

CAAP NO. 24-323
IN THE INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII
Electronically Filed
Intermediate Court of Appeals
CAAP-24-0000323
19-JUN-2024

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Appellant,

v.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Appellees.

Civil Case No. CAAP-23-0001418 (GWBC)
(Circuit Court of Appeals)

APPEAL FROM:

- (1) FINAL JUDGMENT, dated March 25, 2024;
- (2) ORDER GRANTING RESPONDENTS' MOTION TO DISMISS, dated March 25, 2024;
- (3) ORDER REJECTING MOTION FOR ADMISSION TO APPEAR *PRO HAC VICE* FOR JAKE DAVIS, dated March 25, 2024.

FIRST CIRCUIT COURT

HONORABLE GARY W.B. CHANG

STATEMENT OF JURISDICTION

EXHIBITS A–C

CERTIFICATE OF SERVICE

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*(*Pro Hac Vice* application
pending review)
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on behalf of Mari and Vaigai

PETITIONER-APPELLANT’S STATEMENT OF JURISDICTION

Petitioner-Appellant Nonhuman Rights Project, Inc. (“NhRP”) hereby submits this Statement of Jurisdiction according to Rule 12.1 of the Hawai’i Rules of Appellate Procedure (“HRAP”) and the Notice of Entering Case on Calendar. *See* Judiciary Information Management System (“JIMS”), Dkt. No. 15.

I. BACKGROUND

On behalf of wild-born, female Asian elephants Mari and Vaigai, the NhRP filed the underlying Verified Petition for a Common Law Writ of Habeas Corpus (“Petition”) on Oct. 31, 2023, against Respondent-Appellees the City and County of Honolulu, Department of Enterprise Services, its Director, Dita Holifield, and the Honolulu Zoo Director, Linda Santos (“Respondents”). JIMS, Dkt. No. 13 (Record on Appeal) (hereafter, “ROA”), p. 1, No. 1. On Nov. 2, 2023, the NhRP filed a *Pro Hac Vice* Application for Jake Davis, which was denied without prejudice on the same day. *Id.* at pp. 2-3, Nos. 10-13. On Nov. 10, 2023, the NhRP filed a Motion for Admission to Appear *Pro Hac Vice* for Jake Davis (“PHV Motion”), including requisite declarations of local counsel Cheryl Nolan and Jake Davis, along with a proposed notice of hearing, which was again denied without prejudice on Nov. 14, 2023. *Id.* at pp. 3-4, Nos. 18-25.

On Nov. 20, 2023, Respondents filed a Motion to Dismiss the Petition under Hawai’i Rules of Civil Procedure, Rule 12(b)(6) (“MTD”). *Id.* at p. 5, No. 27. On Jan. 8, 2024, the NhRP filed an Opposition to the MTD. *Id.* at p. 8, No. 45. Two days later, Respondents filed a Reply. *Id.* at p. 8, No. 47. On January 16, 2024, the Circuit Court held a hearing on the PHV Motion and the MTD. *Id.* at pp. 9-10, Nos. 51-52 (Minutes). “The court found good cause and granted the Petitioner Nonhuman Rights Project, Inc[’]s Motion for Admission to Appear *Pro Hac Vice* of Jake Davis subject to 8 conditions as stated at the hearing.” *Id.* at p. 10, No. 51. On March 25, 2024, the PHV Motion was retroactively rejected by the Circuit Court without prejudice, the MTD was granted without prejudice, and final judgment was entered. *Id.* at pp. 12-13, Nos. 63, 65, 71. The NhRP filed its Notice of Appeal on April 22, 2024. *Id.* at p. 14, No. 75. The Record on Appeal was transmitted on June 10, 2024. JIMS, Dkt. Nos. 12-14.

II. TIMELINESS OF APPEAL

According to HRAP Rule 4, “when a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.” Final judgment in the Circuit Court was entered on March 25, 2024. ROA, p. 13, No. 71. The NhRP filed its Notice of

Appeal, which seeks review of both the MTD and PHV Motion, on April 22, 2024, twenty-eight (28) days later. *Id.* at p. 14, No. 75. Accordingly, this appeal is timely.

III. GROUNDS FOR APPELLATE JURISDICTION

This appeal does not concern whether to grant a hearing, let alone ultimate relief. It concerns whether Mari and Vaigai have made a *prima facie* case entitling them to the issuance of an order to show cause (“OSC”) so the merits of the Petition can be adjudicated. It also concerns the merits of denying Jake Davis’ PHV Motion. Accordingly, the NhRP has an appeal as of right under Hawai’i Revised Statutes (“HRS”) § 641-1(a), HRS § 602-57(1), (3), and HRAP Rules 3 and 4 from the Circuit Court’s final judgment.

HRS § 641-1(a) reads as follows: “Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court to the intermediate appellate court, subject to chapter 602.” In *State v. Hfvak*, this Court found it lacked appellate jurisdiction over a habeas corpus appeal only because “the circuit court has not yet entered an order that finally determines, and, thus, ends, all proceedings on Appellant[’s] underlying petition for writ of habeas corpus.” 2017 WL 2335633, at *1 (Haw. Ct. App. May 30, 2017). “Absent an appealable final written order, signed by the presiding judge, that finally determines all issues, and, thus, ends the petition for writ of habeas corpus proceeding, leaving nothing further to be accomplished, we lack appellate jurisdiction [because] Hfvak’s appeal is premature.” *Id.* at *2. But this Court held, “HRS § 641-1(a) authorizes appeals to the Hawai’i Intermediate Court of Appeals from a circuit court’s final order,” including “a petition for a writ of habeas corpus under HRS § 660–5,” which is precisely what this appeal concerns. *Id.*

HRS § 602-57 reads as follows: “Notwithstanding any other law to the contrary, the intermediate appellate court shall have jurisdiction . . . (1) To hear and determine appeals from any court or agency when appeals are allowed by law,” and “(3) To make or issue any order or writ necessary or appropriate in the aid of its jurisdiction, and in such case, any judge may issue a writ or an order to show cause returnable before the court.” In *Villanueva v. State*, the Hawai’i Supreme Court found itself without jurisdiction in a habeas corpus appeal from the circuit court because under HRS § 602-57, “movant Gerald Villanueva’s ‘motion to the supreme court to issue writ of

habeas corpus’ . . . [wa]s not within the jurisdiction of the supreme court, but is within the jurisdiction of the intermediate court of appeals.” 2010 WL 530158, at *1 (Haw. Feb. 4, 2010).¹

While the NhRP recognizes that circuit courts and the state supreme court have jurisdiction in affording ultimate relief in original habeas corpus proceedings, *see* HRS § 602-5(4); HRS § 660-3, this Court is not barred from remanding this matter to the First Circuit Court with specific directives related to the issuance of an OSC. For example, in *Matter of Kaohu*, this Court reviewed an application for a writ of habeas corpus ad subjiciendum² seeking relief from an order committing probationer without bail under HRS § 706-626(3) and found that “the order[] of the court below, denying the application” is “affirmed.” 1 Haw. App. 469, 477 (1980). If this Court had not found the probationer’s continued commitment was justified, it seemingly would have remanded the case to the Circuit Court for further proceedings.

In *Turner v. Hawaii Paroling Auth.*, this Court had little problem analyzing the scope of habeas corpus, going as far as extending the reach of the Great Writ by holding “that because a denial of parole continues physical custody, such denial is a proper subject of a writ of habeas corpus.” 93 Haw. 298, 307 (Ct. App. 2000), *as amended* (May 9, 2000). However, this Court did not stop at that conclusion. It would go to analyze whether a Hawai’i Sex Offender Treatment Program requirement, “that a ‘sex offender’ inmate admit to commission of a sexual assault . . . as a precondition to parole,” implicates a liberty interest protected by habeas corpus. *Id.* at 300. The Court found that an obligatory admission, without an adversarial offender classification hearing, violated Hawai’i constitutional due process safeguards and was thus subject to habeas corpus protections since “violation of a constitutional right may support the issuance of a writ of habeas corpus.” *Id.* at 308. *Matter of Kaohu* and *Turner* validate this Court’s ability to affirm or deny circuit court decisions in habeas corpus matters and to expand the scope of habeas corpus when necessary. This is no different from other common law courts.

Decisions like the one in *Carter v. Johnson*, although inapposite, support this appeal. 2023 WL 5200314, at *1 (Haw. Aug. 14, 2023). There, the Court held: “The ICA does not have jurisdiction

¹ Unpublished decisions included herein are “cited for persuasive value.” Haw. R. App. P. 35(c)(2).

² “[W]hen the words ‘habeas corpus’ are used alone, they have been considered a generic term understood to refer to the common-law writ of habeas corpus ad subjiciendum, which was the form termed the ‘great writ.’” *Preiser v. Rodriguez*, 411 U.S. 475, 484 n.2 (1973).

to consider a request for an extraordinary writ.” *Id.* However, the Court’s holding turned on the fact that petitioner was seeking habeas corpus relief in an original proceeding. *Id.* (“Petitioner requests that the extraordinary writ be granted by the Intermediate Court of Appeals.”).

The NhRP, unlike the Petitioner in *Carter*, is seeking review of the Circuit Court’s decision to grant Respondents’ MTD because the NhRP presented a prima facie case entitling Mari and Vaigai to the issuance of an OSC. The NhRP has not filed a new, original petition in this Court, and it is not requesting this Court grant ultimate relief. Rather, the NhRP respectfully asks this Court to remand with a directive that an OSC be issued so the merits of the Petition can be adjudicated.

Furthermore, since it was improper to retroactively deny Jake Davis’ PHV Motion, the NhRP respectfully seeks remand with a directive that Jake Davis’ *pro hac vice* status be reinstated for the remainder of this case.

IV. CONCLUSION

Based on the foregoing, it is respectfully submitted that this Court has jurisdiction over this appeal.

DATED: San Diego, California, June 19, 2024

/s/Cheryl Nolan
Cheryl Nolan, Esq.
HI Bar No. 6412
Attorney for Petitioner-Appellant NhRP
on behalf of Mari and Vaigai

EXHIBIT A

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Attorneys for Respondents

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1CCV-23-0001418
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Dkt. 71 JDG

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Petitioner,

vs.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Respondents.

CIVIL NO. 1CCV-23-0001418

JUDGMENT

JUDGMENT

In accordance with Rule 58 of the Hawai'i Rules of Civil Procedure, and pursuant to the
Order Granting Respondent City and County of Honolulu's Motion to Dismiss filed



March 25, 2024 (Dkt. 65) (“Order”),

GWBC

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment is hereby entered, consistent with the Order, in favor of Respondent City and County of Honolulu and against Petitioner, as to the Petition (Dkt. 1). Any and all remaining claims are dismissed without prejudice.

DATED: Honolulu, Hawai‘i, March 25, 2024

/s/ Gary W. B. Chang



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/Cheryl Nolan

CHERYL NOLAN

JAKE DAVIS

Attorneys for Petitioner

NONHUMAN RIGHTS PROJECT, INC.

Nonhuman Rights Project, Inc., on behalf of Mari and Vaigai vs. City and County of Honolulu, Department of Enterprise Services, et. al.; Civil No. 1CCV-23-0001418; JUDGMENT

23-06708/

EXHIBIT B

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1CCV-23-0001418
25-MAR-2024
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Dkt. 65 ORDG

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Petitioner,

vs.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS,

Respondents.

CIVIL NO. 1CCV-23-0001418 (GWBC)

ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS

Hearing

Date: January 16, 2024

Time: 3:00 p.m.

Judge: The Honorable Gary W.B. Chang

Trial Date: None

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

Petitioner Nonhuman Rights Project, Inc. ("Petitioner") filed a Petition for a Common
Law Writ of Habeas Corpus on behalf of Mari and Vaigai, two elephants at the Honolulu Zoo



(“Petition”). Before the Court is the Motion to Dismiss the Petition (“Motion”) filed by Respondents City and County of Honolulu Department of Enterprise Services and its Director, Dita Holifield, and the Honolulu Zoo Director, Linda Santos (“Respondents”).

GWBC

After considering the written submissions of counsel, the records and files herein, and oral argument presented,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Respondents' Motion to Dismiss is granted, without prejudice.

DATED: Honolulu, Hawai'i, March 25, 2024.

/s/ Gary W. B. Chang



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

CHERYL NOLAN
JAKE DAVIS
Attorneys for Petitioner
NONHUMAN RIGHTS PROJECT, INC.

Nonhuman Rights Project, Inc., on behalf of Mari and Vaigai vs. City and County of Honolulu, Department of Enterprise Services, et. al.; Civil No. 1CCV-23-0001418; ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

EXHIBIT C

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Attorneys for Petitioner Nonhuman Rights Project, Inc.

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1CCV-23-0001418
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Dkt. 63 ORD

IN THE COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,
DEPARTMENT OF ENTERPRISE
SERVICES and its DIRECTOR, DITA
HOLIFIELD, and the HONOLULU ZOO
DIRECTOR, LINDA SANTOS.

Respondents.

Civil Case No.: 1CCV-23-0001418
(HCCR 7, 7.2; Haw. R. Sup. Ct. 1.9)

[REJECTED BY THE COURT]

GWBC

**ORDER GRANTING MOTION FOR
ADMISSION TO APPEAR *PRO HAC*
VICE FOR JAKE DAVIS**

JUDGE: GARY W.B. CHANG
TRIAL DATE: NONE
HEARING DATE: 1/16/24
HEARING TIME: 3:00 PM HST



TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD HEREIN:

Petitioner, THE NONHUMAN RIGHTS PROJECT, INC., on behalf of Mari and Vaigai's ("NhRP") application for admission of Jake Davis to the Bar of this Court *pro hac vice* came regularly before this Court on January 16, 2024, at 3:00 PM HST.

This Court, having questioned and received assurances from Hawai'i local counsel Cheryl Nolan as to applicant Jake Davis' civility, and posture to discovery, settlement, and adherence to Haw. R. Sup. Ct. §1.9. The Court also noted the following requirements,

1. Within 10 days after entry of this Order granting the petition for *pro hac vice* appearance, and within 10 days of making subsequent fee payments in January of each year, *pro hac vice* counsel shall pay the required fees to the Hawai'i State Bar Association and Office of Disciplinary Counsel.
2. Proof of payment by *pro hac vice* counsel shall be filed in the record of this Court within 10 days of the Order and January of each additional year under Haw. R. Sup. Ct. § 1.9.
3. This Order is void by operation of law for failure to pay the required fees and for failure to file proof of payment of the fees with this Court.
4. Hawai'i local counsel shall sign all pleadings, motions, briefs, and other documents submitted in this case, participate actively in all phases of the case, be directly involved, and be prepared to proceed with the case as required.
5. *Pro hac vice* counsel shall abide by the local custom and practice and shall also abide by the Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers.
6. *Pro hac vice* counsel shall have full knowledge of Hawai'i local practice, rules of court, and local law.

7. Hawai'i local counsel shall file a copy of this Order with the Hawai'i State Bar Association and the Office of Disciplinary Counsel, and shall notify the Hawai'i State Bar Association and the Office of Disciplinary Counsel when the pro hac vice counsel's involvement is terminated, the case is closed, or the order granting pro hac vice admission is no longer valid.
8. Pro hac vice counsel and Hawai'i local counsel are subject to discipline and sanctions for any violations of this Order including Hawai'i local counsel's legal obligations in the supervision of legal work,

Based on the foregoing, the Court hereby ORDERS as follows:

NhRP's application for admission of Jake Davis to the Bar of this Court *pro hac vice* is GRANTED.

IT IS SO ORDERED.

DATED: March 25, 2024

GWBC REJECTED BY THE COURT WITHOUT PREJUDICE _____ GWBC
Hon. Gary W.B. Chang

APPROVED AS TO FORM:

/s/ Patrícia A.V. Sendão
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GWBC REASONS: The order failed to state all of the conditions that the court stated in announcing its ruling during the hearing. GWBC

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*(*Pro Hac Vice* application pending review)

Attorneys for Petitioner-Appellant NhRP
on behalf of Mari and Vaigai

CAAP NO. 24-323
IN THE INTERMEDIATE COURT OF APPEAL
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NONHUMAN RIGHTS PROJECT, INC., on
behalf of Mari and Vaigai, individuals,

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CITY AND COUNTY OF HONOLULU,
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DIRECTOR, LINDA SANTOS,

Appellees.

Civil Case No.: 1CCV-23-0001418 (GWBC)
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APPEAL FROM:

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- (3) ORDER REJECTING MOTION FOR ADMISSION TO APPEAR *PRO HAC VICE* FOR JAKE DAVIS, dated March 25, 2024.

FIRST CIRCUIT COURT

HONORABLE GARY W.B. CHANG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the following by the Judiciary Information Management System on July 19, 2024:

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DATED: San Diego, California, July 19, 2024

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Attorney for Petitioner-Appellant NhRP
on behalf of Mari and Vaigai