

NO. 26436

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PEGGY FEARN, Plaintiff-Petitioner

vs.

THE HONORABLE GREGG YOUNG, Per Diem Judge of the Family Court of the First Circuit, State of Hawai'i, or his successor in interest of the Family Court of the First Circuit, Respondent

and

RODGER JOHNSON, Defendant-Respondent

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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

Upon consideration of Petitioner Peggy Fearn's petition for a writ of mandamus and the supplemental memorandum in regard to the petition for a writ of mandamus, the papers in support, and the records and files herein, it appears that: (1) Petitioner asks this court to review the order issued by the respondent judge in Fearn v. Johnson, FC-DA 03-1-2850, wherein the respondent judge refused to take further action on Petitioner's petition for a temporary restraining order and deferred jurisdiction to the North Dakota court that was handling matters related to Petitioner's divorce and custody of a minor child in Johnson v. Fearn, Civil No. 95-C-1658, pending in the District Court, Grand Fork County, North Dakota; (2) Petitioner also filed a motion in the North Dakota case asking North Dakota to decline to exercise its jurisdiction and to relinquish jurisdiction to the Hawai'i court; (3) on March 26, 2004, the North Dakota court issued a memorandum decision granting

Petitioner's motion and relinquishing jurisdiction to the Hawai'i family court; (4) inasmuch as the North Dakota court relinquished jurisdiction over these matters to the Hawai'i court and Petitioner can seek any appropriate relief in the Hawai'i family court, the issuance of a writ of mandamus is not warranted. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (citing Straub Clinic & Hospital v. Kochi, 81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996)) (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 the alleged wrong or obtain the requested action). Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied without prejudice to Petitioner seeking any appropriate relief in the Family Court of the First Circuit.

DATED: Honolulu, Hawai'i, April 16, 2004.

Everett Cuskaden,
Ryan Cuskaden, and
Evan Uchida (Everett
Cuskaden & Associates)
for plaintiff-petitioner
on the writ