

NOT FOR PUBLICATION

NO. 26894

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 OCT 26 AM 9:07

FILED

IN THE MATTER OF J.B., A PERSON UNDER THE AGE OF EIGHTEEN, and
THE REVEREND DARREL JARMUSCH, NEXT OF FRIEND OF J.B.,
Petitioner-Appellant,
v.
THE HONORABLE TRUDY SENDA,
JUDGE OF THE FAMILY COURT OF THE FIFTH CIRCUIT, et. al.,
Respondents-Appellees

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-M NO. 04-1-0088)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Fujise, JJ.)

Petitioner-Appellant Reverend Darrell Jarmusch

(Jarmusch) appeals from the "Order Denying Petition for Writ of Habeas Corpus" (Order) filed on October 7, 2004 in the Family Court of the Fifth Circuit (family court).¹

After careful review of the issues raised and the arguments made by the parties, as well as the record of the proceedings before the family court and the relevant case law, we resolve Jarmusch's points on appeal as follows:

¹ The Honorable Trudy Senda presided.

NOT FOR PUBLICATION

Hawaii Revised Statutes (HRS) § 551-2 (1993)² allows the court to appoint any person as "next friend" for a minor. However, "[t]he burden is on the 'next friend' clearly to establish the propriety of his status and thereby justify the jurisdiction of the court." Whitmore v. Arkansas, 495 U.S. 149, 163-164 (1990). Jarmusch failed to meet this burden.

Moreover, Jarmusch does not have an absolute right to a hearing. Russell v. Blackwell, 53 Haw. 274, 284, 492 P.2d 953, 960 (1972). Although Jarmusch describes the treatment of J.B. by her foster mother, Kapa'a High School and Kaua'i Child Welfare in the past, he makes no factual allegations establishing that the custody of which he complains, is currently without justification or otherwise illegal pursuant to HRS § 660-3 (1993).³ Based on

² Hawaii Revised Statutes (HRS) § 551-2 (1993) reads as follows:

§ 551-2 Guardian ad litem; next friend; appointment.
Nothing in this chapter impairs or affects the power of any court to appoint a guardian to defend the interests of any minor or person not in being impleaded in such court, or interested in any matter there pending, or its power to appoint or allow any person as next friend for a minor, to commence, prosecute, or defend any action or proceeding in the minor's behalf; provided that in all proceedings for annulment, divorce, or separation, except in the case of annulment on the ground of nonage, either spouse, although a minor, may sue or be sued in the minor's name without a guardian or next friend.

³ Hawaii Revised Statutes § 660-3 (1993) reads as follows:

§ 660-3 Issuable by whom. The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty; provided that persons committed or detained by order of the family court or under chapter 334 may, and if the jurisdiction of the family court is exclusive, shall, prosecute their applications in the family court.

NOT FOR PUBLICATION

the facts alleged, the family court did not err in denying the Petition without a hearing.

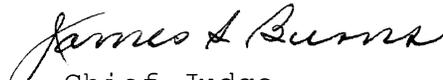
Therefore,

IT IS HEREBY ORDERED that the "Order Denying Petition for Writ of Habeas Corpus" filed on October 7, 2004 in the Family Court of the Fifth Circuit is affirmed.

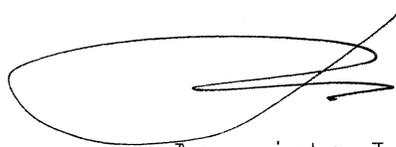
DATED: Honolulu, Hawai'i, October 26, 2005.

On the briefs:

Rev. Darrel Jarmusch,
Petitioner-Appellant, pro se.


Chief Judge

Joanna B.K. Fong and
Holly T. Shikada,
Deputy Attorneys General
for Respondents-Appellees.


Associate Judge


Associate Judge