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CAAP-24-0000323

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI'I

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

Petitioner-Appellant,

vs.

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

Respondents-Appellees.

Civil Case No.: 1CCV-23-0001418 (GWBC)
(Circuit Court Appeal)

APPEAL FROM THE:

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

FIRST CIRCUIT COURT

HONORABLE GARY W.B. CHANG



**ANSWERING BRIEF OF RESPONDENTS-APPELLEES CITY AND COUNTY OF
HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR,
DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, LINDA SANTOS**

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ANSWERING BRIEF OF RESPONDENTS-APPELLEES CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENTERPRISE SERVICES AND ITS DIRECTOR, DITA HOLIFIELD, AND THE HONOLULU ZOO DIRECTOR, LINDA SANTOS

I. INTRODUCTION

Nonhuman Rights Project, Inc. (“NhRP”) filed a petition for a writ of habeas corpus on behalf of Mari and Vaigai, two Asian elephants at the Honolulu Zoo. CC Dkt. 1.¹ This was not the first application of its kind: NhRP has filed at least thirteen petitions for habeas relief on behalf of non-human animals across the United States. Every trial court to have considered one of NhRP’s petitions has reached the same conclusion: habeas relief is not available to non-human animals. Every appellate court to have reviewed one of those decisions has affirmed the trial court’s ruling.

Undeterred, NhRP filed a habeas petition (“Petition”) in Hawai‘i, hoping for a different result. The Circuit Court – like every other trial court before it – correctly dismissed the Petition. Still undeterred, NhRP has appealed to this Court. Respondents-Appellees (collectively, the City) respectfully request that this Court – like every other appellate court before it – affirm the Circuit Court’s conclusion that habeas relief is unavailable to non-human animals. The law is clear on this matter, and if NhRP wishes to change the law, its path is through the Legislature – not the courts.

¹ All page number citations refer to the PDF page number of the electronic document. All citations to “CC Dkt.” refer to documents filed in the Circuit Court of the First Circuit of the State of Hawai‘i, case number 1CCV-23-0001418. All citations to “ICA Dkt.” refer to documents filed in this appeal before the Intermediate Court of Appeals of the State of Hawai‘i, case number CAAP-24-0000323.

II. CONCISE STATEMENT OF THE CASE

A. The Underlying Petition

NhRP is a non-profit corporation that has, for over a decade, attempted to find a court that would fundamentally alter the law of habeas corpus to encompass non-human animals. *See generally* CC Dkt. 1. On October 31, 2023, NhRP filed a petition for a writ of habeas corpus in the Circuit Court “[p]ursuant to the common law of Hawaii and Chapter 660 of the Hawaiian Revised Statutes [sic].” *See* CC Dkt. 1 at PDF 18. The Petition seeks to have the elephants transferred to an animal sanctuary. CC Dkt. 1 at PDF 101.

In its Petition, NhRP used the terms “writ of habeas corpus” and “order to show cause” interchangeably; while NhRP conceded that the two are functionally equivalent, it specifically requested the latter. CC Dkt. 1 at PDF 21, n.4; *see also* ICA Dkt. 19 at PDF 20-21 n.7. In so doing, NhRP seeks a lengthy and time-consuming evidentiary hearing. However, as discussed below, an evidentiary hearing on this matter would not change the ultimate legal conclusion that the Petition fails as a matter of law.

B. The City’s Motion to Dismiss

On November 20, 2023, the City moved to dismiss the Petition because habeas relief is only available to human beings. CC Dkt. 27. The Circuit Court considered the numerous factual allegations presented in the 375 page-long Petition in a light most favorable to NhRP, and concluded that the Petition failed as a matter of law. *See e.g.*, CC Dkt. 1 at PDF 28-66. The Circuit Court orally granted the motion at the hearing on January 16, 2024, and the order and final judgment were entered on March 25, 2024. CC Dkts. 65, 71. At the January 16 hearing, the Circuit Court also orally granted the application for *pro hac vice* admission of Jake Davis as counsel for NhRP, subject to numerous conditions. The City took no position as to the *pro hac*

vice application (and in the instant appeal, the City continues to take no position regarding NhRP’s counsel’s *pro hac vice* application). CC Dkt. 43.

C. Appeal

NhRP filed the instant appeal before this Court on April 22, 2024. ICA Dkt. 1; *see also* CC Dkt. 75. NhRP asks this Court to overturn the Circuit Court’s determination that the habeas petition fails as a matter of law; this is not an original proceeding seeking habeas relief.²

III. STANDARD OF REVIEW

“A circuit court’s ruling on a motion to dismiss is reviewed de novo.” *Bank of Am., N.A. v. Reyes-Toledo*, 143 Hawai‘i 249, 256-57, 428 P.3d 761, 768-69 (2018) (citations omitted).

“[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief.” *Id.* at 257, 428 P.3d at 769 (citations and block quote formatting omitted).

“[D]ismissal pursuant to [Hawai‘i Rules of Civil Procedure] Rule 12(b)(6) is appropriate where the allegations of the complaint itself clearly demonstrate that plaintiff does not have a claim, and in weighing the allegations of the complaint as against a motion to dismiss, the court will not accept conclusory allegations concerning the legal effect of the events the plaintiff has alleged.” *Id.* at 262, 428 P.3d at 774 (cleaned up).

² Only “[t]he supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty[.]” HRS § 660-3; *See also* HRS § 602-5 (providing that the Hawai‘i Supreme Court has jurisdiction “[t]o issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated”); HRS § 602-57 (defining the jurisdiction of the Intermediate Appellate Court). *Accord Carter v. Johnson*, No. SCPW-23-0000358, 2023 Haw. LEXIS 145, at *1 (Hawai‘i Supreme Court, Aug. 14, 2023) (citing to HRS § 602-57 and stating: “The ICA does not have jurisdiction to consider a request for an extraordinary writ.”). Pursuant to HRAP 35(c)(2), a copy of the order in *Carter* is appended hereto.

Interpretation of a statute is a question of law which is also reviewed de novo. *Id.* at 257, 428 P.3d at 769 (citations omitted).

IV. ARGUMENT

The Circuit Court correctly concluded that habeas relief is unavailable to non-human animals. This conclusion is the same whether reached through an analysis of the plain language of Hawai‘i’s statutes governing habeas petitions (as discussed in section A, *infra*) or through a review of the writ under the common law (as discussed in section B, *infra*). The City respectfully requests that this Court affirm the Circuit Court’s ruling.

A. Under HRS chapter 660, habeas relief is only available to human beings.

i. The Honolulu Zoo elephants are not “persons” eligible to seek habeas relief under HRS § 660-3.

As the Hawai‘i Supreme Court has stated, “this court must presume that the legislature meant what it said and is further barred from rejecting otherwise unambiguous statutory language.” *Morgan v. Planning Dep’t, Cnty. of Kauai*, 104 Hawai‘i 173, 185, 86 P.3d 982, 994 (2004). *See also State v. Wheeler*, 121 Hawai‘i 383, 390, 219 P.3d 1170, 1177 (2009) (the plain language of a statute is “the fundamental starting point of statutory interpretation”). The plain language of HRS § 660-3 is clear that writs of habeas corpus are limited to cases in which a “*person*[.]” is unlawfully restrained. HRS § 660-3 (emphasis added). NhRP seeks writs on behalf of Mari and Vaigai, two Asian elephants. The elephants are not “persons” within the meaning of the statute, and are therefore ineligible for the relief sought.

NhRP argues that this Court should ignore the term “persons” in HRS § 660-3. However, as the Hawai‘i Supreme Court has repeatedly held, “[i]t is a cardinal rule of statutory construction that courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be

legitimately found which will give force to and preserve all words of the statute.” *State v. Choy Foo*, 142 Hawai‘i 65, 80, 414 P.3d 117, 132 (2018). In contravention of this longstanding legal principle, NhRP would have this Court render the word “person” in HRS § 660-3 “superfluous, void, [and] insignificant,” *id.*, and instead hold that the word “person” is a “placeholder with no substantive meaning.” ICA Dkt. 19 at PDF 15.

NhRP then argues that the word “person” includes animals. ICA Dkt. 19 at PDF 19.

There is no support for this contention. To the contrary, HRS § 1-19, the catchall definition of “person,” does not include animals:

The word ‘person,’ or words importing persons, for instance, ‘another’, ‘others’, ‘any’, ‘anyone’, ‘anybody’, and the like, signify not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

Additionally, the ordinary use of the word “person” does not include non-human animals. *See* HRS § 1-14 (“The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning.”); *see also, e.g., Black’s Law Dictionary* 1378 (11th ed. 2019) (defining “person” as “A human being. – Also termed *natural person*.”). Elephants are not “persons,” and are thus statutorily ineligible for habeas relief.

Should the Court wish to dig deeper, the “whole code” canon of statutory interpretation may assist in its analysis.³ The Legislature has defined “person” in multiple sections of the

³ *See generally* Evan C. Zoldan, *Canon Spotting*, 59 Hous. L. Rev. 621, 622 (2022) (“The canons of statutory interpretation are central to the work of legal interpreters, including judges, scholars, and advocates. . . . In this ‘age of statutes,’ the canons of statutory interpretation are the common language spoken by legal interpreters. Judges use the language of the canons to explain their

Hawai‘i Revised Statutes, but nowhere has the Legislature suggested that “person” includes “animals.” For example, HRS chapter 701-118 – one of the preliminary provisions of the Hawai‘i Penal Code – provides:

‘Person,’ ‘he,’ ‘him,’ ‘actor,’ and ‘defendant’ include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association.^[4]

Accord HRS § 707-700 (“‘Person’ means a *human being* who has been born and is alive.” (emphasis added)). There are many other statutes defining “person” as including both human beings and corporate entities, but not animals. *See, e.g.*, HRS § 6E-2 (historic preservation: “‘Person’ means any individual, firm, corporation, partnership, or association.”); HRS § 11-302 (campaign finance: “‘Person’ means an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees.”); HRS § 235-1 (general provisions regarding taxation: “‘Person’ includes an individual, a trust, estate, partnership, association, company, or corporation.”); HRS § 560:1-201 (Uniform Probate Code: “‘Person’ means an

reasonings. Advocates rely on the canons to articulate legal arguments.”). Reliance on these canons is unnecessary, however, because the plain language of chapter 660 is unambiguous.

⁴ This Court has already been presented with the question of whether a dolphin was included in the terms “person” and “another” under the Penal Code, though the Penal Code expressly defines “person” as “any natural person.” In *State v. Le Vasseur*, this Court affirmed the trial court’s decision that the terms “persons” and “another” did not include dolphins. 1 Haw. App. 19, 25, 613 P.2d 1328, 1333 (1980). This Court concluded that “[a] dolphin is not ‘another’ within the meaning of HRS § 703-302 where HRS § 701-118(8) defines ‘another’ as ‘any other person ...’ and HRS § 701-118(7) defines ‘person’ as a natural person and when relevant a corporation or an unincorporated association.” *Id.* at 20.

individual or an organization.”); HRS § 428-101 (Uniform Limited Liability Company Act: “‘Person’ includes any individual or entity” and “‘Individual’ means a natural person.”).⁵

Notably, there is no mention of non-human animals in any of these definitions.

The Legislature is, of course, very capable of amending the definition of “person” to fit different circumstances. For example, HRS § 174C-12.5 (part of the State Water Code) defines “person aggrieved” to include “an agency that is a party to a contested case proceeding before that agency or another agency.” In contrast, HRS § 531B-2 (addressing the disposition of human remains) defines “person” as “an individual eighteen years of age or older.” Had the Legislature wanted to include elephants or other non-human animals in HRS chapter 660, it would have.

As set forth above, several definitions of “person” include the word “individual,” *see, e.g.*, HRS § 1-19, but the word “individual” does not include elephants either. “Individual” is defined more than a dozen times throughout the Hawai‘i Revised Statutes; nearly all of these statutory provisions define “individual” as a “natural person” (and none of them includes animals). *See, e.g.*, HRS §§ 11-302, 414-3, 414D-14, 421-1, 428-101. Furthermore, as the Hawai‘i Supreme Court has explained, “where general words follow specific words in a statute, those general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Priceline.com, Inc. v. Dir. of Taxation*, 144 Hawai‘i 72, 90, 436 P.3d 1155, 1173 (2019) (cleaned up). For instance, HRS § 1-19 defines “person” to include individuals, firms, corporations, and others. Here, however, the category of “non-human animal” markedly strays from the commonality of these enumerated items. If the

⁵ There are over one hundred statutory provisions defining “person,” none of which includes animals. Some (but not all) of these statutes are listed in the HRS Index under Definitions, Person.

Legislature wanted to include non-human animals – an entirely different class of beings – in the definitions of “person” or “individual,” it would have done so.

Indeed, where the Legislature intended to refer to animals, the Legislature was clear in doing so. *See, e.g.*, HRS § 711-1100 (defining “animal” as “every living creature, *except a human being*” (emphasis added)); HRS chapter 142 (“Animals, Brands, and Fences”); HRS chapter 150A (“Plant and Non-Domestic Animal Quarantine and Microorganism Import”). One definition of “animal” is written very broadly: “[a]nimal’ means any invertebrate or vertebrate species of the animal kingdom including but not limited to mammal, bird, fish, reptile, mollusk, crustacean, insect, mite, and nematode, other than common domestic animal such as dog and cat.” HRS § 150A-2. Clearly, the Legislature is capable of drafting an all-encompassing definition if it chooses to do so. Nowhere has the Legislature included non-human animals in the definition of “person.”

NhRP claims, without support, that “there is no clear legislative intent” for the definition of “person” in HRS § 1-19. The legislative intent – evinced by the plain language – is clear. Nevertheless, NhRP claims that “HRS § 1-19, a general provision, cannot inform the term ‘person’ in HRS § 660-3, a special provision, because there is no clear legislative intent to do so.” ICA Dkt 19 at PDF 22. NhRP misapplies the canon of *generalia specialibus non derogant*, as there is no specific provision in HRS § 660-3 defining the term “persons.” Given the absence of a “special or particular provision[.]” within HRS § 660-3 that could possibly “control over” the “general provision[.]” of HRS § 1-19, this canon of interpretation is inapplicable.

Simply put, NhRP’s argument that the Honolulu Zoo elephants are “persons” entitled to habeas relief is not supported.

ii. HRS § 660-3 governs habeas corpus.

NhRP contends that substantive entitlement to habeas corpus relief must be governed by common law, and *cannot* be modified by statute, such that this Court must ignore the plain language of HRS § 660-3. This is irrelevant,⁶ but it is also incorrect. There is no question that the Legislature can modify the common law. *See* HRS § 1-1 (“The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, *except as otherwise expressly provided* by the Constitution or laws of the United States, or *by the laws of the State . . .*” (emphases added)). *See also Priceline.com, Inc. v. Dir. of Taxation*, 144 Hawai‘i 72, 82, 436 P.3d 1155, 1165, (2019) (“[The] common law may generally be overridden by statute.”); *Herring v. Gulick*, 5 Haw. 57, 58 (1884) (“The rule of the law is that when the remedy provided by statute is complete, the common law remedy is superseded by the statute, and the person injured must pursue the course pointed out by the Act. In such case the statutory remedy is not merely cumulative upon the common law action, but an entire substitution for it, and must be exclusively pursued.” (citation and internal quotation signals omitted)); *Pogoso v. Sarae*, 138 Haw. App. 518, 520, 382 P.3d 330, 332 (2016) (“The law is clear that legislative enactments have priority over and supercede [sic] the common law. . . . [The courts] are constrained to give effect to the plain meaning of the statute that is consistent with the legislative purpose, even if it results in the derogation of a common law rule.” (cleaned up)).

⁶ As discussed in section B, this argument is irrelevant because the common law and statute say the same thing when it comes to non-human animals.

NhRP selectively excerpts Hawai‘i case law, citing to *Brown v. Goto* that, “[u]ndoubtedly the right to the writ could not be taken away by statute.” 16 Haw. 263, 265 (1904). NhRP omits language unfavorable to its position; the quotation from the *Brown* case reads in full:

Undoubtedly the right to the writ could not be taken away by statute *but that is quite a different matter from prescribing by what courts, in what manner and under what conditions, within reasonable limits, it may be exercised.* The only provision in the Constitution relating to the writ is that “the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” Art. 1, Sec. 9.

Id. (emphasis added). Thus, NhRP’s citation undermines its position: the Legislature’s codification of the writ at HRS chapter 660 prescribes “in what manner and under what conditions [the writ] may be exercised,” which is “quite a different matter” than “tak[ing the right] away by statute.” *Id.*

NhRP further cites to *In re Cambridge*, 1 Haw. 191 (1855), but that case does not help NhRP either. *In re Cambridge* concerned a statute which codified the writ of habeas corpus “to all its efficacy at common law, in cases to which that statute applied, but it was confined to commitments on criminal charges, leaving *all other* cases of unjust imprisonment to the *habeas corpus* at common law.” 1 Haw. at 192 (emphasis in original). Consistent with *In re Cambridge*, HRS chapter 660 is the Legislature’s codification of the writ. HRS § 660-3 provides that “[t]he supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty[.]”. The right to habeas relief, as codified in HRS § 660-3, restates the common law right “to all its efficacy.” *See also In re Apuna*, 6 Haw. 732, 734 (1869) (“In many of the United States there are statutes defining [the writ of habeas corpus]’ nature and force; but they are all essentially alike, and are all in substance the same with the English Statute of 31 Car. II.”).

NhRP’s assertion that the Legislature lacks the authority to limit habeas relief to human beings – on the theory that the Legislature can only set procedures, but not substantive terms – is without merit. NhRP argues that this Court should simply ignore HRS chapter 660 “because of the role habeas corpus plays in Hawaiian jurisprudence: ‘The writ of habeas corpus enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters.’” ICA Dkt. 19 at PDF 15 (quoting *In re Apuna*, 6 Haw. 732, 735-36 (1869)). Yet NhRP still fails to provide a basis for its argument that the Legislature is prohibited from defining the manner and conditions under which habeas relief may be granted.

Finally, NhRP argues that article I, § 15 of the Hawai‘i Constitution prohibits the Legislature from limiting habeas relief to “persons.” ICA Dkt. 19 at PDF 17 (arguing that HRS chapter 660 is unconstitutional because the Legislature cannot “statutorily limit[] the Great Writ’s substantive scope” and that limiting habeas relief to human beings “violate[s] the Suspension Clause in the Constitution of the State of Hawai‘i”). Again, NhRP is incorrect. Article I, § 15 limits the circumstances under which the Legislature can *suspend* access to habeas relief altogether:

The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it.

The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe.

HRS Const. Art. I, § 15. Once again, NhRP’s argument fails because HRS chapter 660 is fully consistent with the Legislature’s authority to determine “in what manner and under what

conditions [the writ] may be exercised.” *Brown v. Goto*, 16 Haw. at 265. HRS chapter 660 does not “suspend” habeas relief.⁷

Regardless, even if NhRP were correct that HRS chapter 660 does not (or cannot) apply, NhRP’s Petition still fails. As discussed in the next section, habeas relief under the common law was (and is) only available to human beings.

B. Under the common law, habeas relief is only available to human beings.

- i. Hawai‘i should interpret the common law of habeas corpus as all other jurisdictions presented with this question have: non-human animals cannot be granted a writ of habeas corpus as a matter of law.

Even if this Court were to rely solely on English common law, NhRP’s claims still fail: the ancient writ of habeas corpus was (and is) only available to human beings. *See generally, In re Apuna*, 6 Haw. 732, 735-36 (1869) (“The rights of *persons* in this Kingdom under writs of *habeas corpus* are . . . as fully secured by Constitutional and Statutory provisions as if the famous English guaranties and enactments . . . were spread upon our statute books The writ of *habeas corpus* enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters.” (emphasis added)).

In re Apuna provides an extensive discussion on the substance of the original writ which confirms that the writ was only available to human beings. *Id.* at 734-36. There, the Supreme Court of the Kingdom of Hawai‘i examined the scope of *habeas corpus* as it was codified at the time and found that it was the same as that under common law: it “was designed to release *persons* from illegal confinement.” *Id.* at 734. As the Court explained:

What is this writ of *habeas corpus*? In many of the United States there are statutes defining its nature and force; but they are all

⁷ Further, as discussed in Section B, there is nothing to “suspend” given that non-human animals have never been entitled to habeas relief.

essentially alike, and are all in substance the same with the English Statute of 31 Car. II.

. . . The writ always intended, if not otherwise described, is the writ *ad subjiciendum et recipiendum*, which was **designed to release persons from illegal confinement**. The writ was known in English law long anterior to Magna Charta, which secured the acknowledgment of common rights, as follows:

39. “*Nullus liber homo capiatur, vel imprisonetur aut dissaisiatur aut utlagetur, aut aliquo modo destruat; nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terrae.*”

. . .

39. “**No freeman shall be taken** or imprisoned, or dispossessed, or outlawed, or banished, or in any manner destroyed; nor will we convict or sentence him, except by lawful judgment of his peers, or the law of the land.”

Id. at 734-35 (emphases added). In other words, under common law, the writ of habeas corpus applies to people – not non-human animals.

Across the nation, courts have reflected on the common law derived from England and have universally determined that non-human animals are not entitled to the protections it confers onto persons. Courts in California, Colorado, Connecticut, Michigan and New York have considered NhRP’s common law argument and have all reached the same conclusion: the common law writ of habeas corpus is only available to human beings.⁸ NhRP concedes that the

⁸ Petitioner omits from its opening brief the numerous decisions that have concluded that its Petitions were without merit:

- California: *In re Nonhuman Rights Project, Inc., ex rel. Amahle, Nolwazi, and Vusmusi*, No. S281614, 2023 Cal. LEXIS 6969 (Cal., Dec. 13, 2023); *Nonhuman Rights Project, Inc. v. Fresno’s Chaffee Zoo Corporation et al.*, 22CECG02471, Order (Cal. Ct. App., May 18, 2023); *In re Nonhuman Rights Project, Inc., ex rel. Amahle, Nolwazi, and Vusmusi*, 22CRWR686796, Order (Cal. Super. Ct., Nov. 15, 2022).

writ has never in the long history of English and American courts been made applicable to nonhuman animals, and Hawai‘i’s common law writ of habeas corpus is derived from the same legal foundation.⁹

The 375 page-long Petition and NhRP’s opening brief are not just bereft of law in support; they fail to mention just how much law there is to the contrary on this exact question.

For example, as the New York State Court of Appeals explained:

[D]espite the awesome power of the writ of habeas corpus and its enduring use throughout the centuries, no court of this state—or any other—has ever held the writ applicable to a nonhuman animal. Nothing in our precedent or, in fact, that of any other state or federal court, provides support for the notion that the writ of habeas corpus is or should be applicable to nonhuman animals. . . . [T]he Great Writ protects the right to liberty of humans *because* they are humans with certain fundamental liberty rights recognized

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- Colorado: *Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV31236, Order (Colo. Dist. Ct., Dec. 03, 2023).
 - Connecticut: *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford II*) 231 A.3d 1171 (Conn. App. Ct. 2020), *leave to appeal denied*, 235 A.3d 525 (Conn. 2020); and *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc.*, (*Commerford I*) 216 A.3d 839 (Conn. App. Ct. 2019), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019).
 - Michigan: *Nonhuman Rights Project Inc. v. Deyoung Fam. Zoo*, LC No. 23-17621-AH, Order (Mich. Cir. Ct., Dec. 12, 2023), appeal docketed, No. 369247 (Mich. Ct. App., Jan. 02, 2024).
 - New York: *Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921 (N.Y. 2022); *Nonhuman Rights Project, Inc. v. Lavery*, 54 N.Y.S.3d 392 (N.Y. App. Div. 2017), *leave to appeal denied*, 100 N.E.3d 846 (N.Y. 2018); *Nonhuman Rights Project, Inc. ex rel. Hercules and Another v. Stanley*, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015); *People ex rel. Nonhuman Rights Project, Inc., ex rel. Tommy v. Lavery*, 998 N.Y.S.2d 248 (N.Y. App Div. 2014), *leave to appeal denied*, 38 N.E.3d 828 (N.Y. 2015); *Nonhuman Rights Project, Inc., ex rel. Kiko v. Presti*, 999 N.Y.S.2d 652 (N.Y. App. Div. 2015), *leave to appeal denied*, 38 N.E.3d 827 (N.Y. 2015).

⁹ See Petitioners’ Memorandum in Opposition before the Circuit Court, CC. Dkt. 45 at PDF 23 (“While it is true that no U.S. court has yet granted habeas corpus relief to a nonhuman animal, this fact is irrelevant....”).

by law. . . . While it is true that the courts—not the legislature—ultimately define the scope of the common-law writ of habeas corpus. . . [the statutory distinctions between human beings and nonhuman animals] reflect the abiding view that nonhuman animals are not persons with a common-law right to liberty that may be secured through a writ of habeas corpus.

Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny, 197 N.E.3d 921, 927-931 (NY 2022).

Accord Justice v. Vercher, 518 P.3d 131, 136 (Or. Ct. App. 2022) (“Under the English common law, only human beings and legal entities created by human beings were considered ‘persons’ capable of holding and asserting legal rights.”); *Nonhuman Rights Project, Inc. v. R.W.*

Commerford & Sons, Inc., 216 A.3d 839, 840 (Conn. App. Ct. 2019), *leave to appeal denied*, 217 A.3d 635 (Conn. 2019) (“[T]here is no instance in our common law in which a nonhuman animal or representative for it has been permitted to bring a lawsuit to vindicate the animal’s own purported rights, and animals under Connecticut law, as in all other states, have generally been regarded as personal property; moreover, because an elephant is incapable of bearing duties and social responsibilities, as required under the social compact theory.”).

NhRP relies entirely on two dissenting opinions, but “[n]otwithstanding those dissenting opinions, the overwhelming weight of legal precedent is against the NHRP.” *Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV301236, Order at PDF page 9 (Colo. Dist. Ct., Dec. 03, 2023).¹⁰ The *Breheny* decision ultimately affirmed the trial court’s grant of the respondents’ motion to dismiss. *Nonhuman Rights Project, Inc. ex rel. Happy v. Breheny*, 197 N.E.3d 921 (N.Y. 2022); *see also Nonhuman Rights Project,*

¹⁰ “One cannot help speculating that the *Breheny* dissenters were able to engage in the aspirational flights of fancy that they did – essentially pulling rights out of thin air, creating rights because they thought those rights should exist – precisely because they were in the minority. Had they been in the majority, they would have had to contend with the effects of their ruling.” *Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain*, 2023CV301236, Order at PDF page 18 (Colo. Dist. Ct., Dec. 03, 2023).

Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain, 2023CV301236, Order (Colo. Dist. Ct., Dec. 03, 2023) (granting respondents’ motion to dismiss).

Whether habeas relief under the common law could include non-human animals has been thoroughly reviewed. NhRP’s argument has been rejected every time.

ii. NhRP did not establish a prima facie case for habeas relief.

A petition for habeas relief on behalf of non-human animals fails as a matter of law. In the instant case, the Circuit Court appropriately accepted NhRP’s factual allegations as true, and in the light most favorable to NhRP, when it reviewed the motion to dismiss. NhRP, however, asks that our courts accept its *legal* conclusions as true – that is, the contention that non-human animals are entitled to habeas relief – and require the Circuit Court to hold a lengthy evidentiary hearing.

Accepting factual allegations as true for a motion to dismiss is not the same as “accept[ing] conclusory allegations concerning the legal effect of the events the [NhRP] has alleged.” *See Reyes-Toledo*, 143 Hawai‘i at 262, 428 P.3d at 774 (cleaned up). Whether non-human animals are eligible for habeas relief is a legal question. An order to show cause would result in an evidentiary hearing that could not change the legal principle that non-human animals are not entitled to habeas relief. *See Nonhuman Rights Project, Inc. ex rel. Hercules and Another v. Stanley*, 16 N.Y.S.3d 898, 905 (N.Y. Sup. Ct. 2015) (court signed order to show cause *ex parte* in order to hear from *respondents* and without granting a writ of habeas corpus);¹¹ *Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 *1 (N.Y. Sup. Ct. 2020) (trial court

¹¹ In *Stanley*, the court chose to “exercise[] [its] discretion in favor of hearing from both sides, as *respondents* had not been heard by the lower courts or by the Appellate Divisions beyond their opposition to petitioner’s motion to reargue the . . . summary denial of the petition.” (Emphasis added.)

consolidated Petitioner’s Order to Show Cause with Respondent’s motion to dismiss and granted the motion to dismiss).

The Circuit Court correctly ruled that, as a matter of law, elephants are not entitled to habeas relief. NhRP did not – and cannot – establish a prima facie case.

V. CONCLUSION

As summarized by Judge Eric Bentley in the order granting the motion to dismiss the petition filed in Colorado:

Notwithstanding those dissenting opinions, the overwhelming weight of legal precedent is against the NHRP. Because the NHRP seeks an expansion of existing legal rights rather than enforcement of already-existing rights, its project is appropriately directed to the legislature, not to this Court. Existing law, which it is this Court’s responsibility to interpret and apply, compels dismissal.

Nonhuman Rights Project, Inc., v. Cheyenne Mountain Zoological Society and Bob Chastain, 2023CV301236, Order at PDF page 9 (Colo. Dist. Ct., Dec. 03, 2023). NhRP may advocate for policy changes at the Legislature and City Council, but NhRP cannot use a habeas petition to accomplish its policy goals.

The City respectfully asks that the Circuit Court’s Order and Final Judgment be affirmed.

DATED: Honolulu, Hawai‘i, August 29, 2024.

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Neutral

As of: August 21, 2024 5:47 PM Z

Carter v. Johnson

Supreme Court of Hawai'i

August 14, 2023, Decided; August 14, 2023, Filed

SCPW-23-0000358

Reporter

2023 Haw. LEXIS 145 *

SAMUEL CARTER, Petitioner, vs. THE HONORABLE RONALD G. JOHNSON, Judge of the Circuit Court of the First Circuit, State of Hawai'i, Respondent Judge, and STATE OF HAWAI'I, Respondent.

Prior History: [*1] 1CPC-22-0001081.

[Carter v. Johnson, 2023 Haw. LEXIS 119, 2023 WL 4348845 \(Haw., July 5, 2023\)](#)

Core Terms

extraordinary writ, habeas corpus, writ petition

Judges: By: Recktenwald, C.J., McKenna, and Eddins, JJ., Circuit Judge Watanabe and Circuit Judge Kawano, assigned by reason of vacancies.

Opinion

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR EXTRAORDINARY WRIT

This court denied Petitioner's May 24, 2023 petition for writ of habeas corpus by order filed on July 5, 2023. On July 21, 2023, Petitioner filed an "Application for Extraordinary Writ" on the same basis as the May 24, 2023 petition for writ of habeas corpus, except Petitioner requests that the extraordinary writ be granted by the Intermediate Court of Appeals (ICA).

The ICA does not have jurisdiction to consider a request for an extraordinary writ. See [Hawai'i Revised Statutes \(HRS\) § 602-57](#) (2016). It is this court that has jurisdiction to consider such a request. [HRS § 602-5\(a\)\(3\)](#) (2016).

Upon consideration of the "Application for Extraordinary Writ" filed on July 21, 2023, and the record, Petitioner's request for an extraordinary writ is denied because an extraordinary writ is not meant to be used to supersede a circuit court judge's discretionary authority. See [Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 \(1999\)](#).

DATED: Honolulu, Hawai'i, August 14, 2023.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Kathleen N.A. Watanabe

/s/ Kelsey T. Kawano

End of Document

STATEMENT OF RELATED CASES

Pursuant to Rule 28(b)(11) of the Hawai‘i Rules of Appellate Procedure, the City hereby states that it is unaware of any cases related to this appeal.

CAAP-24-0000323

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

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

Petitioner-Appellant,

vs.

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

Respondents-Appellees.

Civil Case No.: 1CCV-23-0001418 (GWBC)
(Circuit Court Appeal)

APPEAL FROM THE:

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

FIRST CIRCUIT COURT

HONORABLE GARY W.B. CHANG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a copy of the foregoing document was served upon the following person(s) via electronic filing in the Judiciary Electronic Filing and Service System (JEFS):

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*(*Pro Hac Vice* application forthcoming)

Attorneys for Petitioner-Appellant
Nonhuman Rights Project, Inc.,
on behalf of Mari and Vaigai, individuals

DATED: Honolulu, Hawai'i, August 29, 2024.

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JACQUELINE M. DE LEEUW HUANG
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Attorneys for Respondents-Appellees