

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

In re:)
 Susanne Kayser-Schillegger and)
 Lutz Kayser,)
 Plaintiffs-Appellants (pro se),)
 v.)
 The Honorable Chief Justice of the High Court)
 of the Republic of the Marshall Islands, Carl B.)
 Ingram, Appellee.)
 Robbie Chutaro, John G. Snook, Google,)
 Microsoft, Yahoo! Inc., Lycos, Inc., Ask.Com-)
 IAC World, Appelles.)

Supreme Court Case No. *2009-001*
 High Court Case Nos:
 2008-016 & 2008-017
 [consolidated]

FILED

2009
~~DEC 31 2008~~ *WC*

 ASST. CLERK OF COURTS
 REPUBLIC OF MARSHALL ISLANDS

ORDER DENYING PETITION FOR WRIT OF PROHIBITION DIRECTED TO THE HIGH COURT AND THE HONORABLE CARL B. INGRAM, CHIEF JUSTICE, HIGH COURT (By: Cadra, C.J., Wallace, A.J., Kurren, A.J.)

Upon consideration of Petitioners' petition for a writ of prohibition directed to the High Court, Chief Justice Carl B. Ingram, the papers in support of the petition and the records submitted in support of the petition,

1. Petitioners, Susanne Kayser-Schillegger and Lutz Kayser, seek review of orders entered in the above captioned action and request that this Court issue a writ of prohibition directed to the High Court and the Honorable Carl B. Ingram from enforcing "orders for extension of time" and from enforcing an "order re: pending motions" dated 11/05/09. Petitioners challenge the High Court's order requiring them to serve an amended complaint upon a corporate defendant over which, they contend, the court lacks jurisdiction.
2. The writ of prohibition is not a writ of right but is a discretionary writ which issues only in cases of public importance or of exceptional character where the law affords no

adequate remedy on appeal. The party seeking the writ must show that there is no other means of obtaining the relief desired and generally must bear the burden of showing that his right to issuance of the writ is “clear and indisputable.” In cases where the petition is directed against an interlocutory order issued by a judge the requirement for obtaining the writ is even stricter because of the general rule that interlocutory orders are not appealable. In such cases, the Court must consider the strong legislative policy against piecemeal appeals, the policy against obstructing ongoing judicial proceedings by interlocutory appeals, and the unfortunate result that when such a writ is directed against the trial judge it makes that judge a party litigant whereby he must seek his own counsel and prepare his own defense. *See, e.g., Kabua v. High Court of the Republic of the Marshall Islands*, 1 MILR 23 (S.Ct. Civil No. 85-05) (1986) and cases cited therein.

3. Where a trial judge has discretion to act, mandamus (or prohibition) clearly will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject that is properly before the court under circumstances in which it has a legal duty to act. *See, e.g., State v. Hamili*, 952 P.2d 390, 392 (Ha. 1998) (citing *Straub Clinic v. Kochi*, 917 P.2d 1284, 1288 (Ha. 1996)).

4. Having reviewed petitioners’ submissions and the record before us, we are not convinced that the trial judge exceeded his jurisdiction to issue the challenged orders for extensions of time nor do we, on the record before us, find a flagrant and manifest abuse of discretion in granting those orders such as to make the petitioners’ right to issuance of the requested writ clear and indisputable. The High Court’s orders granting extensions of time are

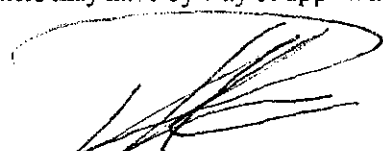
interlocutory and can be reviewed through the ordinary course of appeal. We decline review of the High Court's orders granting extensions of time.

5. Where the jurisdiction of a trial court depends upon a factual determination, a writ of prohibition will not lie. *William Penn Fraternal Ass'n v. Hickman*, 506 S.W. 2d 823, 824 (Ark. 1974). Whether the trial court has jurisdiction over the corporate defendant ordered to be served with an amended complaint is a factual determination to be made by the trial court and a writ of prohibition is not available. Petitioners have failed to show an alleged error in ordering petitioners to file and serve an amended complaint against this corporate defendant that cannot be reviewed by the ordinary process of appeal. We, accordingly, decline review of the High Court's said order.

6. To the extent petitioners challenge other orders made by the High Court in its 11/05/09 "order re: pending motions," we decline review.

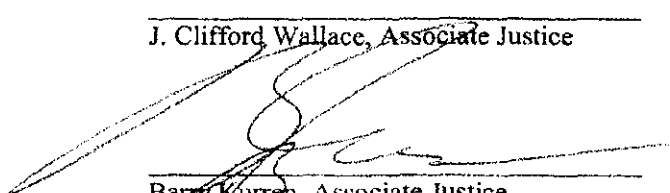
IT IS THEREFORE ORDERED that the petition for a writ of prohibition is denied without prejudice to petitioners presenting any arguments in the pending High Court case(s) and without prejudice to any eventual remedy petitioners may have by way of appeal from a final judgment.

Dated this 30th day of December, 2009.



Daniel N. Cadra, Chief Justice

J. Clifford Wallace, Associate Justice



Barry Kurren, Associate Justice

interlocutory and can be reviewed through the ordinary course of appeal. We decline review of the High Court's orders granting extensions of time.

5. Where the jurisdiction of a trial court depends upon a factual determination, a writ of prohibition will not lie. *William Penn Fraternal Ass'n v. Hickman*, 506 S.W. 2d 823, 824 (Ark. 1974). Whether the trial court has jurisdiction over the corporate defendant ordered to be served with an amended complaint is a factual determination to be made by the trial court and a writ of prohibition is not available. Petitioners have failed to show an alleged error in ordering petitioners to file and serve an amended complaint against this corporate defendant that cannot be reviewed by the ordinary process of appeal. We, accordingly, decline review of the High Court's said order.

6. To the extent petitioners challenge other orders made by the High Court in its 11/05/09 "order re: pending motions," we decline review.

IT IS THEREFORE ORDERED that the petition for a writ of prohibition is denied without prejudice to petitioners presenting any arguments in the pending High Court case(s) and without prejudice to any eventual remedy petitioners may have by way of appeal from a final judgment.

Dated this 31st day of December, 2009.

Daniel N. Cadra, Chief Justice



Clifford Wallace, Associate Justice

Barry Kurren, Associate Justice