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COURT APPOINTED SPECIAL
ADVOCATES PROGRAM

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SPECIAL PROCEEDING TO
UNSEAL ADOPTION RECORDS

Case No. 1FFM-24-0000018
(Special Proceeding)

INTERESTED PARTY COURT
APPOINTED SPECIAL ADVOCATES
PROGRAM'S SUBSTANTIVE JOINDER
TO DEPARTMENT OF HUMAN
SERVICES' "MEMORANDUM IN
OPPOSITION TO MOTION TO UNSEAL
COURT ADOPTION RECORDS OF
ISABELLA P. KALUA F.K.A. ARIEL
SELLERS" FILED APRIL 1, 2024 (JEFS
dkt. 53); MEMORANDUM IN SUPPORT
OF SUBSTANTIVE JOINDER;
CERTIFICATE OF SERVICE

Judge: Honorable Matthew J. Viola
Hearing Date: None

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INTERESTED PARTY COURT APPOINTED SPECIAL ADVOCATES PROGRAM'S
SUBSTANTIVE JOINDER TO DEPARTMENT OF HUMAN SERVICES' "MEMORANDUM
IN OPPOSITION TO MOTION TO UNSEAL COURT ADOPTION RECORDS OF
ISABELLA P. KALUA F.K.A. ARIEL SELLERS" FILED APRIL 1, 2024 (JEFS dkt. 53)

Interested Party Court Appointed Special Advocates Program ("CASA"), by and through its undersigned attorneys, submits this substantive joinder to the Department of Human Services' ("DHS") "Memorandum in Opposition to Motion to Unseal Court Adoption Records of Isabella P. Kalua f.k.a. Ariel Sellers[.]" filed on April 1, 2024, pursuant to Rule 10(a) of the Hawai'i Family Court Rules and Rule 7.2(g)(1)(A)(i) of the Rules of the Circuit Courts of the State of Hawai'i.

CASA agrees with DHS's position that this Court should deny Public First Law Center's ("Public First") request to unseal the subject confidential adoption proceeding because, consistent with the legislative history and intent behind HRS § 578-15, Public First failed to show good cause. CASA requests the same relief sought by DHS's memorandum in opposition and asserts additional arguments in support of DHS's position in the attached memorandum in support.

DATED: Honolulu, Hawaii, April 22, 2024.

STATE OF HAWAII

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MEMORANDUM IN SUPPORT OF
SUBSTANTIVE JOINDER

MEMORANDUM IN SUPPORT OF SUBSTANTIVE JOINDER

CASA substantively joins in DHS’s “Memorandum in Opposition to Motion to Unseal Court Adoption Records of Isabella P. Kalua f.k.a. Ariel Sellers[.]” (JEFS dkt. 53) on the same grounds stated therein, namely that Public First failed to show good cause, as required by HRS § 578-15(b), to allow this Court to unseal Isabella’s confidential adoption proceeding records.

I. ARGUMENT

HRS § 578-15(b) (Supp. 2023) provides, in relevant part:

(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

(1) Upon order of the family court upon a showing of *good cause*[.]

(Emphasis added.) As Public First acknowledges in its Motion to Unseal, this “basic requirement that that records must be permanently sealed has remained.” JEFS dkt. 1 (citation omitted). “[U]pon a showing of good cause[.]” the family court may order confidential adoption proceeding records to be unsealed for inspection.

“Good cause,” however, is not statutorily defined and has not yet been interpreted by Hawai‘i courts in the context of unsealing confidential adoption proceeding records under HRS § 578-15(b). As demonstrated below, the legislative history and intent behind this statute makes clear that the public’s interest in unsealing Isabella’s confidential adoption proceeding records must yield to the confidentiality interests of the adoption triad – the adoptees, adoptive parents, and natural parents – upon which the “good cause” standard was enacted to safeguard.

When construing a statute, we start with the statute’s language; “implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself.” *Barker v. Young*, 153 Hawai‘i 144, 148, 528 P.3d 217, 221 (2023) (citation omitted). Black’s Law Dictionary defines “good cause” as: “A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused.” *Chen v. Mah*, 146 Hawai‘i 157, 178 n.22, 457 P.3d 796, 817 n.22 (2020) (quoting *Good Cause*, *Black’s Law Dictionary* (11th ed. 2019)). The Hawai‘i Supreme Court has recognized that “‘good cause’ is a relative and highly abstract term, and its meaning must be determined not only by verbal context of the statute in which the term is employed, but also by context of action and procedures involved in the type of case presented.” *Doe v. Doe*, 98 Hawai‘i 144, 154, 44 P.3d 1085, 1095 (2002) (cleaned up). Because the parties in this case proffer two different interpretations, the phrase “good cause,” contrary to Public First’ assertion, is not “plain and unambiguous.” *See Est. of Roxas v. Marcos*, 121 Hawai‘i 59, 68, 214 P.3d 598, 607 (2009) (“[A] statute is ambiguous if it is capable of being understood by reasonably well-informed people in two or more different senses.” (citation omitted)).

We look next to extrinsic aids to assist in our interpretation of “good cause” as used in HRS § 578-15(b). This Court may “resort to the use of legislative history when interpreting an ambiguous statute.” *Haw. Home Infusion Assocs. v. Befitel*, 114 Hawai‘i 87, 91, 157 P.3d 526, 530 (2007) (citation omitted). Legislative history is useful to “discern the underlying policy which the legislature seeks to promulgate and, thus, . . . determine if a literal construction would produce an absurd or unjust result, inconsistent with the policies of the statute.” *Survivors of Medeiros v. Maui Land & Pineapple Co.*, 66 Haw. 290, 297, 660 P.2d 1316, 1321 (1983).

In 1945, the legislature enacted Act 40, which provided in relevant part:

Secrecy of Records. The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of the department of public welfare or his agent, or by any proper person on a showing of good cause therefor, upon order of court. Upon the entry of the decree the clerk of the court shall seal all records in the proceedings. Such seal shall not be broken and such records shall not be inspected by any person, including the parties to the proceedings, except upon order of court.

The clerk of the court shall keep a docket of all adoption proceedings, which may only be inspected by order of the court.

1945 Laws of Territory of Hawaii Act 40, § 2 at 302. This portion of Act 40 was codified as Revised Laws of Hawaii (“RLH”) § 12276.02 – a predecessor to HRS § 578-15(b). The House Committee on Judiciary confirmed that RLH § 12276.02 functioned to ensure “complete secrecy of the proceedings both before and after the entry of the decree” “so that, after adoption, all public records will indicate that the child is the natural child of the adopting parents.” S. Stand. Comm. Rep. No. 90, in 1945 Senate Journal, at 276. The Committee on Conference, in accordance with this intent, agreed to amend the Senate’s draft to include this “secrecy of records” provision in the Conference Committee draft, which was the version ultimately enacted as Act 40. Conf. Comm. Rep. No. 9, in 1945 Sente Journal, at 726.

As DHS correctly notes, the legislature enacted Act 338 in 1990, which, for the first time, added the “upon a showing of good cause” requirement for unsealing confidential adoption proceeding records for inspection after the entry of a decree. Act 338 provided, in relevant part:

(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

(1) Upon order of the family court *upon a showing of good cause*[.]

1990 Haw. Sess. Laws Act 338, § 5 at 1038 (emphasis added). Both the House and Senate stated that the purpose of the bill was to allow the members of the adoption triad to inspect adoption records. S. Stand. Comm. Rep. No 3056, in 1990 Senate Journal, at 1241; H. Stand. Comm. Rep. No. 632-90, in 1990 House Journal, at 1076. The House Committee on Judiciary expressed, however, that “access to adoption records cannot be allowed without sufficient safeguards which will protect those individuals and maintain a balance in the exercise of rights by the members of the triad.” S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. One of these safeguards included the insertion of “[l]anguage . . . to clarify that the opening of adoption records can occur upon order of the family court upon a showing of good cause.” *Id.* This amendment, the Committee stated, “is necessary to ensure that this procedure, which is currently available, will still be available in addition to the other procedures established in this bill as amended.” *Id.*

Public First argues there is “good cause” to unseal portions of Isabella’s confidential adoption proceeding records. This “good cause” to which Public First relies includes: (1) “confidentiality is no longer needed to protect the integrity of the adoption process”; and (2) “the

specific facts of this case demand openness to ensure public oversight when a child dies in the care of a state-sponsored adoption.” JEFS dkt. 1 at PDF 7. This claimed “good cause,” however, is inconsistent with the legislative history and intent behind this statute.

While this Court has discretion to determine what constitutes “good cause,” *Chen*, 146 Hawai‘i at 178, 457 P.3d at 817, this determination must be consistent with the plain language and legislative intent behind HRS § 578-15(b). As stated, the predecessor of HRS § 578-15(b) was originally enacted to ensure “complete secrecy of the proceedings both before and after the entry of the decree[,]” unless otherwise ordered by the court. S. Stand. Comm. Rep. No. 90, in 1945 Senate Journal, at 276. The “upon a showing of good cause” requirement, as enacted in 1990, functioned, and continues to function, as a safeguard to “members of the triad who wish to maintain confidentiality.” S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. This Court must therefore make a determination of “good cause” that safeguards not only Isabella’s statutory right to confidentiality of the adoption proceeding records – which survives the probate court’s suggestion of death, *see cf. Swidler & Berlin v. United States*, 524 U.S. 399, 405 (1998) (holding that privilege continues after an individual’s death)¹ – but safeguards

¹ Anne Klinefelter and Marc C. Laredo explained:

[T]he ethical obligation to client confidentiality survives the death of the client. The purposes of the ethical rules on confidentiality overlap with goals of the attorney-client privilege and of work-product protection but also are said to be broader, in that they support the reputation of the legal profession. To the extent that the ethical obligation is seen as creating a duty to a client, the analysis that the privilege survives the death of the client would also suggest that counsel's ethical obligations support the same result.

Anne Klinefelter & Marc C. Laredo, *Is Confidentiality Really Forever Even if the Client Dies or Ceases to Exist?*, 40 No.3 Litigation 47, 49 (2014).

Isabella’s minor siblings’ (as the adoptees) interest and the Kaluas’ (the adoptive parents) interest in the confidentiality of the subject adoption proceeding records.

Isaac Kalua has evidenced his concerns and objections as to the unsealing of Isabella’s confidential adoption records. JEFS dkt. 21. Nicole Cummings and Dean Nagamine, in their capacities as Isabella and her minor siblings’ court-appointed advocates,² state no objection to unsealing the confidential adoption proceeding records. JEFS dkts. 37, 43. However, these court-appointed advocates were not appointed to waive Isabella’s or her minor siblings’ interests in confidentiality of the adoption proceeding records or their right to privacy. *See PO v. JS*, 138 Hawai‘i 109, 118, 377 P.3d 50, 59 (App. 2016) (“If the child is not sufficiently mature to assert or waive privilege, the family court is within its discretion to appoint an independent guardian ad litem solely for the purpose of the privilege issue, or to rely on the existing guardian ad litem.” (citing HRS § 551-2 (Supp. 2006)),³ *vacated in part on other grounds*, 139 Hawai‘i 434, 393 P.3d 986 (2017). Instead, the powers of a guardian ad litem to act on behalf of Isabella and her minor siblings are strictly circumscribed by this Court’s own responsibility to ensure that Isabella’s and her minor siblings’ interests are not compromised. *See In re Doe*, 108 Hawai‘i 144, 154, 118 P.3d 54, 64 (2005) (“[T]he powers of a guardian ad litem . . . to act on behalf of a ward are strictly circumscribed by the court’s own responsibility to ensure that the interests of the ward are not compromised.”).

² A review of Nicole’s and Dean’s statements of no objection appear to confirm that neither are appointed as guardian ad litem for Isabella and her minor siblings in this specific proceeding. *See* JEFS dkts. 37, 43.

³ Although the court cited the version of HRS § 551-2 included in the 2006 Supplement, this version is identical to the 2018 version of HRS § 551-2. Accordingly, if the version of HRS § 551-2 in the 2006 Supplement is not easily accessible, this Court can refer to the 2018 version of HRS § 551-2.

Under Public First’ interpretation of HRS § 578-15(b), this Court would be permitted to unseal confidential adoption proceeding records to “ensure public oversight when a child dies in the care of a state-sponsored adoption.” JEFS dkt. 1 at PDF 7. As confirmed by the legislative intent of HRS § 578-15, the public’s interest in ensuring oversight over DHS *does not* take priority over the interest of the adoption triad – namely Isabella, her minor siblings, and the Kaluas – in preserving the confidentiality of the adoption proceeding records. Public First’ request that “adoption confidentiality . . . yield to protect and promote the integrity of the adoption process through public understanding” completely disregards the safeguards specifically enacted by the legislature to protect the confidentiality interests of the adoption triad. S. Stand. Comm. Rep. No. 3056, in 1990 Senate Journal, at 1241. It is therefore Public First’ interpretation, not DHS’s or CASA’s interpretations, that will surely produce “an absurd and unjust result . . . clearly inconsistent with the purposes and policies of the statute[.]” *Survivors of Medeiros*, 66 Haw. at 297, 660 P.2d at 1321 (citations omitted). The proper forum for vindication of this value preference – ensuring public oversight of DHS and the state-sponsored adoption process – is in the legislature, the executive, or administrative agencies, and not the judiciary. *See Hawaii’s Thousand Friends v. Anderson*, 70 Haw. 276, 283, 768 P.2d 1293, 1299 (1989). Thus, Public First failed to make the requisite showing of “good cause,” consistent with the legislative history and intent behind HRS § 578-15(b), to allow this Court to unseal Isabella’s confidential adoption proceeding records.

Public First also argues that Hawai’i Administrative Rules (“HAR”) § 17-1601-6 provides “an extensive, non-exhaustive list of instances in which DHS itself – without consent or court order – may set aside confidentiality in favor of disclosure.” JEFS dkt. 1 at PDF 8. However, as Public First conveniently omits, HAR § 17-1601-6 controls the disclosure of DHS’s

records – defined as “all written, oral, electronic information gathered and maintained by the department [of human services] in its State central registry or in physical records[.]” HAR § 17-1601-2 – “pursuant to a legitimate *state* purpose[.]” HAR § 17-1601-6 (emphasis added). This argument must necessarily fail because this Court is not bound by the definition of “legitimate state purpose” in HRS § 17-1601-6 when determining whether there is “good cause” to unseal confidential adoption proceeding records in possession of the family court under HRS § 578-15(b).

As an alternative argument, Public First asserts that Special Master Stephen W. Lane be appointed “to prepare, for public disclosure, a synopsis of the factual and legal record presented to the Court for Isabella’s adoption placement with the Kaluas and any other information relevant to understand how this case was handled by government authorities[.]” citing *Kema v. Gaddis*, 91 Hawai‘i 200, 202, 982 P.2d 334, 336 (1999). JEFS dkt. 1 at PDF 2, 9-10. In the portion of *Kema* to which Public First cites, Judge Gaddis ordered DHS to prepare a synopsis for the Honolulu Advertiser, along with all other media representatives, to serve the legitimate interest of “assist[ing] authorities in locating [Peter Boy].” 91 Hawai‘i at 202, 982 P.2d at 336. However, as Public First appears to emphasize, the paramount concern in this case is not to locate Isabella; it is to “allow[] the public to understand how this adoption unfolded and take steps to improve the process.” JEFS dkt. 1 at PDF 4. Public First cites no authority, and CASA finds none, that permits this Court to direct Special Master Stephen W. Lane to prepare a synopsis without showing “good cause” through the filing of his own motion to unseal Isabella’s confidential adoption proceeding records and absent some “legitimate purpose.”

II. CONCLUSION

CASA requests and substantively joins in the request of DHS to deny Public First’
“Motion to Unseal Court Adoption Records of Isabella P. Kalua f.k.a Ariel Sellers[,]” filed on
January 12, 2024. JEFS dkt. 1.

DATED: Honolulu, Hawaii, April 22, 2024.

STATE OF HAWAII

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(Family Court Miscellaneous)

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that, on the date indicated below, a true and correct copy of the foregoing document was duly served upon the following parties through the US Mail, postage prepaid, or electronically by the Judiciary Electronic Filing System:

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STATE OF HAWAII

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