

## **Summary of Ariel's Family Court Records**

Public First Law Center asked the family court in 2023 to release two case files concerning Ariel Sellers, also known as Isabella Kalua. Public First also asked for the report of Stephen Lane, who was appointed as a “Special Master” by the family court to investigate whether “grounds exist for the filing of tort claims” on behalf of Ariel’s estate and her siblings.

The Hawaii Supreme Court ultimately held the public deserved to see these records, to better understand the record on which the family court approved Ariel’s placement with Isaac and Lehua Kalua. The records were released last fall. They consist mainly of form court filings and orders, social worker reports, and medical records, and are redacted extensively to protect the privacy interests of Ariel’s siblings.

This is Public First’s digest of those records.

### **The Beginning (Vol. 1)**

Melanie Joseph gave birth to her third child at Castle Hospital in late October 2018. The father, Adam Sellers, was there at some point but reportedly left after an argument with Melanie. Melanie and her newborn both tested positive for methamphetamine, which Melanie admitted using shortly before going into labor and regularly since 2016. This was reported to DHS, who then placed the newborn with the Kaluas as foster parents. Melanie’s two older children were living with their maternal grandmother at the time, which DHS allowed to continue, with conditions.

It is unclear how DHS initially selected the Kaluas to foster Melanie’s newborn – as Special Master Lane reported, they seem to have been the only ones ever considered. DHS described them as “family friends” of Melanie.<sup>1</sup>

Within days of placing Melanie’s newborn with the Kaluas, DHS initiated the child protective act case by filing a petition, authored by a DHS social worker, that cited Melanie’s unstable housing and “impairment due to drug abuse” as the basis for removal. Although it sought foster placement for the newborn, DHS found Melanie capable of caring for her older children, so long as she had the support of her mother, Barbara Kumai, and complied with a DHS-prepared “service plan.” The foundation of that service plan was participation in substance abuse treatment.

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<sup>1</sup> Melanie has stated in the press that Lehua believed her brother was the father, which Melanie denied.

## **Initial Hearing, November 2018 (Vol. 1, 2)**

Judge Bode A. Uale held the first hearing on November 7, 2018. Melanie appeared. Adam did not. DHS's attorney represented to the court that Melanie agreed to foster custody of the newborn and family supervision over the siblings. Judge Uale granted the relief requested by DHS, appointed a lawyer to represent Melanie, and scheduled a periodic review hearing in three months' time. In hand-delivered written materials, Melanie was repeatedly warned, in bold and all caps, that she stood to lose her parental rights if she failed to participate.

Judge Uale also appointed a volunteer guardian ad litem from the Court Appointed Special Advocates program.<sup>2</sup> The appointing order granted the CASA guardian ad litem access to the children and all of their records and required at least one in-person visit with the children every three months. It also tasked the guardian with serving as a fact finder and making recommendations to the court about the children's best interests.<sup>3</sup>

## **Immediate and 1<sup>st</sup> Periodic Review Hearing, February 2019 (Vol. 1, 2)**

Ariel's CASA guardian first visited her at Kumai's home two weeks after the initial court hearing and again on January 23, 2019. From those visits the guardian reported that Ariel was "friendly, talkative, and energetic." She observed no signs of developmental issues and noted that Ariel's room was kept "very clean and neat."

The day before that visit, on January 22, the DHS social worker assigned to Ariel's case made a home visit to discuss "reported safety concerns." Ms. Kumai told the DHS social worker Melanie was not home. The social worker later reported to the court that when Ariel overheard this, she "interjected and stated that her mother was home and was laying on [Kumai's] bed." Melanie joined them and completed the home visit; her

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<sup>2</sup> [CASA](#) is a "volunteer program that empowers everyday citizens as officers of the court to help abused and neglected children find safe & permanent homes." Each volunteer is trained and overseen by a social worker employed by the Judiciary.

<sup>3</sup> There appears to be intentional overlap between the role of the CASA guardian and DHS social worker in a child protective act case, in an effort to spread the load borne by DHS social workers and create redundancies in the name of child safety. The guardian is appointed to act as advocate for the child. The DHS social worker has a broader ambit, seemingly intended to act as an impartial expert in child well-being and parental fitness on behalf of the State. Both visit the children and their families. Each submit reports to the judge at periodic review hearings. They act as the eyes and ears of the court and are the primary drivers of the case through their recommendations.

mom explained she was fearful Melanie would be “in trouble” with DHS. (The social worker would repeat this incident in every safe family home report she filed, describing it as an attempt by Melanie to “deceive” child welfare services.) Melanie promised to contact a substance abuse service provider within two days. She failed to do so.

By the end of January 2019, the CASA guardian and her supervising social worker had grown concerned about the wellbeing of Ariel and her siblings. CASA took its concern to DHS, but DHS, in CASA’s view, was too slow to respond. So CASA filed an emergency motion for immediate review and asserted its belief that “it is in the best interests of the subject children that Family Supervision of them be revoked and Foster Custody be awarded to [DHS].”

In support, CASA’s lawyer declared “the CASA Program has received information that Mother has yet to begin any type of substance abuse treatment program and Mother is associating herself with known drug users in the Waimanalo area. Additionally, Mother reportedly is no longer welcome to stay overnight at the house the children are residing in.” An immediate review hearing was justified, CASA further declared, because the “CASA Program has not been successful in finding out how” DHS “wishes to move forward in this case[.]”

As requested, Judge Uale held an immediate review hearing on February 11, 2019. By then, however, DHS had already removed Ariel and her older sibling from Kumai’s home and placed them with the Kaluas a few days before the hearing. Melanie did not appear. Melanie’s attorney, along with DHS’s attorney, the DHS social worker, the CASA guardian, and CASA’s attorney all appeared. The judge approved the requested DHS foster custody of Ariel and her sibling, retroactive to February 8, when they were removed from Kumai’s home and placed with the Kaluas. The hearing lasted five minutes.

A later-filed CASA report to Judge Uale shed further light on the basis for its concern. During first week of January 2019, Kumai’s boyfriend and others were seriously injured in a motorcycle accident in Waimanalo. The CASA guardian noted, based on a report ostensibly from Lehua: “Maternal grandmother spending lots of time at hospital, RCG [foster parent] said that resulted in Melanie watching Ariel without MGM supervision.” (The Special Master’s report also suggests, based on medical and DHS records, that Ariel may have been sexually assaulted by an unidentified “uncle” while living in Kumai’s home. That allegation, however, does not appear in the unredacted portion of the court records as a basis for Ariel’s February 8 removal from Kumai’s home.)

When the CASA guardian visited the Kaluas' home on February 11 – two days after DHS placed Ariel with them – she reported "Ariel was having a tough time with structure, as it seems she did not have any rules or boundaries at Grandma's house and was permitted to eat cereal, candy, and other sugary foods throughout the day" and that "Ariel expressed to this writer that she wants to return to Grandma's house." Once her kids were placed with the Kaluas, Melanie was allowed three hours a week to visit them, in the Kaluas' garage.

Melanie was three hours late to the first periodic review hearing, on February 26, and missed it. In its report to the judge, the DHS social worker outlined Melanie's failure to engage in the rehabilitation services required by her service plan. Judge Uale continued the periodic review hearing to May 23, 2019.

### **2<sup>nd</sup> Periodic Review Hearing, May 2019 (Vol. 2, 3)**

In the meantime, it got harder for Melanie to visit her children. Lehua asked DHS to coordinate and supervise visits, on the grounds that Melanie was not observing ground rules for the visits at Lehua's home. Lehua reported to DHS that Melanie would arrive late, often appeared high, at times would "whisper" to Ariel, and that the visits were disruptive for Ariel. On March 7, the DHS social worker emailed Lehua: "Thanks for being so cooperative and working with DHS. I really appreciate that you opted for visitations at your home in the beginning of the case. Now that visitations are going to occur with DHS, I hope this will relieve some of the pressure." She went on:

Here is what I will need:

- Date and times visits since it started
- Note down any late starts or cancellations of the visits [redacted]
- if you took notes during each visit, please jot it down [redacted], your observations, was it positive? Was there concerns? ....

Also:

- List if visit was done with mother only, mother/grandmother, etc.
- if there were days she appeared to be high and you want to state that, you need to "describe" her behavior that made her appear high

Hope this helps you out.

Two days later Lehua responded, "Here's what [I] have down since it started" and provided a detailed accounting of roughly forty visits, down to the minute Melanie arrived, from November 9, 2018 through February 21, 2019. According to Lehua, on nearly every occasion, Melanie came late and appeared to be high – Melanie seemed

“tired,” “sweaty,” had dilated pupils, spoke nonsensically, or “acted weird like she was high on drugs.” Take, for example, her account of the December 17<sup>th</sup> visit with her newborn:

Melanie arrives at 4:34. Her pupils was dilated, she looked tired, but wide awake and pale like a ghost, but she said she was fine. I told her just to let you know [I] was once in your shoes high on drugs, lost, lonely, empty, confused and clueless as to what to do with my life. She looked shock like, what are you saying? So [I] told her yes 20 years ago I was high on ice and praying to God to make a way to save my life and with my hubby and God [I] am still clean and sober. But [I] told [her] Mel, you got to want to change, you got to be ready to change for yourself and no one else. She looked at me and said yes [I] am high and I am sorry [I] came to visits high more than once and [I] said [I] know. She said she wants to change, but she’s not ready.

And during a visit with Ariel on February 19, a little over a week after she was placed with the Kaluas, Lehua reported that Melanie

kept asking Ariel (are you happy here) (You can tell mommy and [I] can get you out of here), she would repeat that over and over. She also kept saying (you can tell me if they’re hurting you), [I] did tell Mel why are you saying those things and no ones hurting no one here. On this day she was high, sweaty, stink and dirty.

These emails were submitted to Judge Uale in connection with the May 23 review hearing.

Also submitted on May 23 was an “ohana conference” summary report prepared by Epic Ohana, Inc. On March 12, 2019, Epic convened Melanie, a few family members, a friend, the Kaluas, DHS social worker, CASA social worker at the Waimanalo public library to discuss the children, legal timelines, visitation, case direction, and the service plan. A facilitator and recorder from Epic participated, who prepared the report. The report describes Ariel as “friendly, loving, bright, and honest and can definitely be hard head sometimes, though she does respond well to direction if it is given with loving authority.” It continues, “She has a very healthy appetite and Lehua and Sonny are working with her to eat more fruits and vegetables to get her weight down.” Regarding visits, the summary provides Melanie’s visits with the children must be supervised by “CWS” and “CWS will transport.”

The ohana conference summary report also reflects a discussion of reunification as the case direction, but stressed for Melanie, “CWS will be specifically looking to see that she attends her substance abuse assessment with Hina Mauka on 3/22/19 and engages in any recommended treatment.” Melanie made it to Hina Mauka on March 22, but was three hours late and had to be rescheduled to March 29. And then she failed to make that appointment.

At the May 23, 2019 periodic hearing, DHS and CASA both reported to Judge Uale that the children were doing well in foster placement, Melanie was not making any progress on her service plan, and Adam was nowhere to be found. Melanie’s visits with Ariel were supervised by DHS and Melanie recently missed a few. By six months in, DHS had concluded “[p]arents are not able now or in the foreseeable future to provide a safe family home” and informed Judge Uale it would begin to shift efforts from reunification to termination of parental rights. After three months with the Kaluas, the CASA guardian reported, Ariel was doing well and was “the most well-behaved this writer has ever seen her” at a March 29 visit. The guardian concluded Ariel was “well adjusted,” eating healthier, and “appears to have lost some weight.”

### **Report of Abuse, July 2019 (Vol. 1)**

A DHS record – attached to a Special Master’s report prepared after the adoption had been approved and Ariel went missing – indicates that on July 3, 2019 DHS received a report of abuse concerning Ariel. The unidentified reporter alleged he or she observed Lehua “punching, pulling/slapping Ariel” and noted Ariel was “treated differently and not fed like the other children.” That record indicates Lehua denied the report and told a DHS licensing worker that she had to restrain Ariel during tantrums, for her safety, and that the licensing worker advised Lehua to instead “move objects so Ariel does not get hurt.” The report of abuse was investigated and closed by a social worker not assigned to the case and there is virtually nothing in the record about the investigation.

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\*\*07/03/2019 INTAKE# N2850 UNCONFIRMED INSTITUTIONAL ABUSE/PHYSICAL ABUSE TO ARIEL SELLERS BY DHS SPECIAL LICENSED RESOURCE CAREGIVER, LEHUA KALUA. REPORTEDLY, RCG HAD BEEN OBSERVED PUNCHING, PULLING/SLAPPING ARIEL. ARIEL HAD REDNESS TO HER FACE AND A BRUISE ON HER EYE. ARIEL WAS TREATED DIFFERENTLY AND NOT FED LIKE OTHER CHILDREN.  
LICENSING WORKER, ROBIN LO, HAD NO CONCERNs TO REPORT FOR RCG. MS. LO SAID SHE HAD ADDRESSED RESTRAINT ISSUES WITH RCG WHO HAD REPORTED TO HER THAT SHE WOULD HAVE TO HOLD ARIEL DOWN DURING HER TANTRUMS FOR HER SAFETY. MS. LO SAID SHE TOLD RCG THAT SHE CANNOT RESTRAIN ARIEL RATHER MOVE OBJECTS SO ARIEL DOES NOT GET HURT.  
--CASE INV AND CLOSED BY A. FOSTER ON 8/10/19.

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### **3<sup>rd</sup> Periodic Review Hearing, November 2019 (Vol. 4)**

The November 5 review hearing lasted thirteen minutes. Melanie failed to appear. Isaac appeared alone, again, along with the usual cast of professionals.

At the hearing DHS submitted a Safe Family Home Report dated October 23, 2019 and prominently stated that no child had been harmed since its last report. That report focused on Melanie's failure to comply with her service plan and reported to Judge Uale that she was "currently homeless" and not providing for the children financially. A few pages in, DHS disclosed Ariel sustained fractures to two fingers in October, possibly caused by "Ariel having her finger slammed in a door." Doctors and DHS would monitor the situation, the court was informed. The CASA guardian's report also disclosed that Ariel fractured her fingers in October. But neither CASA nor DHS explained to the court that the Kaluas did not seek medical attention for Ariel's injury until two weeks *after* it occurred.

Nothing in the court records indicates DHS disclosed the July 3 report of abuse to Judge Uale. DHS reported only that Ariel was participating in therapy to address alleged instances of being "unkind to herself" – pulling her hair out and scratching herself.

The CASA guardian, however, did report the allegation in generalized terms. She informed the court in her third report to the court that the DHS social worker "received a report (from a source unknown to this writer) that RCG [Lehua] was allegedly abusing Ariel based on allegations that Ariel had lost a lot of weight, her hair was falling out, and she appeared to have bruises on her face." The CASA guardian reported that on July 10 she visited Ariel and "observed that Ariel did not appear underweight and did not have any noticeable bruising" but her hair was thin in areas,

and that the latter was confirmed by a doctor to be the result of a disorder “common among children who have experienced trauma.”

Although the guardian represented that the DHS social worker “independently investigated” the allegations of harm and confirmed they were unfounded, no one provided the court with a report of the DHS investigation or any other information about it— who made it, how it was investigated, or the basis for DHS’s conclusion that it was unfounded.

The CASA guardian’s report also disclosed that the DHS social worker “informed this writer regarding several incidents of RCGs failing to keep DHS updated [redacted] RCGs reporting that they are ‘overwhelmed,’ and RCGs (either deliberately or accidentally) miscommunicating with DHS and other service providers [redacted]. A meeting with the DHS, CASA, and RCG is being coordinated to assist and support the RCGs where needed.” DHS never disclosed this to Judge Uale, nor did it explain how the concern was addressed.

An earlier suspicious injury went entirely unreported to the court. Lane’s report indicates that at a routine medical examination on August 5, 2019, a physician at the Waimanalo Health Center “observed unusual bruising”—including on Ariel’s back. Lane reports further, “Lehua told the doctor that Ariel was hitting and pinching herself and that these wounds were self-inflicted. Lehua did not explain and the doctor did not ask how Ariel was able to cause her bruises on her mid-back.”

Although DHS noted “Ms. Joseph is very bonded to Ariel who she considers her favorite and will shower Ariel with lots of love and attention during visits,” it recommended the children stay with the Kaluas until adoption, given the lack of parental engagement. DHS reported the Kaluas expressed interest in adoption in “ongoing discussions” with DHS.

During the hearing there was a discussion of Melanie’s visits with the children. Judge Uale allowed one more DHS-supervised visit in Waimanalo, but ordered all visits thereafter to be at DHS offices. Melanie was to be provided a bus pass. The case was continued to February 2020 to consider termination of parental rights.

#### **4<sup>th</sup> Periodic Review Hearing, February 2020 (Vol. 5, 6)**

From reports submitted to Judge Uale in connection with the February 2020 review hearing we know the following.

Days after the November 2019 review hearing, Lehua and an unidentified “aunty” took Ariel for a follow-up visit to Shriner’s Hospital for her finger fractures. Lehua pointed out a “hard bump” over Ariel’s “right clavicle that she noticed a few days ago after Ariel returned from a visit with her biologic mother. Ariel said that she fell off the monkey bars during that visit.” She was diagnosed with a one-to-two-week-old fractured clavicle. The Shriner’s physician recommended “fully supervised visits with the biologic mother to be supervised at all times” and recommended Lehua inspect Ariel daily for new injuries. But DHS had been supervising those visits since March. Lehua assured the doctor, in any event, that “a judge has recently ruled the visits with the biologic mother will now take place at the CPS office.”

On November 18, Epic held another Ohana Conference, although this time the focus was on transitioning to “permanency.” Neither Melanie nor Adam attended. Some of Melanie’s family did. The November 18 conference summary reports Ariel “has had some adjustment difficulties and is working with play therapist, Gina, to address this. She has been thriving since starting therapy but still often looks sad.” After almost a year in foster care participants still described Ariel as “very connected with her mother. She has some behavior issues after visits that lasts up to two days. She is attached to Lehua and Sonny but misses her mother.” By then, Melanie’s supervised visits were down to an hour and a half per week, at a DHS office, and she was showing up less and less. The report continues: “Ariel had some injuries that went undetected so because of this [the Kaluas] are checking her body two times a day for new injuries.” To explain how those injuries went undetected, Lehua suggested to numerous professionals that Ariel was insensitive to pain: “She has an appointment at Shriner’s Hospital on 12/9/19 to test her pain threshold.”

On January 14, 2020, Lehua took Ariel to Castle Hospital “after she cried in pain after falling from a trampoline.” She fractured two bones in her leg and had her leg placed in a hard cast. The CASA guardian visited the Kalua home on the same day, although it is unclear if the visit was before or after the injury. According to Special Master Lane’s report, in a “follow up visit, Lehua reported that she was trying to keep Ariel from walking but was having a hard time at night when Ariel would raid the refrigerator for food.”

In light of Ariel’s injuries, DHS convened a “multidisciplinary team conference” on February 7, 2020 to assess the “presence or absence of child abuse/neglect.” It took place at nonprofit Child and Family Services in Ewa Beach and was attended by Ariel’s primary care physician, the DHS social worker, the CASA social worker and attorney, and both Isaac and Lehua. The panel reviewed Ariel’s medical records and listened as

Lehua explained that Ariel threw powerful tantrums, seemed to have “multiple personalities,” and exhibited “self-injurious behavior.”<sup>4</sup>

The multidisciplinary team issued a report concluding that the series of fractures sustained by Ariel over six months “do not appear to be consistent with pathological fractures, because Ariel has provided a plausible mechanism of injury for each fracture, but it would not be unreasonable to exclude bone disease as a continuing factor.” The team noted further that the “frequency of skeletal injuries does raise concerns for adequate supervision both at home and during visitations.” The panel recommended Ariel’s “Calcium, Parathyroid, and Vitamin D” be checked “to optimize health and rule out bone disease as a contributing cause of multiple fractures.”

The team also noted another medically significant event – “significant weight loss”:

In the first months of foster placement, Ariel had an 8 lb. weight loss. While she was then overweight and is now an appropriate weight for height, this is not a recommended way to achieve a healthy body mass index. RCG explains that Ariel was accustomed to a diet of fast food pizza, cheeseburgers and French fries and initially refused the healthy foods that she was served by her caregiver. Ariel has taken time to adjust to the change in diet and is now gaining weight appropriately.

The team’s report does not include any reference to the July 2019 report that Ariel was “not fed like the other children.”

Despite Ariel exhibiting signs of “adjustment difficulties,” such as pulling her hair out and other purported self-harm, the multidisciplinary team and DHS did not have the benefit of any reports from Ariel’s play therapist: “There were no records available from the current play therapist. The CWS social worker stated that communication and reports of progress have been very limited with this provider.”

The multidisciplinary team, in the end, concluded the Kaluas were overwhelmed but doing their best, suggesting they “may benefit from additional hands-on assistance with parenting skills with access to respite care [ redacted ].” They were far less charitable

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<sup>4</sup> In a civil suit, counsel for Ariel’s estate declared that Alyssa Foster – the social worker who investigated the July 3 report of abuse and who appears to have left DHS shortly after to work for Parents and Children Together (PACT) – testified in a deposition that she had concerns about Ariel’s safety and was supposed to be invited to participate in the MDT but was not; and that it was improper for the Kaluas to have participated.

toward Melanie, closing the report—oddly, given their purview to investigate Ariel’s injuries—by concluding she was unfit to parent Ariel:

Development delays that were not promptly addressed and medical neglect (well-child and immunizations) were confirmed for Ariel while in the care of her mother. . . . Ms. Joseph has not engaged with DHS recommended services, does not have stable housing, and has unaddressed substance abuse and mental health concerns, which have resulted in the suspension of visitation with her children. The MDT has determined that Ms. Joseph is unable to provide a safe and protective home for any of the children.

Another red flag inexplicably did not make it into the MDT report—and was thus not disclosed to Judge Uale. A DHS summary of the MDT conference—again attached to the Special Master’s report but not disclosed to Judge Uale—indicates Ariel’s primary care physician expressed “concern[ ] about Ariel’s absences from school.”

That same DHS summary indicates that DHS held a staff meeting on February 21, 2020 to discuss Ariel’s fractures and “how to move forward” with the Kaluas. The meeting resulted a few soft recommendations: that the DHS social worker and her supervisor “read home study in the licensing unit to get background history” of the Kaluas, “[f]ollow up with PACT provider Alyssa regarding recent CWI concern,” and “get a progress report on Ariel” from her play therapist.

On the same day as the “moving forward” staff meeting, DHS filed a motion to shorten the required notice for a motion to terminate parental rights, which was granted. DHS did not explain in the motion why it couldn’t provide the required notice, claiming only that there wasn’t enough time to do so. DHS filed its motion to terminate parental rights on February 24, 2020. It was to be heard the very next day.

On the same day it filed its motion to terminate Melanie and Adam’s parental rights, DHS received a report of abuse from a mandated reporter. A teacher of Ariel’s was concerned enough about her wellbeing in the Kalua’s care to report the concern to DHS. The teacher raised several concerns. DHS logged the report in its log of contacts but never reported it to the family court—even though DHS appeared in front of Judge Uale the day after it got the report.

The teacher reported that Ariel only attended five days of school in January, and only 66 days to date—a 50% attendance rate.<sup>5</sup> The teacher also reported an odd incident where Ariel arrived to school with a long sleeve shirt under her school uniform and took it off due to the hot weather. “After school (date no specified by reporter) Ariel was required to walk across the campus to RCG car limping on her cast. . . . Ariel returned to the classroom, shaking, trembling, crying hysterically asking for the long sleeve shirt.”

The report continues, “Teacher reported that she provides homework for RCG during Ariel’s absences but that when child returns to school, Ariel is not able to recall the home work assignments.” “RCG provides multiple medical notes for absences but teacher is suspicious that PCP may not know what is happening at school.” And finally, “Teacher reported that when Ariel is asked about her home environment, Ariel will shut down despite Ariel being the most vocal student throughout the day.” DHS planned to “follow up with RCG at next home visit to discuss concerns.”

The February 25, 2020 review hearing lasted eleven minutes. Melanie was a no show. Isaac and Lehua attended. A court-appointed attorney for Adam appeared and represented that he was incarcerated but would be released soon.

In addition to the MDT report, the family court received a permanent plan from DHS at the review hearing. That plan prominently declared there were no safety issues for Ariel.

5. Any safety issues/factors for [REDACTED] Ariel Sellers [REDACTED]  
[REDACTED] NONE

But, the DHS permanent plan continued, Ariel was “prone to fractures and falls”:

Ariel has medical insurance with HMSA Ariel’s primary care doctor is Dr. Titcomb. Ariel is current on all of her immunizations and is currently in good health, however, Ariel is prone to fractures and falls and has had a history of multiple fractures on her fingers, collar bone and leg. Ariel is

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<sup>5</sup> Although originally scheduled for 180 instructional days, as required by statute, there were a total of 140 instructional days that year, reduced due to COVID-19 pandemic restrictions—to imposed a month later.

being closely monitored by Dr. Titcomb and Shriners to determine if the fractures are due to other medical conditions.

The CASA guardian reported to Judge Uale that “Ariel is often very rough with herself and others, and does not seem to feel physical pain, which sometimes results in injuries to herself.” “Due to injuries without complaints of pain, there was concern for a diagnosis of possible congenital insensitivity to pain.”

The CASA guardian reported further that after scheduled visits with Melanie, “Ariel would have extreme tantrums that sometimes lasted for days, during which she would scream, cry, swear, and attempt to hurt herself.” “Since visits with Mother were suspended on January 13, 2020, RCGs have reported that Ariel has not had a single tantrum and has been kinder to them and to herself.”

Ariel is currently receiving ongoing individual play therapy [redacted].

Ariel was reported to have some mental issues that caused her to pull out her own hair and refer to herself in the second person. RCG reported that at times, when Ariel was good she would refer to herself as another name, but when she was bad, she would say that she was Ariel. [redacted]. Ariel did not disclose any sexual abuse at the time of the interview, but it was reported later by RCG that Ariel’s reactions and comments after the interview was concerning. Ariel is also waitlisted to begin SA therapy when services can be initiated.

Regarding any attendance concerns, CASA reported: “She reported that she loves school and playing with friends. However, she has been absent due to being sick and due to the fractures of her fingers and leg that she suffered in October and January, respectively.” DHS similarly stated: “Ariel is reported to be doing well in school and loves to go to school. Department of Education providers have reported that Ariel has multiple absences due to the various injuries she has sustained throughout the school year since August 2019. Ariel is now able to count from 1-20, sing songs and has a better memory retention for recognizing words and numbers.”

Regarding her weight loss, DHS told the court: “Dr. Titcomb reported that Ariel’s weight is also closely monitored because initially when Ariel was placed into foster care she was overweight. She has since lost the weight and is in an average percentile for her height.”

After recapping Melanie’s failures to comply with her service plan, the permanent plan noted that throughout “the onset of the case, Ms. Joseph has attempted to maintain

Ohana Visitation. . . . During the visitations, Ms. Joseph appeared to be very closely bonded to Ariel.” “Ariel Sellers have been proposed [sic] of the permanent plan in an age appropriate manner and is in agreement with the termination of parental rights.”

The DHS permanent plan further stated:

Initially, maternal grandmother worked with DHS to be a point of contact for Ms. Joseph where DHS and providers could leave messages for mother.

Maternal grandmother later changed her phone number and lost contact with DHS. DHS has had ongoing discussions with resource caregivers regarding permanence during home visits. RCG’s [sic] reported that they would like to be a forever home to [redacted].

Judge Uale continued the hearing on DHS’s motion to terminate parental rights to March 25, 2020 to give Adam time to comply with a service plan.

#### **5<sup>th</sup> Periodic Review Hearing, June 2020 (Vol. 7)**

The March 25 hearing was continued due to the onset of COVID-19 pandemic restrictions. At the continued hearing, on June 17, 2020, Melanie and Adam again failed to appear. The court entered default against them and granted DHS’s motion to terminate parental rights and ordered all parties to appear in December for an adoption hearing. The termination hearing lasted four minutes.

#### **Adoption Hearing, January 2021 (Vol. 1, 7, Adoption Records)**

Following the imposition of stay-at-home orders and social distancing mandates, the vast majority of Ariel’s required face-to-face visits with her CASA guardian were conducted virtually. In CASA’s fifth report to the Judge Uale, the guardian reported that she “conducted a weekly FaceTime visit with Ariel since March 2020.” And she reported that the COVID-19 induced distance learning was a boon to her attendance and educational success:

While Ariel was disappointed not to be attending kindergarten in person, she has excelled in her distance learning classes. . . . She has been absent zero times this quarter, which is a huge improvement. Her report card also shows that she is developing or meeting proficiency in all subjects, and that she is a self-directed learner. She continues to express that she loves school, and has earned near-perfect scores on several recent tests.

At the December 1, 2020 permanency and adoption hearing, only the DHS social worker, attorney, and CASA guardian appeared. DHS asked for more time to prepare its adoption report, and the court continued the hearing to January 26, 2021.

DHS filed its adoption petition on January 12, 2021. In support of the petition, the DHS social worker assigned to Ariel's case, from almost the beginning, authored and submitted an "Adoption Report" dated November 17, 2020. The report devotes two pages on the circumstances that led to the termination of Melanie and Adam's parental rights and then introduces the Kaluas:

The couple are both of mixed Hawaiian descent and own their three-bedroom home through Hawaiian Homestead. . . .

Ms. Lehua Ruby Marie Kapika (Kanahele) Kalua is a stay-at-home mother . . . . Ms. Kalua reported that she grew up in the Waimanalo area and comes from a large family and knows most of the people in her community. Ms. Kalua reported that she loves children and enjoy[s] being a stay at home mother. She reported that her Hawaiian culture and living in a small community helps her stay grounded.

Mr. Isaac Kauluhaimalama Kalua III comes from a Christian background that helped to instill strong family values in his life. He is of mixed Hawaiian descent and works full time as a federal employee on Kaneohe Marine Base. He reported that this is his second marriage to Ms. Kalua and that the two of them tried to have children but were unsuccessful. He feels very blessed to have the opportunity to be a father . . . . Mr. Kalua reported that his Hawaiian culture helped to facilitate strong family and community connections.

In support of its petition, DHS provided the family court with limited financial information. It only provides the monthly gross income of Isaac (\$4,755.35 from work as a "shipyard specialist") and Lehua (\$3,750 in foster board payments). There is no discussion of expenses.

As noted by the Special Master's report, in July 2020 – six months before the adoption hearing, and four months before DHS finalized the adoption report – Isaac filed for chapter 13 bankruptcy relief.<sup>6</sup> DHS appears to have had no knowledge about this significant financial event.

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<sup>6</sup> At some point after Isaac filed for bankruptcy, but before the adoption hearing, it appears that DHS placed a *fourth* child with the Kaluas. A police affidavit filed in the

The adoption report also outlined Isaac's criminal past. As DHS reported to the family court, Isaac was arrested and charged with four felonies on June 27, 2000, including terroristic threatening and assault. Isaac pled guilty, served time in jail, and was placed on probation for five years. The adoption report provides none of the facts underlying the arrest, just that "Mr. Kalua reported that this was an unfortunate experience he encountered with his ex-wife. . . . He was remorseful and reported that he was going through a rough divorce at the time of the incident."

The DHS adoption report concludes with a plain statement for the court: "DHS has no concerns at this time for Ms. Kalua and Mr. Kalua. . . . Mr. and Ms. Kalua have worked hard to resolve their traffic issues and past infractions so that they are able to provide a stable home environment for their family of six."

After hearing four minutes of sworn testimony from DHS and the Kaluas, Judge John C. Bryant, Jr. agreed, swiftly declaring the Kaluas "fit and proper persons financially able to provide the children with a proper home and education."<sup>7</sup> When he issued the adoption decree, Judge Bryant formally concluded two years of family supervision.

A DHS log, attached to the Special Master's report, indicates continuing concerns regarding Ariel's safety. Those records indicate "case opened on 2/1/21, on 01/26/21 the Kaluas adopted [redacted] Ariel" suggesting a possible DHS inquiry into another report of abuse or neglect against the Kaluas, but no other details are disclosed.

Another entry in the DHS log appears to indicate that on May 14, 2021, DHS referred the Kaluas to voluntary case management services after receiving a "report of concern for the Kalua and 1 Joseph minors by adoptive mother/foster mother, 43 YO Lehua R Kalua (AKA Kanahele) and adoptive/foster father, Isaac K. Kalua III."

On September 13, 2021, Ariel was reported missing.

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Kaluas' criminal case indicates that DHS placed another newborn child of Adam and Melanie with the Kaluas sometime in 2020.

<sup>7</sup> Judge Uale retired in December 2020.