

NO. 29166

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII
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2008 JUN -9 PM 1:41

FILED

GARDINER BOSEY SMITH III, Petitioner,

vs.

THE HONORABLE GLENN J. KIM, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, AND N. ANAYA, CLERK OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, Respondents.

ORIGINAL PROCEEDING
(CIVIL NO. 07-1-0785-05)

ORDER GRANTING MOTION TO WAIVE FILING FEE
AND DISMISSING PETITION FOR WRIT OF MANDAMUS
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner *pro se* Gardiner Bosey Smith III petitions for a Writ of Mandamus directed to the Honorable Glenn J. Kim, Judge, Circuit Court of the First Circuit, and N. Anaya, a clerk of that court [hereinafter, collectively, respondents]. Petitioner also moves for waiver of the filing fee.

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 the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action. *Straub Clinic & Hospital v. Kochi*, 81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996). Such writs are not meant to supersede the legal discretionary authority of the lower court, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. *Id.* Where a trial 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

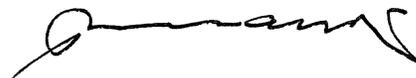
subject properly before the court under circumstances in which it has a legal duty to act.

Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (1999). The materials presented by petitioner cannot support a conclusion that respondents have "exceeded . . . jurisdiction" or have committed "a flagrant and manifest abuse of discretion." Further, if judgment is entered in favor of the defendants in the underlying action, Civil No. 07-1-0785-05 GJK, petitioner will have a right to appeal after entry of the final judgment. Thus, mandamus will not lie. Therefore,

IT IS HEREBY ORDERED, pursuant to Section 607-3 (1993) of the Hawai'i Revised Statutes, that the motion for waiver of the filing fee is granted and the filing fee for this proceeding, No. 29166, is waived.

IT IS FURTHER ORDERED, pursuant to Rule 21(c) of the Hawai'i Rules of Appellate Procedure, that the petition is denied.

DATED: Honolulu, Hawai'i, June 9, 2008.



Kamae E. Dally, Jr.

No. 29166, Smith v. The Honorable Glenn J. Kim--Order
Granting Motion to Waive Filing Fee and Dismissing
Petition for Writ of Mandamus