For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE BABY E.C., A MINOR, THROUGH GAIL SHEARER, ESQ., GUARDIAN AD LITEM AND VIRGIN ISLANDS VOLUNTEER ADVOCATES FOR CHILDREN, INC. Appellant/Petitioner.	)	**S. Ct. Civ. No. 2017-0017** Re: Super. Ct. Civ. No. 28/2015 (STX) Consolidated Cases: S. Ct. Civ. No. 2017-0017 S. Ct. Civ. No. 2017-0021

On Petition for Writ of Mandamus
On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Denise A. Hinds Roach

Considered: May 8, 2018
Filed: September 25, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

The guardian ad litem ("GAL") of Baby E.C. filed a petition for a supervisory writ of mandamus, as well as a subsequent appeal, arguing that the Superior Court compromised her role

as a GAL. Because the Superior Court did not issue an appealable injunction, we dismiss the interlocutory appeal. However, construing the petition for supervisory writ as a petition for a traditional writ of mandamus, we grant the petition in part.

I. BACKGROUND

Born in late 2015, Baby E.C. is the daughter of an intellectually incapacitated mother and a father who voluntarily terminated his parental rights. The Department of Human Services ("DHS") has legal and physical custody of the baby. The baby resides at the Queen Louise Home for Children. DHS made efforts to place Baby E.C. with her next of kin; however, the identified and contacted next of kin is unable to care for the baby. As a result, DHS has been searching for a private foster home for Baby E.C. On October 21, 2016, DHS removed the baby from the Queen Louise Home and placed her in a "stranger's" home. (Super. Ct. Transmittal 3.2.2017, *32.) In response, the GAL moved for an emergency injunction, asking the Superior Court to direct DHS to return the child to the Queen Louise facility. Before the court conducted a hearing on the emergency injunction, DHS voluntarily returned the baby to the Queen Louise Home. Then, on the date of the scheduled hearing on the petition, November 2, 2016, the court rescheduled the hearing for December 7, 2016 and stated:

> Given the objection, it is my strong - - not even a recommendation, a strong recommendation that we err on the side of caution and keep the child . . . [in her] current placement until such time as the Family Judge has ruled on the matter, if the parties are unable to come to an agreement.

Prior to the December 7, 2016 hearing, the parties agreed that DHS would keep the child at the Queen Louise Home pending resolution of the case.

To determine the placement of a child, DHS conducts a home study. Then, a team of DHS employees decides whether a particular home placement is appropriate by considering several

factors, such as permanency, safety, and availability. In addition, because there is a distinction between foster parents and adoptive parents, DHS aims for adoption, given its permanency goals. DHS placed the baby at the Queen Louise Home because of the unavailability of private homes. Two potential foster applicants were interested in caring for the baby. However, only one individual, M.B., completed the necessary application. The parties agreed that M.B.'s family would have two visits with the baby at the Queen Louise facility before final placement. The Court kept the agreement in place until further adjudication.

Two weeks before the December 7, 2016 hearing date, the GAL subpoenaed two DHS employees; one, I.B., to give testimony and another, L.J., to respond to a subpoena duces tecum with "a list of documents . . . request[ed] based on the statute." (Super. Ct. Transmittal 3.2.2017, *34.) At the hearing, the GAL complained to the Superior Court that a DHS employee who was served with the subpoena duces tecum did not comply with the subpoena and argued that the employee's failure to comply was prejudicial to Baby E.C. As a result, she asked the Superior Court to hold the DHS in contempt for noncompliance. The Superior Court then asked the GAL to file a motion to compel. The GAL then responded that because a child abuse and neglect case is a quasi-criminal case, under the rules for self-serving a subpoena, she believed that she could not obtain the documents until the date of the hearing and thus could not move to compel prior to the hearing. In response, the Superior Court advised the GAL to submit a motion to compel. The GAL immediately made an oral motion to compel the Government to produce the documents. But the court advised her to file a written motion, and then asked the GAL whether she was prepared to go forward with the hearing. The GAL responded that she could go forward but reserved the right to recall the witnesses upon receipt of the documents.

During the examination of I.B., the GAL tried to elicit information contained in the home

study about M.B.'s family.[1] The GAL first asked I.B., "[d]o you recall what [the foster parent's] marital status is?" (Super. Ct. Transmittal 3.2.2017, *72.) I.B. refused to provide the information because she was "not comfortable discussing [the] application at [that] time." (Super. Ct. Transmittal 3.2.2017, *72.) The GAL then requested the court to order I.B. to respond to the question, stating that "[t]his was one of the documents that were subpoenaed . . . [t]hose documents are relevant under the statute in terms of making a full inquiry into the best interest of the minor child." (Super. Ct. Transmittal 3.2.2017, *73.) In response, DHS's counsel, Joseph Ponteen, stated that I.B. had no authorization to release the documents until "legal counsel reviews the request and [has] made whatever appropriate motions," but that counsel was "away until December 16." (Super. Ct. Transmittal 3.2.2017, *73-74.)

He then questioned the GAL's authority to ask about the "personal attributes" of M.B., stating that a group of employees at DHS reviews individuals' suitability and thus the GAL's questions seemed like a "witch hunt." (Super. Ct. Transmittal 3.2.2017, *74.) The GAL responded that it is her "duty . . . to inquire into any matter that concerns the best interest of the minor child" and, even if the information is confidential, she may access the information as provided by statute. (Super. Ct. Transmittal 3.2.2017, *74.) She further contended that—unless a GAL has access to information pertaining to a prospective parent—DHS would have "unfettered discretion" to determine a child's placement. (Super. Ct. Transmittal 3.2.2017, *74.) The court then asked the GAL to list the questions she planned to ask I.B. The GAL stated that she would ask about the potential foster parent's marital status, age, and employment, as well as whether the potential foster

[1] DHS completed a home study regarding M.B. and her family, which studied the family's living arrangements and included a background check. In addition, DHS obtained personal information about M.B. as part of the application process, including her age, employment, and medical and financial information.

parent has children or has experience raising a one-year-old infant. The GAL explained that she requested this information because it is essential to determining whether M.B.'s home is a suitable permanent placement for the baby. She also later explained that in order to formulate a relevant line of questioning, she "need[ed] to see the contents of the file to know what [her] concerns are, if [she has any] concerns." (Super. Ct. Transmittal 3.2.2017, *76.) The Superior Court concluded that the GAL's questions were inappropriate and decided to conduct an *in camera* review of the information to determine whether any information in the file was alarming, reasoning that the GAL's only "job is to bring matters to [the court's] attention." (Super. Ct. Transmittal 3.2.2017, *76.)

The court and the GAL then debated the GAL's role in the proceeding. The court continued to insist that the GAL's role was solely to assist the court and "to bring to the [c]ourt's attention areas of concern." (Super. Ct. Transmittal 3.2.2017, *77-80.) The GAL then responded that if her only role was to assist the court, there would be no need for a GAL. She also argued that she may access the file because, by statute, a GAL has access to the files of custodians and M.B. is "the child's intended custodian." (Super. Ct. Transmittal 3.2.2017, *77-80.) The court countered that M.B. was not yet a custodian.

After the Superior Court prevented the GAL from questioning I.B. about the information in the home study, the GAL began to question I.B. about certain events that gave rise to the emergency petition. The court, *sua sponte*, inquired about the relevance and the GAL explained that it was important to investigate DHS's decision to remove the baby from the Queen Louise facility and place her in a stranger's home. The court then stated that it would "take that matter under advisement" and directed the GAL to question I.B. about other individuals interested in

adopting Baby E.C. (Super. Ct. Transmittal 3.2.2017, *85-86.) Because of the limitations set by the Superior Court, the GAL had no further questions.

On December 16, 2016, the Superior Court ordered DHS to submit the proposed foster parent's file for an *in camera* review. After the review, the court ruled that there was nothing alarming in the file and consequently denied the GAL access to the information. On February 2, 2017, the GAL filed a petition for writ of supervisory mandamus. She argues that the Superior Court impaired her obligations as a GAL by denying her (1) access to the home study of the prospective foster parent and her family and (2) the ability to examine the DHS witness about information related to the prospective foster parent. The GAL also argues that the Superior Court compromised her ability to adequately represent the best interests of the child by allowing a DHS employee to disobey a subpoena. Then, on February 17, 2017, the GAL timely appealed the Superior Court's January 27, 2017 order, making, in large part, the same arguments. *See* V.I. R. APP. P. 5(a)(1). Thereafter, on or around March 29, 2017, the GAL filed an emergency motion for stay pending appeal, which this Court granted.[2] Finally, upon motion by the GAL, this Court consolidated the cases and expedited the subsequent appeal.

II. DISCUSSION

A. Appellate Jurisdiction

Ordinarily, this Court may only hear appeals from final judgments entered by the Superior Court. *See* 4 V.I.C. § 32(a). There is no dispute that the order from which the GAL appeals is unreviewable under the finality rule. *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315

[2] On April 7, 2017 Chief Justice Rhys S. Hodge granted this motion, temporarily, pending referral to the panel. As we decide the merits of this appeal herein, the emergency motion for stay pending appeal is moot. *See In re Sunset Sales, Inc.*, 195 F.3d 568, 573 (10th Cir. 1999) (finding a motion for stay pending appeal moot because the court was "prepared to rule on the merits of the appeal").

(V.I. 2007). However, as an exception to the finality rule, we have jurisdiction to review an interlocutory order if it "grant[s], continu[es], modif[ies], refus[es] or dissolve[es] [an] injunction." 4 V.I.C. § 33(b)(1). An interlocutory order is an injunction if it is "(1) directed at a party; (2) enforceable by contempt; and (3) 'designed to accord or protect some or all of the substantive relief sought by a complaint in more than a temporary fashion.'" *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 593 (V.I. 2018) (quoting *Enrietto*, 49 V.I. at 316). The GAL argues that this Court has jurisdiction to review this case because the January 27, 2017 order purportedly dissolves a prior oral preliminary injunction by the Superior Court, which prohibited the removal of the child from the Queen Louise Home. We disagree.

As a threshold matter, it is highly debatable whether the Superior Court's November 2, 2016 oral statement—in which it stated that its "strong recommendation" was for the child to remain in her "current placement" until it issued a ruling on the proposed placement—constitutes an injunction. *See Bryant v. People*, 53 V.I. 395, 404 (V.I. 2010) ("Inasmuch as the temporary custody order is neither enforceable by contempt nor designed to afford the substantive relief sought in the petition in more than a temporary fashion, it cannot be characterized as an injunction subject to immediate review."). However, even if we were to assume—without deciding—that the Superior Court issued an oral injunction on November 2, 2016, and dissolved that injunction in its January 27, 2017 order, that would not necessarily confer upon this Court jurisdiction over the portions of the order denying the GAL access to the requested information. On the contrary, this Court may only review these issues if they are "inextricably intertwined" with the appealable interlocutory decision. *People v. Ward*, 55 V.I. 829, 839 (V.I. 2011). "'Issues are 'inextricably intertwined' only when the appealable issue 'cannot be resolved without reference to the otherwise unappealable issue.'" *Id.* (quoting *Invista S.A.R.L. v. Rhodia S.A.*, 625 F.3d 75, 88 (3d Cir. 2010)).

The portion of the January 27, 2017 order that denied the GAL's requests is not inextricably intertwined with the portion permitting "pre-adoptive" visits by the prospective parents. "Issues are not inextricably intertwined if different legal standards apply to each issue." *Burlington Northern & Santa Fe Ry. v. Vaughn*, 509 F.3d 1085, 1093 (9th Cir. 2007). The propriety of permitting "pre-adoptive" visits—again, assuming, without deciding, that the decision constitutes an injunction—would require this Court to review the best interests of the child through the lens of the four injunction factors, while the issue of what role the GAL is permitted to play in the proceedings requires this Court to evaluate and determine the duties of a GAL under 5 V.I.C. § 2542 and 5 V.I.C. § 2540. Although it is possible that the GAL, if permitted to engage in the activities that the Superior Court disallowed, might have elicited new testimony or introduced additional evidence that pertained to whether permitting "pre-adoptive visits" is in the best interests of the child, for an issue to be inextricably intertwined, it is not sufficient for there to simply be a relationship between the issues. *Ward*, 55 V.I. at 839. Rather, the issues must be intertwined to such a great extent that the appealable issue "cannot be resolved without reference to the otherwise unappealable issue." *Id.*; *see also Swint v. Chambers County Comm'n*, 514 U.S. 35, 50 (1995). This is deliberately "a very high bar" that precludes exercising jurisdiction over an order whose relationship to an appealable order is only tangential or speculative. *See Poulos v. Caesars World, Inc.*, 379 F.3d 654, 669 (9th Cir. 2004).

Because the portion of the January 27, 2017 order denying the GAL's requests is not inextricably intertwined with the portion of the same order that permitted "pre-adoptive visits," we may not exercise appellate jurisdiction over that issue. And since the GAL has not actually set forth any independent legal argument for why this Court should reverse the grant of "pre-adoptive

visits," the single issue that arguably could be appealed pursuant to 4 V.I.C. § 33(b)(1) is not properly before us. Therefore, we dismiss the GAL's appeal for lack of jurisdiction.

B. Mandamus Relief

While this Court lacks appellate jurisdiction over the GAL's attempted appeal of the January 27, 2017 order, it clearly may exercise original jurisdiction over the GAL's petition for a writ of mandamus. *See* 4 V.I.C. § 32(b). The appropriate standard for granting a writ of mandamus turns on whether it is supervisory or traditional. *Id*. Generally, to obtain a traditional writ of mandamus, a petitioner must show that (1) she has a clear and indisputable right to relief, (2) there are no other adequate means of obtaining relief, and (3) mandamus is appropriate under the circumstances. *See In re Le Blanc*, 49 V.I. 508, 517 (V.I. 2008). Unlike the standard for granting a traditional writ of mandamus, we are flexible with regard to whether other avenues of relief exist when it comes to a supervisory writ. *In re Holcombe*, 63 V.I. 800, 825 (V.I. 2015). The goal of a supervisory writ of mandamus is to ensure that the judicial branch, as a whole, functions appropriately. *Id.* at 824 ("This Court undoubtedly has the statutory and inherent authority to issue supervisory writs to the entire Superior Court when necessary to ensure the 'proper functioning of the judicial process.'").Regardless of the stringent requirements of traditional mandamus relief, supervisory writs are appropriate when the appellate court is convinced that resolution of an important, undecided issue will forestall future error in [the trial court], eliminate uncertainty and add importantly to the efficient administration of justice." *Id.* at 824 (internal quotation marks omitted). Supervisory mandamus is thus appropriate when its purpose is to "obtain an authoritative interpretation of the law for the guidance of public officials in their administration of the public business, notwithstanding the fact that there also exists an adequate remedy at law." *Id.* at 824-25.

Here, although the GAL alleges that Superior Court violated an unambiguous statute that grants a GAL access to all information necessary to carry out her role as a child's advocate and attorney, *see Holcombe*, 63 V.I. at 826 (quoting *Mafnas v. Superior Court of Com. of N. Mariana Islands*, 1 N.M.I. 277, 285 (N. Mar. I. 1990)), a supervisory writ is not appropriate because, unlike the circumstances presented in *Holcombe*, the GAL in the present case has not alleged that the Superior Court's actions in this particular case represent a recurrent court-wide practice. Therefore, we apply the three-factor test applicable to petitions for a traditional writ of mandamus.

1. GAL's Access to the Home Study & the Prospective Foster Parent's File

The GAL argues that by barring her from questioning the DHS witness about information concerning the potential foster parent and preventing her from gaining access to the home study, the Superior Court denied her of the opportunity to carry out her authority and duties as a GAL under 5 V.I.C. § 2542 and 5 V.I.C. § 2540. We conclude that the Superior Court erred in denying the GAL access to the relevant details of the home study and information about the foster parenting applicant.

The information in the file and the home study are documents relevant to the case under 5 V.I.C. § 2542. Thus, the GAL has a clear and indisputable right to relief as to access to the home study and the prospective parent's file. In addition, there are no other avenues of obtaining relief, as effective relief could become unattainable, considering that a placement could negatively affect Baby E.C. by the time the case becomes appealable. Lastly, mandamus is appropriate in this case. Among other things, the Superior Court misconstrued the role of a GAL in child and neglect proceedings and, in an effort to safeguard the best interest of Baby E.C. and similarly situated children, this Court has an obligation to make clear the GAL's role in these proceedings. Therefore, as we discuss below, this case meets the requirements for a traditional writ of

mandamus.

a. Clear and Indisputable Right to Relief: The GAL's Statutory Duties and Authority

This Court defers to the plain and unambiguous language of statutes and "give[s] effect to every provision" in the statute. *See In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015); *Duggins v. People*, 56 V.I. 295, 302 (V.I. 2012). Thus, when a statute is unambiguous, that is the end of the matter and "no further inquiry is needed." *In re Reynolds*, 60 V.I. 330, 334 (V.I. 2013). The statute setting forth the role of a GAL in abuse and neglect proceedings provides in full:

> In every case of child abuse or neglect the court shall appoint counsel for the child to act in the role of guardian ad litem. Such counsel shall be willing and competent by training or experience in representing the interests of a child in such proceedings. [A] [g]uardian ad litem shall be given access to all reports relevant to the case and to any reports of examination of the child's parents, guardian or custodian. [A] [g]uardian ad litem shall be charged with the representation of the child's rights, welfare, interest and well-being and to advocate the child's viewpoint, and to these ends shall make such further investigation as he deems necessary. In addition, [a] guardian ad litem may interview witnesses, examine and cross-examine witnesses, introduce other evidence, make recommendations to the court and participate in the proceedings to the degree appropriate for adequately representing the child.

5 V.I.C. § 2542 (emphasis added). Thus, a GAL has access to two types of documents or reports. First, "all reports relevant to the case" and, second, "any reports of examination of the child's parents, guardian or custodian." *See id.* The statute also grants a GAL discretionary investigatory power and the right to participate in court proceedings. *See id.* Lastly, under the statute, the GAL serves as a child's attorney. *See In re Q.G.*, 60 V.I. 654, 658 n.3 (V.I. 2014) ("5 V.I.C. § 2542 makes clear that a guardian *ad litem* appointed under this section serves as the child's attorney by providing that "[i]n every case of child abuse or neglect the court shall appoint *counsel for the child* to act in the role of guardian *ad litem.*") (emphasis in original).

The GAL posits that 5 V.I.C. § 2542 entitles her to access the requested files because we should treat the prospective foster parent as a custodian of the child. According to 5 V.I.C. §

2502(10), "'[c]ustodian' means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis." Because the prospective foster parent does not yet have legal custody of the child and is not acting in loco parentis, the Superior Court is correct that the prospective foster parent is not a custodian of the child in the strictest sense. But we need not rely solely on that phrase.

The statute uses the conjunction "and" between "all reports relevant to the case" and "any reports of examination of the child's parents, guardian or custodian." As we give words their ordinary meaning and rely on grammatical construction, we need not read the statute restrictively because the conjunction "and" means "in addition to" or "along with." 1 V.I.C. § 42; *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 236 (2011) (highlighting "linking independent ideas is the job of a coordinating junction like 'and[]'"); *Reese Bros., Inc. v. United States*, 447 F.3d 229, 235–236 (3rd Cir. 2006) ("The usual meaning of the word 'and,' however, is conjunctive, and 'unless the context dictates otherwise, the 'and' is presumed to be used in its ordinary sense[.]") (citations omitted); THE OXFORD ENGLISH DICTIONARY 316 (1961). Thus, we conclude that the sentence in section 2542 means that a GAL may have access to both reports relevant to the case, <u>as well as</u> reports of examination of certain parties, including custodians. Consequently, the GAL may freely access the home study and information about the prospective foster parent's file because they are indeed relevant to the case. *See, e.g., Osler Inst., Inc. v. Miller*, 24 N.E.3d 1272, 1283 (Ill. App. Ct. 2015) ("The plain and ordinary meaning of the word 'relevant' is … 'having significant and demonstrable bearing on the matter at hand[.]'"); *State v. Roberts*, 673 P.2d 974, 978 (Ariz. Ct. App. 1983) (same).[3]

[3] Having found that 5 V.I.C. § 2542 entitles the GAL to obtain the information she sought, we need not address the arguments concerning 5 V.I.C. § 2540.

b. Lack of Other Means of Obtaining Relief

Ordinarily, if a party can eventually appeal a case, there exists a manner in which she could obtain relief. *See Le Blanc*, 49 V.I. at 516. While in theory the GAL may await appeal, the reality is that the GAL may be unable to obtain effective relief by the time the case becomes appealable. *See Holcombe*, 63 V.I. at 824 (recognizing, although in the context of supervisory mandamus, that "some flexibility is required if the extraordinary writ is to remain available for extraordinary situations") (internal quotation marks omitted) (modifications removed). We cannot ascertain how a placement would affect Baby E.C.'s well-being, and her placement could affect her negatively while the GAL awaits a final order and subsequent appeal. As previously stated, a GAL acts as a child's attorney and has investigatory power. *See In re Q.G.*, 60 V.I. at 658 n.3. To effectively act as a child's attorney and advocate, as part of her investigation, a GAL needs access to relevant information in order to make a sound recommendation for the child and adequately represent the child's best interest. 5 V.I.C. § 2542. This is similar to attorneys' need to obtain relevant information through discovery in order to develop a case effectively in other contexts. *See, e.g.*, *In re Colonial Pipeline Co.*, 968 S.W.2d 938 (Tex. 1998) (explaining that "mandamus relief may be justified to correct discovery order when . . . (2) the party's ability to present a viable claim or defense is severely compromised or vitiated by the erroneous discovery ruling to the extent that it is effectively denied the ability to develop the merits of its case; or (3) the trial court's discovery order disallows discovery which cannot be made a part of the appellate record, thereby denying the reviewing court the ability to evaluate the effect of the trial court's error"). But, unlike a trial court's general discretion to oversee the scope of discovery, here, a statute specifically mandates that the Superior Court grant the GAL access to certain records. 5 V.I.C. § 2542.

Because a GAL's lack of necessary information would affect the GAL's ability to make a sound recommendation, and any negative effect on Baby E.C. could potentially be irreparable, the GAL would be unable to obtain effective relief by the time the case becomes appealable. And, notably, the question before us is a novel and important one affecting children—the resolution of which would facilitate the administration of justice in similar circumstances. *See Holcombe*, 63 V.I. 824 (discussing the importance of effective administration of justice in the context of a supervisory writ); *see also In re S.E.C. ex rel. Glotzer*, 374 F.3d 184 (2d Cir. 2004) ("[The] [c]ourt will entertain petition for writ of mandamus to cure defective pretrial discovery order if petitioner demonstrates (1) presence of novel and significant question of law; (2) inadequacy of other available remedies; and (3) presence of legal issue whose resolution will aid in administration of justice."). Thus, we conclude that no other adequate means to obtain relief exists.[4]

c. Appropriateness of Mandamus

A traditional writ of mandamus is appropriate here for several of reasons. First, the Superior Court ignored an unambiguous statute that grants the GAL access to the home study and the prospective foster parent's file, although the records sought are clearly "reports relevant to the case" under 5 V.I.C. § 2542. *See Holcombe*, 63 V.I. at 821-22, 839 (noting mandamus is appropriate where the Superior Court "usurps the power" of the legislature by violating a statute). Second, here, "resolution of an important, undecided issue will forestall future error in the trial

[4] The Superior Court's decision to conduct an in camera review of the file to see if the file contained anything alarming is not sufficient under 5 V.I.C. § 2542. The statute specifically allows a GAL to have access to documents relevant the case. *See* 5 V.I.C. § 2542. It does not merely state that a GAL should be apprised of relevant documents. *See id.* Thus, conducting an in camera review of the file is neither an adequate substitute for access nor a remedy providing adequate relief. *See id.*

court, eliminate uncertainty and add importantly to the efficient administration of justice." *Holcombe*, 63 V.I. at 822-25 (citations omitted). The Superior Court misconstrued a GAL's statutory role in abuse and neglect proceedings; it indicated that a GAL's only role is to serve as "an aid to the Court" and "bring to the Court's attention areas of concern."[5] To the contrary, a GAL's role in abuse and neglect proceedings is much more meaningful. Among other things, a GAL serves as an advocate for a child's best interest, serves as the child's attorney, and may investigate in order to make a sound recommendation. It is important to clarify the meaningful role of a GAL in these proceedings and ensure that the GAL has access to all relevant records, even confidential ones, allowed by statute. 5 V.I.C. §§ 2540, 2542. Third, as noted above, waiting until the Superior Court enters a final judgment could result in the inability to obtain effective relief. Any placement could negatively impact Baby E.C. in an irreparable manner if the GAL were required to await a final judgment. Accordingly, a traditional writ of mandamus is appropriate in this case.

2. Subpoena Duces Tecum

The GAL maintains that the Superior Court deprived her of her statutory authority, under 5 V.I.C. § 2542, to access relevant records and, in turn, to introduce evidence concerning Baby

[5] It is true that a common-law GAL, appointed pursuant to the court's *parens patriae* power, typically functions solely as an investigative arm or agent of the court, and is subject to whatever limitations and boundaries of authority the court deems appropriate. *See Tutein v. Artega*, 60 V.I. 709, 717 (V.I. 2014) (describing the function of a common law GAL "as an agent or arm of the court . . . [who] essentially functions as the court's investigative agent") (citations omitted). However, in the context of abuse and neglect proceedings, the appointment of the GAL, as well as the scope of her duties and functions, is not a matter left to the discretion of the court, but is rather mandated by statute. *See* 5 V.I.C. § 2542 ("In every case of child abuse or neglect the court shall appoint counsel for the child to act in the role of guardian ad litem.").

E.C.'s best interests because the court proceeded with the December 6, 2016 hearing despite the absence of the documents she requested and subpoenaed from the DHS, and despite the absence of any motion to quash.

Here, due to the absence of the DHS employee, the Superior Court advised the GAL to file a motion to compel before it decided the issue. However, Superior Court Rule 11, which at the time governed subpoenas in the Superior Court,[6] did not require a motion to compel where a subpoenaed witness fails to appear. Instead, Superior Court Rule 11(c) provided that "[t]he judge, on motion made promptly, may quash or modify the subpoena if compliance would be unreasonable or oppressive." Thus, in the absence of a motion to quash the Superior Court failed to follow the procedures set forth by the court's rules concerning subpoenas. And, the GAL is correct that she may introduce evidence under 5 V.I.C. § 2542. But even though the Superior Court did not follow the court's rules and the GAL had a right to introduce the evidence, mandamus relief is not appropriate in this instance. The GAL can appeal this issue and obtain effective relief from this Court when the case becomes appealable. *See Le Blanc*, 49 V.I. at 516 (noting if a case is appealable, a party may not obtain mandamus relief because there exists other avenues of relief). As a result, we hold that the GAL is not entitled to a writ of mandamus with respect to the subpoena issue.

III. CONCLUSION

Although this Court lacks jurisdiction over the GAL's appeal, we have jurisdiction over

[6] Effective March 31, 2017, Superior Court Rule 11 and various other rules applicable to the Superior Court were repealed and replaced with the Virgin Islands Rules of Civil Procedure. *See In re Adoption of Virgin Islands R. of Civ. Proc.*, 2017-001, 2017 WL 1293844, at *1 (V.I. Apr. 3, 2017). However, because the Superior Court issued its decision on January 27, 2017, we apply the Rules of the Superior Court that were in effect at the time rather than those in effect today.

the petition for writ of mandamus. The GAL has demonstrated a clear and indisputable right to relief because the disputed records in this proceeding are documents relevant to the case under 5 V.I.C. § 2542. Moreover, no other avenues for obtaining timely relief exist; a foster placement could negatively affect Baby E.C. by the time the case becomes appealable. Additionally, it is imperative that we correct the Superior Court's overly restrictive understanding of a statutorily mandated GAL's role in child and neglect proceedings, as required by 5 V.I.C. § 2542, so that the best interests of Baby E.C. and similarly situated children are not negatively affected by the Superior Court's misinterpretation. We therefore grant the petition in part, vacate the Superior Court's order, and issue a writ compelling the Superior Court to allow the GAL access to the home study and information in the prospective foster parent's file. Nevertheless, we deny the petition as to the subpoena issue, since the GAL has failed to meet her burden of demonstrating that she lacks other methods of obtaining the same relief.

Dated this 25th day of September 2018. **BY THE COURT:**

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court