

NO. 29916

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

 RAUL LEMUS-PEREZ, Petitioner,

vs.

 THE HONORABLE RHONDA I.L. LOO, JUDGE OF THE DISTRICT COURT
 OF THE SECOND CIRCUIT, STATE OF HAWAI'I, Respondent.

 ORIGINAL PROCEEDING
 (CASE NO. 2DTA-07-01362)
ORDER

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

Upon consideration of the petition for a writ of mandamus filed by petitioner Raul Lemus-Perez and the papers in support, it appears that the June 25, 2009 order resetting the hearing date on the motion to dismiss Case No. 2DTA-07-01362 was signed by respondent Judge Rhonda Loo for Judge Simone Polak, the presiding judge in Case No. 2DTA-07-01362. The hearing date was apparently reset to allow the motion to dismiss to be heard by Judge Polak as presiding judge. Resetting the hearing date on the motion to dismiss was within the discretion of Judge Polak and was not a flagrant and manifest abuse of discretion.

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 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

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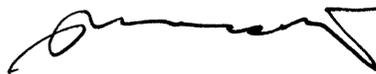
legal remedies in lieu of normal appellate procedures. Where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and 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.). Accordingly,

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

DATED: Honolulu, Hawai'i, July 13, 2009.



Fauna A. Nakayama



James C. O'Leary, Jr.

Mark E. McDaniel