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FIRST CIRCUIT
1FFM-24-0000018
10-JUN-2024
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IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

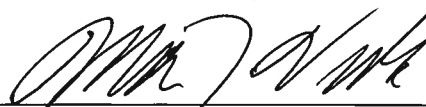
**SPECIAL PROCEEDING TO
UNSEAL ADOPTION RECORD**

) Case Number: 1FFM-24-0000018
)
) [DKT. 21] ISAAC KALUA'S MEMORANDUM
) IN OPPOSITION TO MOTION TO UNSEAL
) ADOPTION RECORDS OF ISABELLA P.
) KALUA, FKA ARIEL SELLERS;
) DECLARATION OF FRANCIS T. O'BRIEN;
) EXHIBITS "A" – "C" – **REDACTED**
)
)

**[DKT. 21] ISAAC KALUA'S MEMORANDUM IN OPPOSITION
TO MOTION TO UNSEAL ADOPTION RECORDS OF
ISABELLA P. KALUA, FKA ARIEL SELLERS – REDACTED**

Pursuant to the Decision and Order Re: Motion to Unseal Court Adoption Records of Isabella P. Kalua F.K.A. Ariel Sellers filed January 12, 2024, filed June 10, 2024 ("Decision and Order"), the attached document is filed herein and shall remain under seal except as provided for in paragraph 93 of the Decision and Order.

DATED: Kapolei, Hawai'i, June 10, 2024.



MATTHEW J. VIOLA
Judge of the Above-Entitled Court

Attorney for ISAAC KALUA III

**Electronically Filed
FIRST CIRCUIT
1FFM-24-0000018
05-MAR-2024
04:25 PM
Dkt. 21 MEO**

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

1FFM-24-0000018

ISAAC KALUA'S MEMORANDUM IN
OPPOSITION TO MOTION TO
UNSEAL ADOPTION RECORDS OF
ISABELLA P. KALUA, FKA ARIEL
SELLERS; DECLARATION OF
FRANCIS T. O'BRIEN; EXHIBITS
"A" --"C"

Comes now ISAAC KALUA III (hereinafter referred to as "Respondent"), in his capacity as Father/Respondent in a [REDACTED] and as one of the parents who adopted Isabella Kalua and her siblings, and states his opposition to the Motion to Unseal Adoption Records of Isabella P. Kalua, fka Ariel Sellers filed by Civil Beat Law Center for the Public Interest (now known as Public First Law Center). Counsel's appearance in this matter is limited to Respondent's status as a party to the [REDACTED] and Respondent's status as the adoptive father of Isabella P. Kalua. Respondent's counsel does not represent Respondent in his capacity as Defendant in a pending criminal action, nor does he represent Respondent in his

capacity as a Defendant in a pending civil proceeding. Respondent's counsel was not counsel for Respondent at the time that the adoption in question was granted by the Court.

While this Court has issued an Order that documents in this proceeding shall be filed under seal and may not be released to third parties, Respondent has no confidence that matters submitted in this proceeding will remain confidential. Respondent has specific reasons for this concern. Attached hereto as Exhibit "A" is a true and correct copy of an article authored by Stephen W. Lane, the former Special Master, that was published on February 6, 2024, in the Hawaii Free Press. Mr. Lane's only official contact with the [REDACTED] was during his appointment as Special Master. He was not and is not a party to the [REDACTED]. Mr. Lane was not and is not a party involved in the adoption proceeding. Mr. Lane was discharged from his position as Special Master before [REDACTED]. Mr. Lane is not related to the child. He has no right to information about the [REDACTED] [REDACTED] since he was discharged from his position as Special Master. Nevertheless, in his article, Mr. Lane makes reference to the content of [REDACTED] [REDACTED]. I am informed and believe that [REDACTED] would be confidential and that Mr. Lane, who is not a party to that case, has no right to access to that information. In addition, however Mr. Lane may have obtained that information, and assuming for the sake of argument that the information that he included in his article was correct, divulging such information would constitute a criminal violation pursuant to HRS § 346-11. Given that he has shown no respect for the laws regarding confidentiality to date, there is no reason to

believe that he will do so with regard to information that might be disclosed in response to the current motion.

In addition, Civil Beat has seen fit to trumpet the filing of this Motion to the public and to use it as a means to raise money. Attached hereto as Exhibit "B" is a true and accurate copy of an article that was written by John Hill and published by Civil Beat on February 1, 2024. That article contains quotes from Mr. Lane and also quotes from Mr. Creps, one of the attorneys representing the moving party herein. The article authored by Mr. Hill starts off with the following quote: "Well, we tried doing this the easy way. Now comes the hard way." As noted above, at the end of the article is a request for contributions to support the work of Civil Beat. It should be obvious that Movant has no interest in preserving any confidentiality that may exist with regard to the records of this case and no interest in looking out for the best interests of any of the children involved.

Given that Mr. Creps, Mr. Lane, and Civil Beat have chosen to drag all of this into the public view for their own personal and financial reasons, there is no reason to believe that anything that is said in response to the motion would be treated any differently. Therefore, in spite of the Court's Order in this case, Respondent's comments will be kept generic and will not deal with the specifics of any of the allegations that are directed against Respondent in this or any other matter. As Respondent's attorney in the 
, counsel is obligated to follow the statutory rules regarding confidentiality in spite of the demands made by movants.

I. ARGUMENT

A. HRS § 578 DOES NOT SUPPORT MOVANT'S POSITION

HRS §578-15(b) provides:

(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;
- (2) After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or adoptive parents;
- (3) After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the natural parents;
- (4) Upon request by the adopted individual or adoptive parents for information contained in the records concerning ethnic background and necessary medical information; or
- (5) Upon request by a natural parent for a copy of the original birth certificate.

As used in this subsection, "natural parent" means a biological birthing parent or non-birthing parent, or a legal parent who is not also the biological parent.

The language relied upon to support Movant's request for access to the records of the adoption proceeding is HRS §578-15(b)(1). However, Respondent would submit that the first requirement that should be read into that section is that a person seeking access to adoption should be a "proper person," the term used in HRS § 578-15(a) when describing who might be granted access to an adoption before the adoption has been granted. It is Respondent's position that the Movant in this case should not be considered a proper person. There is no "relationship" between Movant and the children involved. Movant is not a relative of any of the children, nor has it been appointed as a representative of the children's best interests. Movant was not a party to the adoption proceeding. If, as they claim, they are representing the public interest, there is nothing in the statute to suggest that such an entity should be considered a proper person to be seeking access to that file. See: In the Matter of the Adoption of a Male Child, CAAP-23-

0000290 (S.D.O.) (February 9, 2024), a copy of which is attached hereto as Exhibit "C." Just as the Court read into the law that a party challenging an adoption must be a "proper person" it is submitted that anyone seeking access to these records must first satisfy the requirement of being a proper person. If Movant is not a proper person then the Motion should be denied. See, also, In re Adoption of Watson, 45 Haw. 69, 361 P.2d 1054 (1961).

With regard to the issue of what constitutes "good cause" the Court's attention is directed to Chen v. Mah, 146 Hawai'i 157, 178, 457 P.3d 796, 817 (2020), quoting Doe v. Doe, 98 Hawai'i 144, 154, 44 P.3d 1085, 1095 (2002) (discussing Hawaii Family Court Rules, Rule 59(a)). The Hawaii Supreme Court has stated:

It is not possible to provide one definition of "good cause," as standards governing whether "good cause" exists depend not only upon the circumstances of the individual case, but also upon the specific court rule at issue. This is because in addition to HRCP [Hawai'i Rules of Civil Procedure] Rule 55(c) at issue in this case and HFCR [Hawai'i Family Court Rules] Rule 59(a) referenced above, there are numerous court rules in which the phrase "good cause" appears. Many of these rules use the phrase "good cause" in contexts that differ from the "good cause" required to set aside an entry of default pursuant to HRCP Rule 55(c), and address different policy considerations dictating stricter or more lenient definitions of "good cause" or differing approaches on how to determine whether "good cause" exists depending on the court rule and circumstances at issue.(footnotes omitted).

It is submitted that if the Court is going to determine "good cause" under the particular facts of this case, the appropriate standard for determining whether Movant has shown good cause should be the "best interests of the child" standard. Unless Movant is able to show that the disclosure of the information being requested is in the best interests of all the children who were adopted, he has not shown good cause and the Court would be justified in denying the Motion.

B. KEMA V. GADDIS SUPPORTS RESPONDENT'S POSITION

In the companion motion to release records in the Chapter 587A case, Movant cites Kema v. Gaddis, 91 Hawai'i 200, 982 P.2d 334 (1999), in support of their position. It is Respondent's position that the decision in Kema supports Respondent's position that information regarding the adoption should not be released. In Kema, the family court granted a newspaper access to a redacted version of a closed CPS file after the child disappeared. The child's father filed a Petition for a Writ of Prohibition or Mandamus to direct the family court judge to withhold release of the files and to vacate the order allowing access to the files.

The Hawai'i Supreme Court stated:

We agree with Judge Gaddis's conclusion that providing information to the media, under certain circumstances, might serve a legitimate purpose under HRS chapter 587. In this case, for example, the first release of information regarding Peter Boy's history was clearly in Peter Boy's best interest because it could have resulted in the acquisition of intelligence regarding Peter Boy's disappearance, which could potentially have enabled the family court to provide services to Peter Boy that would safeguard him. Moreover, the first release of information did not infringe upon the best interests of Peter Boy's siblings. Nonetheless, although we acknowledge that the release of further family court documents to the media might serve some legitimate purpose, the overriding concern of the Child Protective Act in determining whether to release such information remains the best interest of the children involved. Under the Child Protective Act, the interests of other parties or non-parties seeking information are not as compelling as the interests of the children involved. (Emphasis added).

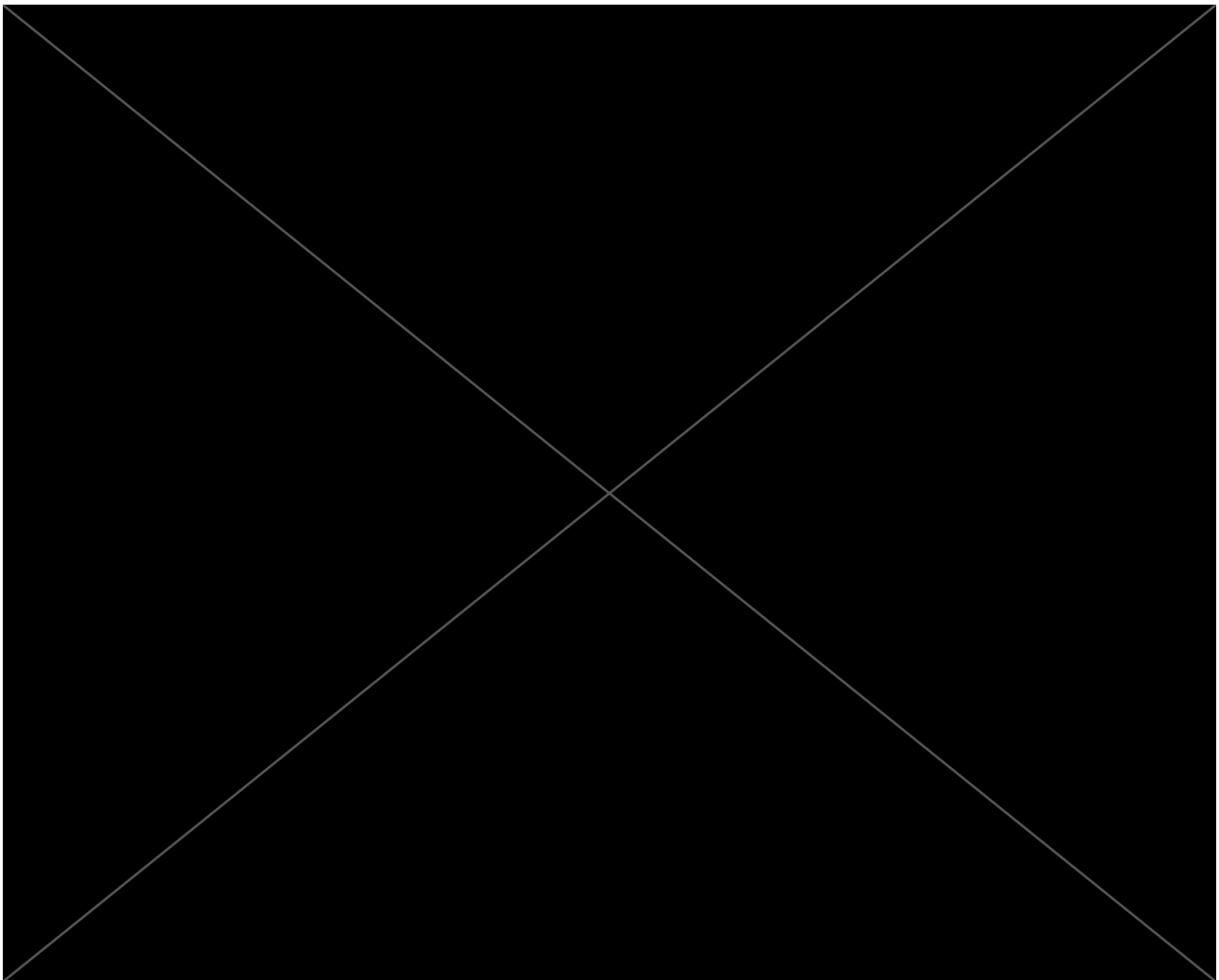
91 Hawai'i, at 206, 982 P.2d at 340.  involving the Kalua children and the effect of the release of the requested information, which involves all of the Kalua children, should be taken into consideration when making any decision regarding the adoption proceeding. Also, there is nothing in the statute to suggest that a claimed "public interest" should even be given consideration when the issue involves records of an adoption.

The Kema Court found that further disclosure of information would be harmful to the other children involved because the information requested about the children was so intertwined with that relating to the missing child that it would not be possible to release the information without affecting all the children. It is Respondent's position that the information that is contained in the files regarding the children is so intertwined and interrelated that disclosure undoubtedly would be harmful to the other children involved. Movant has articulated no facts that would support the position that release of the information would benefit the remaining children and be in their best interests. Under such circumstances, the information sought should not be made public. It is important to emphasize that the Supreme Court found that the overriding concern when presented with a request to release information that otherwise would be confidential remains the best interests of the children involved in the particular case and not foster children generically or anyone else. In this case, Movant concedes that the test to be applied is whether the disclosure of the information would be harmful to the other children and Respondent believes that makes the Kema decision particularly relevant.

C. THE INTERESTS OF THE CHILDREN INVOLVED ARE BEING PROTECTED

There are three actions currently pending that involve the Kalua children. In the criminal case, Respondent and his wife have been charged with murder and are presently being held in pretrial confinement pending a trial that now is scheduled to take place in October of this year. Respondent has entered a plea of Not Guilty to the charges, as has his wife. Constitutionally they are presumed to be innocent, a fact that seems to be lost on Movant, Mr. Hill, and Mr. Lane. In order to obtain a conviction, the prosecution must prove its case beyond a reasonable doubt. As of the present date, that has not happened.

Also, attempts to sensationalize matters surrounding this case may make it difficult if not impossible for Respondent and his wife to get a fair trial in the criminal proceeding. And sensationalization of the facts of the adoption could affect the testimony of witnesses in the other cases currently pending. If the Court were to consider releasing documents that might affect the criminal case, because there is already a protective order in place, it is submitted that the Prosecutor, HPD, and Mr. (and Mrs.) Kalua's defense counsel would be necessary parties to this matter so that their position could be heard. In the criminal case, the prosecution represents the interests of the people of the State of Hawai'i.



The third action currently pending is the claim for civil damages that is being pursued in Circuit Court on behalf of the Kalua children. In that case, the Plaintiff, who is the Guardian Ad Litem appointed by the Court on behalf of the Kalua children after Mr. Lane was discharged, is seeking monetary damages for injuries allegedly caused to the children by Respondent, his wife, and others. The claims of all three children are being represented in this matter.

The three proceedings referenced above all involve the interests of the Kalua children and their parents. In each of the three proceedings there is a judge who is assigned to the case and it is the responsibility of that judge to see to it that the rights of all parties are protected under applicable rules. Since the various interests of the parties in each case are different, it should be left to each judge to decide how to protect those interests. Counsel is informed and believes that there is a Stipulated Protective Order Regarding Discovery that has been ordered in the criminal case and a similar Order in the civil case. Obviously, the [REDACTED] are confidential by statute.

Disclosure of the records requested would not benefit the Kalua children. Their interests are being protected in each of the three proceedings. Movant ignores the rights of the Kalua children and seeks to get access to this information based upon a claim that release of this information would somehow benefit other foster children generally. It is submitted that Movant and/or the public already have all the information that they need if they wish to bring about a change to the foster care system. All statutes and regulations that pertain to the operation of the child protective system and adoptions here in Hawaii are public and are easily accessible to anyone interested in the subject. Nobody who is

serious about formulating a position about whether the existing statutes and regulations are sufficient to protect children who come within the jurisdiction of the family court needs access to the information being requested. Movant has failed to show how making the requested information public is going to benefit any of the Kalua children. What Movant has showed is a desire to sensationalize these matters without regard to the interests of any of the parties involved. Further, release of the information requested by Movant might be inconsistent with the orders that have been issued in the other cases and have a significant impact on the outcome of each of these cases.

D. THERE IS NO BASIS FOR THE SPECIAL MASTER'S REPORT TO BE RELEASED

Mr. Lane was appointed Special Master by the Court in a proceeding that was filed by his attorney. He sought appointment as Special Master in a separate proceeding. He was never a party to the Chapter 587A case. To counsel's knowledge, he did not have access to the documents filed in the adoption case. His appointment was opposed by Respondent based upon the statutory provisions relating to confidentiality of the records in Chapter 587A proceedings. With regard to Mr. Lane's involvement in this matter, the Court's attention is directed to Coal. of Clergy, Laws., & Professors v. Bush, 310 F.3d 1153, 1161 (9th Cir. 2002), where the Court stated:

the supreme court addressed the limitations on third-party "next friend" standing, and explained that "[h]owever friendly" and "sympathetic" a petition may be, and however concerned the petitioner is that "unconstitutional laws [are being] enforced," a petitioner without a significant relationship does not suffer a sufficient grievance for standing purposes. Whitmore, 495 U.S., at 166, 110 S. Ct. 1717. Otherwise, "however worthy and high minded the motives of "next friends" may be, they inevitably run the risk of making the actual defendant a pawn to be manipulated on a chessboard larger than his own case." Lenhard v. Wolff, 443 U.S. 1306, 1312, 100 S. Ct. 3, 61 L.Ed.2d 885 (1979) (Rhenquist, Circuit Justice).

The Special Master's Report, such as it was, has been made available to the Guardian Ad Litem appointed by the Court to oversee the civil case, and she has filed a civil suit against the Kaluas and others on behalf of the children, as recounted above. Respondent is informed and believes that the Plaintiff in that case is represented by three separate law firms, so the children's interest in that case appears to have adequate protection and the children's representative has plenty of legal talent available to obtain whatever documents they believe to be relevant to the claims that are being made.

Counsel is informed that Mr. Lane was to return all documents in his possession to the Department of Human Services when he was discharged as Special Master and counsel is further informed and believes that Mr. Lane was instructed that he was not to discuss the matters within his report with anyone not a party to the Chapter 587A case. It is submitted that there is another judge who would control the release of Mr. Lane's report, and that would be Judge Hall, who handled that entire proceeding involving the Special Master. Counsel is informed and believes that Judge Hall continues to supervise the actions of the Guardian Ad Litem in the civil proceeding since she was the Judge who appointed that Guardian Ad Litem.

It should be noted that Movant makes two requests that involve Mr. Lane. Movant requests release of his Report, and if the Court is not willing to do that it requests the Court to "order Special Master Lane 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." (Emphasis added). It is Respondent's position that the report submitted by Mr. Lane is significantly flawed as a result of Mr. Lane's refusal to follow the

Court's instructions as to the scope of his role as Special Master. The Court's lack of faith in Mr. Lane is reflected in the appointment of someone other than Mr. Lane to retain counsel and oversee any litigation. The request that the "summary" should contain any other information that Mr. Lane considers relevant to how the case was handled by government authorities is an invitation for speculation and opinion that would not be appropriate in this matter. It would be an invitation to air grudges. Thus, it is Respondent's position that the only thing that would be worse than releasing Mr. Lane's report would be to have him prepare a "summary" of that document for public release. Mr. Lane's brief as Special Master was to determine whether there was a basis for a civil claim. In that regard, Mr. Lane was given access to DHS records. With the filing of that report, his involvement in matters affecting the Kalua children should have ended. However, Mr. Lane appears to have an agenda in this matter that extends far beyond his role as Special Master, and it would serve no public interest to have his report made available to the general public in full or in a "summarized" form unless the Court that appointed him approves such an action. Respondent is informed and believes that it is unlikely that Judge Hall would approve release of this report.

E. THIS COURT IS NOT FAMILIAR WITH THE FACTS OF THE FIVE CASES THAT ARE INVOLVED IN MOVANT'S REQUEST AND SHOULD NOT ENTER ORDERS THAT AFFECT THE OTHER ONGOING CASES

There are five cases that are involved in this matter. Each one has different issues and each has a judge that is responsible for protecting the rights of the various parties involved. Movant is asking this court to review the entire adoption file and pick out things that would be "sufficient to understand the factual and legal record on which the Court approved Isabella's foster placement" with the Kaluas. It also requests the Court to review

the entire record in the case and pick out things “sufficient to understand the factual record presented to the Court by the Department of Human Services (DHS) and any other person or party regarding the Kaluas’ fitness as parents.” The information requested is so broad that it lacks any clear boundaries. Further it makes the Court responsible for deciding, not whether requested evidence is relevant, but instead to go into the mind of the Movants to decide what they actually want, whether it exists, and then decide whether it is relevant and whether release of the information would potentially be harmful to the children. The Court also would be responsible to redact any information in the files that was not to be released. They are asking this Court to do something that is truly akin to the labors of Hercules. The process would also be horribly complicated. Once the Court had made its determination, the documents and information in question would need to be reviewed by the parties to determine whether there were specific objections based upon the Court’s determinations and then there would need to be hearings on those issues. During all this time, the cases would be proceeding and the various interests concerned would be changing as those cases progressed. As noted above, Movant has failed to provide any evidence that would support a claim that public disclosure of what is being sought is would not be harmful to the other Kalua children involved.

II. CONCLUSION

All the people listed in the Court’s order already have access to the records or have had access to records in the Chapter 587A case. They have no need for public disclosure of any of the requested information in light of this access. All the people listed are either bound by statutory provisions relating to confidentiality not to make public what is going on in the proceedings and/or by protective orders in both the civil and criminal

case that regulates disclosure of information relating to the case. All of the people listed have access to a Judge familiar with their case to request relief if they are unhappy with the manner in which the particular case is proceeding or if they believe that records relating to the issues in the particular case should be released. And, as noted above, Respondent is informed and believes that in addition to being subject to the rules relating to confidentiality, Mr. Lane is subject to a court Order that prohibits him from disclosing matter relating to his work as a Special Master to third parties not involved in the case.

If Movant wants access to records in the adoption case, it is submitted that the appropriate procedure would be to file a motion in that case seeking the release of information. While Respondent would still oppose release of the information, at least at that point the matter would be before a judge familiar with the facts and posture of the case. All that Movants seek here is publicity for themselves as they seek to advance an agenda that has nothing to do with the particular rights of the parties involved in each case. Likewise, with regard to the request to release Mr. Lane's report, that request should be filed in the case where he was appointed so that the Judge who appointed him can rule on his request in light of the entire record in that case. It is Respondent's position that the facts in that case will not favor release of Mr. Lane's report.

Finally, it is Respondent's position (1) that Movant is not a "proper party" to be seeking release of adoption documents; (2) that the cases of all the children are so intertwined that it is impossible to release information pertaining only to the missing child; and (3) that the harm that would be done to the other children by the public disclosure of the requested documents shows that disclosure is not in their best interests.

Under the circumstances of this case, Respondent submits that the Motion should be denied in its entirety.

Dated: Honolulu, Hawaii, March 4, 2024.

/s/ Francis T. O'Brien
FRANCIS T. O'BRIEN
Attorney for Respondent

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SPECIAL PROCEEDING TO UNSEAL ADOPTION RECORDS

1FFM-24-0000018

DECLARATION OF FRANCIS T.
O'BRIEN; EXHIBITS "A" – "C"

DECLARATION OF FRANCIS T. O'BRIEN

I, FRANCIS T. O'BRIEN, hereby declare as follows:

1. I am the attorney for ISAAC KALUA III (hereinafter "Respondent") in the

[REDACTED]. I do not represent Respondent in any of the other actions currently pending against him. I make this declaration in support of Respondent's Memorandum in Opposition to the Motion to Unseal Adoption Records, filed January 12, 2024. Except where stated to the contrary, I have personal knowledge of the matters stated herein and I am competent to testify as to said matters.

2. Attached hereto as Exhibit "A" is a true and accurate copy of an article that appeared in the Hawaii Free Press on February 6, 2024. Upon information and belief, the article was authored by Stephen W. Lane.

3. Attached hereto as Exhibit "B" is a true and accurate copy of an article that was published by Civil Beat on February 1, 2024. Upon information and belief, the article was authored by John Hill.

4. Attached hereto as Exhibit "C" is a true and accurate copy of the Summary Disposition Order entered by the Intermediate Court of Appeals in In the Matter of the Adoption of a Male Child, CAAP-23-0000290 (S.D.O.) (February 9, 2024)

I, FRANCIS T. O'BRIEN, hereby declare under penalty of law that the foregoing is accurate and correct.

Dated: Honolulu, Hawaii, March 4, 2024.

/s/ Francis T. O'Brien
FRANCIS T. O'BRIEN

Monday, February 12, 2024

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Tuesday, February 6, 2024

Family Court Secrets: Two Years After Ariel Sellers Murder, Kaluas Still Retain Parental Rights

By Selected News Articles @ 1:45 PM :: 851 Views :: [Family](#), [Judiciary](#)

Family Court Secrets: Two Years After Ariel Sellers Murder, Kaluas Still Retain Parental Rights

Editor's Note: On February 21, 2024, Senior family Court Judge Matthew J Viola is set to hear arguments: Murder of Ariel Sellers: Motion to Unseal Kalua Family Court Records

by Stephen W Lane

I was the court appointed Special Master in the Kalua case.

(Isaac and Lehua) Kalua still retain their parental rights of all the children who were in their care, years after their arrest for murdering one of them.

I know that, because they were able to secure a order through their attorney from Judge Costa baring any contact between me and one of the surviving siblings just as I was about to secure admission for her to one of Hawaii's most distinguished private schools that offered special counselling services for her as part of the admission package.

As long the Kaluas are permitted to maintain their parental rights of these children it will seriously frustrate the efforts of those concerned with their safety and stability, such as the search for permanent "forever" foster or adoptive families and educational opportunities, to say nothing of the emotional harm to the children.

One of the surviving siblings was forced to spend more than a year in detained custody, not because she had done anything wrong but because the State of Hawaii was unable to secure a suitable foster family for her, largely due the running objections of the imprisoned Kaluas asserting their parental rights through counsel.

Judge Jessi Hall, the family court judge who approved the placement of the children with the Kaluas suddenly recused herself in the case without explanation.

The case has now been assigned to Family Court Judge Brian Costa.

I can think of no defensible explanation as to why the State of Hawaii hasn't moved to terminate the parental rights of the Kaluas long ago.

---30---

Star-Adv: Couple accused of murder retain parental rights -- "Attorney Francis O'Brien, who specializes in family law, told the Honolulu Star-Advertiser he has been retained to represent Isaac Kalua in family court, and made clear he is not court-appointed, which means someone other than the state is paying O'Brien's legal fees."

RELATED:

EXHIBIT A

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Let The Sunshine In

John Hill: The State Will Need To Explain To A Judge Why It Won't Reveal Its Actions In A Notorious Child Abuse Case

The Public First Law Center has filed motions to unseal foster and adoption records showing why the state placed Ariel Sellers with parents accused of murdering her.

By John Hill

February 1, 2024 · 6 min read

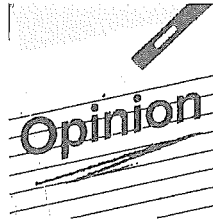


10



EXHIBIT B

Well, we tried doing this the easy way. Now comes the hard way.



For more than two years, the Department of Human Services has stonewalled in accounting for its actions in the horrific death of Ariel Sellers, the 6-year-old Waimanalo girl whose adoptive parents are accused of murdering her.

This, despite federal law and state regulations that require disclosure of at least minimal information when children die or nearly die as the result of abuse and neglect.

Now DHS can explain itself to a judge.

The Public First Law Center has filed motions to unseal the foster and adoption records in the most notorious child abuse case in recent Hawaii history.

The law center is asking the Family Court to release the case dockets in the foster and adoption proceedings.

It also seeks records that would show the court's factual and legal basis for placing Ariel with Isaac and Lehua Kalua, who renamed the girl Isabella. That would include the input the judge got from DHS and others.

Lastly, the law center wants to get any reports filed by a special master in the case. The special master, Steve Lane, was appointed by the court to ascertain whether Ariel's estate or her surviving siblings had grounds to file a civil lawsuit.

The motions — one for the foster records and one for the adoptive — make a compelling case that the privacy interests that protect most child welfare records are moot here because Ariel, tragically, is dead.

And the public has a compelling interest in getting answers.



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“What remains hidden from public view are the connecting facts that explain how this happened — how did a state-sponsored adoption place a young girl in the custody of a couple that murdered her ...?” according to the motion.

“Only by critical examination of what happened can our community ensure that no other child meets Isabella’s fate and start to restore public trust in an adoption process that from all appearances went horribly awry.”

‘Legitimate Purposes’ That Override Confidentiality

The law center undertook the motion on its own, but staff attorney Ben Creps said attorneys were motivated by a series of columns I wrote pointing out the state’s pigheadedness, as well as sustained public interest in the case.

While working on a different case, the law center delved into the standards for when Family Court cases can be unsealed.

In foster cases, for instance, records can be unsealed for “legitimate purposes.” A 1999 Hawaii Supreme Court case held that this includes furthering “the best interests of the children who come within the jurisdiction of the family court ... i.e. purposes that will safeguard, treat, and provide services and plans for children in need of protection.”

This standard should be looked at through the lens of federal law and state regulation meant to reveal the circumstances of child abuse deaths, the law center says. The federal law was meant to allow the public to assess whether the child protection agencies they fund with their tax dollars fail to protect children.

Yet DHS has adamantly insisted that it has no obligation to release these records in the Kalua case.

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Shifting Justifications

When I started reporting on this last year, DHS told me that it wouldn't release the required information because, even though Ariel had been missing for almost two years, she had not officially been declared dead.

When a judge finally did that, DHS then said it hadn't gotten the paperwork from the court. I got it myself and emailed it to them.

Then DHS told me that it didn't need to comply with federal law because the court had not officially declared that her death resulted from abuse or neglect.



Isaac and Lehua Kalua were charged with second-degree murder in connection with the death of their adoptive daughter, who they renamed Isabella. (Courtesy: Honolulu Police Department/2022)

Multiple witnesses — doctors, teachers and others — reported that Ariel was being abused by her adoptive parents, Isaac and Lehua Kalua, according to a civil lawsuit. One of her sisters told police that they kept her in a dog cage in the bathroom, nose and mouth covered with duct tape to prevent her from seeking food at night. And a court found that Ariel died about a month before the Kaluas reported it.

But that suspicious behavior was not enough for the child welfare bureaucrats.

So what's left when a public agency refuses to comply with the clear language of the law?

The courtroom.

"Something clearly went wrong here," Creps said. "The public interest is understandably why and how and how that can be fixed."

The motions raise the question of whose privacy is being protected by DHS's continued refusal to release records. The basic facts of the foster placement and adoption have long ago been reported, as have the allegations and criminal charges against the Kaluas.

The surviving siblings do retain a privacy interest, but the motions stress that they are not seeking personal information about the siblings, the names of people who were required by law and did report their suspicions of Ariel's abuse or other witnesses.

But this can all be handled quite easily by redacting any of that sensitive information.

Steve Lane, the special master in the Kalua case, has long pressed for greater transparency in Family Court.

"I'm delighted and I'm thrilled" by the law center's motions, Lane said. "For too long, too many of the proceedings in Family Court have been held in secret, to the detriment of the people they're supposed to be serving."

A Family Court hearing is scheduled for Feb. 21.

The Public First Law Center, formerly the Civil Beat Law Center for the Public Interest, is an independent organization created with funding from Pierre Omidyar, who is also a co-founder of Civil Beat. Civil Beat Editor Patti Epler sits on its board of directors.

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— tiredVoter 5 hours ago

I'm wondering why it's taking so long to bring the Kaluas to trial. Is it possible that release of the information sought could hinder the prosecution?

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— LKG 5 hours ago

Mahalo Civil Beat for continuing to follow up on this situation. So much is wrong with this situation and community cannot heal until the root of the problem is identified and addressed. This is one of the most vividly egregious abuse cases against a helpless child, and perhaps just the tip of the iceberg, of situations, in an agency where staff is overwhelmed, understaffed, and probably undersappreciated, acknowledged, and rewarded (and I don't mean monetarily). For the sake of the children in our Hawai'i, dependant of the social welfare system for their protection, let's continue as a community, to hold our State officials and Social Agency personnel accountable.

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— **Chris** 5 hours ago

If so many saw this abuse going on and reported it....Would like to see those responsible in DHS who failed this child also charged with criminal neglect in their duty to protect the child who was a ward of the state. This is why they don't want records unsealed - because they know people in DHS are also at fault. Seems this situation should cause a restructuring overhaul of DHS.

 Respect 1  Reply  Share

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— **jusbecuz** 5 hours ago

My subscription to child welfare news nationwide shows that other states get the facts when there is a child death for the purpose of prevention. My experience of 10 years with advocacy for parents in the system is that caseworkers are severely lacking in training of their own laws and procedures that govern their jobs. We need transparency from tax funded agencies, all of them.

 Respect 3  Reply  Share

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— **Augustus** 5 hours ago

Time to do more than demand.....I know, can the Feds come in and push? Surely there are some federal monies involved in that department ?

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 Report



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IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE ADOPTION OF A MALE CHILD
by C.C. and J.C., Petitioners-Appellees

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(CASE NO. 1AD221000013)

SUMMARY DISPOSITION ORDER

(By: Hiraoka, Presiding Judge, Nakasone and McCullen, JJ.)

C.C. and J.C. (together, **Adoptive Parents**) adopted **Child**. Child's natural father **A.M.** moved to overturn the adoption. The Family Court of the First Circuit denied A.M.'s motion by order entered on April 4, 2023.¹ A.M. appeals. We affirm.

Child was born in 2016. In re A.A., 150 Hawai'i 270, 273, 500 P.3d 455, 458 (2021) (**AA I**), cert. denied sub nom. McCoy v. Haw. Dep't of Human Servs., No. 21-1467, 143 S. Ct. 94 (U.S. Oct. 3, 2022) (mem.). One week later, DHS filed a petition for foster custody (the **CPS Case**). The family court defaulted the then-unknown natural father for failing to appear after service by publication. The family court gave DHS foster custody of Child. Child was placed with Adoptive Parents. The family court eventually terminated the parental rights of Child's natural

¹ The Honorable Andrew T. Park presided.

mother and then-unknown father and awarded DHS permanent custody of Child. The family court approved adoption as the permanency plan for Child on August 14, 2018.

On October 9, 2018, A.M. contacted DHS about "the process of legally bringing [Child] home." AA I, 150 Hawai'i at 274, 500 P.3d at 459. A.M. had been adjudicated as Child's natural father in a separate paternity case. A.M. moved to intervene in the CPS Case. He was ordered to first move to set aside his default and the termination of his parental rights. After trial, the family court denied A.M.'s motion to set aside his default and his motion to intervene. Id. at 278, 500 P.3d at 463. A.M. appealed.

The supreme court held that service by publication did not violate A.M.'s constitutional rights, AA I, 150 Hawai'i at 285, 500 P.3d at 470, and the family court did not err by declining to vacate A.M.'s default or the termination of his parental rights, id. at 285-86, 500 P.3d at 470-71. But it also held that A.M. wasn't required to set aside his default or the termination of his parental rights before proceeding with his motion to intervene. Id. at 286, 500 P.3d at 471. The CPS Case was remanded to the family court.

On February 7, 2022, DHS initiated the case below (the **Adoption Case**) by petitioning the family court to let Adoptive Parents adopt Child.

On February 17, 2022, A.M. renewed his motion to intervene in the CPS Case. In re A.A., No. CAAP-22-0000427, 2023 WL 3619865, *2 (Haw. App. May 24, 2023) (mem.) (AA II), cert. rejected, No. SCWC-22-0000427, 2023 WL 5400092 (Haw. Aug. 22, 2023). The family court heard and orally denied the motion on March 14, 2022. Id.

On March 22, 2022, in the Adoption Case, the family court heard and orally granted the petition for adoption.

On April 27, 2022, the family court revoked DHS's custody of Child and terminated its jurisdiction over the CPS Case given Child's adoption. AA II at *2.

The Adoption Decree was entered in the Adoption Case on April 28, 2022.

On May 5, 2022, in the CPS case, A.M. moved for reconsideration of the denial of his motion to intervene. AA II, 2023 WL 3619865, at *2. The family court denied reconsideration. Id. A.M. appealed. We held that A.M.'s appeal from the denial of his motion to intervene was moot. The supreme court affirmed the termination of A.M.'s parental rights, so A.M.'s only remaining interest was in visitation. But Adoptive Parents' adoption of Child extinguished A.M.'s visitation interest. Id. at *3 (citing HRS § 587A-33(d)). We also held that the family court's jurisdiction in the CPS Case terminated upon Child's adoption. Id. (citing HRS §§ 587A-4, 578-16(b)). We affirmed the family court's order denying A.M.'s motion for reconsideration. The supreme court rejected A.M.'s petition for writ of certiorari on August 22, 2023. No. SCWC-22-0000427, 2023 WL 5400092.

In the Adoption Case, A.M. moved to overturn Child's adoption on February 28, 2023. The family court entered an order denying A.M.'s motion on April 4, 2023. This appeal followed.

(1) HRS Chapter 578 governs adoptions. HRS § 578-12 (2018) governs setting aside or modifying adoption decrees. Revised Laws of Hawaii, 1955 (RLH) § 331-12 was the predecessor to HRS § 578-12. In In re Adoption of Watson, 45 Haw. 69, 361 P.2d 1054 (1961), the supreme court held that under RLH § 331-12, the family court may consider "a petition or motion filed by any *properly interested person* to . . . show good cause why a decree of adoption previously entered should be set aside or modified." Id. at 78, 361 P.2d at 1059 (emphasis added). The dispositive issue in this appeal is whether A.M. was a person "properly interested" in setting aside or modifying Child's adoption.

In the CPS Case, the supreme court affirmed the family court's termination of A.M.'s parental rights. AA I, 150 Hawai'i

at 285-86, 500 P.3d at 470-71. A.M. is precluded from relitigating that issue.² The order terminating A.M.'s parental rights stated:

13 Pursuant to HRS § 587A-33(b)(5) Mother and [A.M.] are excluded from participating in adoption or other subsequent proceedings and he/she/they shall not be noticed of future hearings and he/she/they shall not appear at future hearings unless he/she/they receive further legal notice requiring such appearance[.]

Under these circumstances, A.M. was not a person "properly interested" in setting aside or modifying Child's adoption. The family court did not err by denying A.M.'s motion to overturn Child's adoption.

(2) A.M.'s argument that there was structural error in the CPS Case because the family court did not appoint counsel for the unidentified father, who was properly served and defaulted, AA I, 150 Hawai'i at 285-86, 500 P.3d at 470-71, is without merit. See In re JH, 152 Hawai'i 373, 380, 526 P.3d 350, 357 (2023) (noting that without a client, "what's an attorney to do?" because counsel would be "hard-pressed to understand the parent's present objectives, and is challenged to provide sound, ethical representation"). It is also an impermissible collateral attack on the family court's orders in the CPS Case. See In re Hawaiian Elec. Co., 149 Hawai'i 343, 358, 489 P.3d 1255, 1270 (2021) (discussing collateral attack doctrine).

(3) A.M.'s argument that he was not given notice of the Adoption Case also lacks merit. "[N]otice need not be given

² Issue preclusion, also referred to as collateral estoppel, applies when: (1) the fact or issue in the present action is identical with the one decided in the prior adjudication; (2) there was a final judgment on the merits in the prior adjudication; (3) the parties to the present action are the same or in privity with the parties in the prior action; and (4) the fact or issue decided in the prior action was actually litigated, finally decided, and essential to the earlier valid and final judgment. Dannenberg v. State, 139 Hawai'i 39, 60, 383 P.3d 1177, 1198 (2016). Adoptive Parents were allowed to intervene in the CPS case on May 29, 2019. AA I, 150 Hawai'i at 276, 500 P.3d at 461. Thus, A.M., Child, Adoptive Parents, and DHS – the parties to the CPS Case – are also the parties to this case.

to any parent whose parental rights have been legally terminated[.]” HRS § 578-2(e). A person “who does not have any legal interest or custodial right in and to the child, cannot assail an adoption decree on the basis that he was not made a party to or given notice of the adoption proceedings.” Watson, 45 Haw. at 74, 361 P.2d at 1057. Cf. In re AG1 and AG2, ___ Hawai‘i ___, ___ P.3d ___, 2024 WL 299417 (App. Jan. 26, 2024) (holding that HRS § 587A-13 does not require that a parent whose parental rights have been terminated be summoned if a subsequent petition concerning the child is filed).

We need not consider A.M.'s other points of error (concerning good cause to overturn the adoption). The family court's April 4, 2023 "Order Denying Natural and Biological Father's Motion to Overturn Adoption" is affirmed.

DATED: Honolulu, Hawai‘i, February 9, 2024.

On the briefs:

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/s/ Keith K. Hiraoka
Presiding Judge

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