasmuch as petitioners' district court proceeding was a civil proceeding for which the constitutional right to the effective assistance of counsel does not apply.

It further appears that petitioners are not entitled to mandamus relief from the June 20, 2008 order denying the motions to dismiss Cr. No. 07-1-1665 and Cr. No. 07-1-1762 inasmuch as petitioner Mirella Davies chose not to apply for a writ of certiorari to review the dismissal of her interlocutory appeal and the June 20, 2008 order is reviewable on appeal from a

judgment of conviction, should such a judgment be entered in Cr. No. 07-1-1665 or Cr. No. 07-1-1762.

It further appears that the respondent district judge acted within his lawful exercise of jurisdiction pursuant to HRS § 604-10.5(b) inasmuch as the July 31, 2007 amended injunction enjoined harassment within the meaning of HRS § 604-10.5(a)(2) and petitioners fail to demonstrate that the respondent district judge issued the July 31, 2007 amended injunction with the purpose of enjoining petitioners from conduct that does not constitute harassment within the meaning of HRS § 604-10.5(a)(2).

It finally appears that our mandamus jurisdiction is not exercised for the policy reasons advanced by petitioners. Therefore, petitioners are not entitled to mandamus 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.). Accordingly,

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

DATED: Honolulu, Hawai'i, December 7, 2009.