

NO. 28294

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE INTEREST OF N.C., a Minor

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(FC-J NO. 0063855)

ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI
WITHOUT PREJUDICE

(By: Duffy, J., for the court¹)

On November 5, 2009, Petitioners/Parents-Appellants (Parents) filed an application for writ of certiorari, pursuant to Hawai'i Rules of Appellate Procedure Rule 40.1, seeking further review of the Intermediate Court of Appeals' June 26, 2009 summary disposition order in In re NC, No. 28294, and October 28, 2009 judgment on appeal.

This court has previously stated that "[b]ecause standing is a jurisdictional issue that may be addressed at any stage of a case, an appellate court has jurisdiction to resolve questions regarding standing, even if that determination ultimately precludes jurisdiction over the merits." Keahole Defense Coal., Inc. v. Bd. of Land & Natural Res., 110 Hawai'i 419, 427-28, 134 P.3d 585, 593-94 (2006).

Additionally, "[i]n the absence of well recognized exceptions, this court has clearly held that '[c]onstitutional rights may not be vicariously asserted.'" Freitas v. Admin. Dir. of Courts, 104 Hawai'i 483, 486, 92 P.3d 993, 996 (2004) (footnote omitted) (quoting Kaneohe Bay Cruises, Inc. v. Hirata, 75 Haw. 250, 256, 861 P.2d 1, 9 (1993)). "Exceptions to the rule against vicarious assertion of constitutional rights include the right to privacy and First Amendment rights." Tauese v. State,

¹ Considered by: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.

Dep't of Labor & Indus. Relations, 113 Hawai'i 1, 28, 147 P.3d 785, 812 (2006) (citing Freitas, 104 Hawai'i at 486 n.6, 92 P.3d at 996 n.6); see also State v. Kam, 69 Haw. 483, 488, 748 P.2d 372, 375 (1988).

Parents do not argue that they fall within any exception recognized by this court to the rule against vicarious assertion of constitutional rights. Further, Parents do not indicate why NC cannot assert his own constitutional rights, as he did when he was represented by counsel before the Family Court and the ICA. Indeed, NC has until January 26, 2010 to file an application for writ of certiorari.

As Parents have not demonstrated that they have standing to vicariously assert the constitutional rights of NC in the questions presented to this court,

IT IS HEREBY ORDERED that Parents' application is dismissed without prejudice.

DATED: Honolulu, Hawai'i, December 9, 2009.

FOR THE COURT:

Associate Justice

Christopher J. Roehrig
for petitioners/parents-
appellants on the
application