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SJC-12386

IN THE MATTER OF CHILDREN.

April 2, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

Frank LaMonde appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

As best we can tell from the record before us, LaMonde's two minor children are in the temporary custody of the Department of Children and Families and have been since February, 2016. Since that time, LaMonde has filed several emergency motions for custody. In the most recent motion, filed in April, 2017, LaMonde not only seeks custody but also alleges that the children's mother, from whom LaMonde is divorced, is a danger to the children and has "kidnapped" them two or three times.^{1,2} The motion was denied.

LaMonde then filed a petition with a single justice of the Appeals Court pursuant to G. L. c. 231, § 118, first par., seeking custody of the children. He also alleged, in the

¹ The two children are the subject of different proceedings in the Probate Court and the filings and events in the two cases do not exactly align. It appears, however, from the motion in question for "emergency grant of children," that the same motion was filed in both cases.

² Although it is difficult to discern the details from the record before us, it appears that the alleged actions taken by the children's mother occurred before the Department of Children and Families took custody of the children.

petition, that the children's mother kidnapped the children and took them out of Massachusetts; that he reported the alleged kidnapping to both the Probate and Family Court Department and the local police; and that no one has pursued the matter. The single justice denied the petition. LaMonde's subsequent notice of appeal was struck (by a different justice) on the basis that there is no right to appeal from the denial of a petition filed pursuant to G. L. c. 231, § 118, first par. LaMonde then filed his G. L. c. 211, § 3, petition, which appears to be the same document that he filed in the Appeals Court (i.e., the petition pursuant to G. L. c. 211, § 3, is the exact same as the petition pursuant to G. L. c. 231, § 118, first par.). A single justice of this court denied the petition without a hearing.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a showing that "review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." S.J.C. Rule 2:21 (2). LaMonde has not made, and cannot make, such a showing. He has already sought interlocutory review of the trial judge's rulings under G. L. c. 231, § 118, first par., and has been denied relief by a single justice of the Appeals Court. He is not entitled to any additional review at this juncture. See Iagatta v. Iagatta, 448 Mass. 1016, 1016 (2007); Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019-1020 (1996) ("Review under G. L. c. 211, § 3, does not lie where review under c. 231, § 118, would suffice.").³

To the extent that LaMonde also seeks, in this court, relief from the recent denials in the Probate and Family Court Department of his motion to expedite the custody proceedings, the issue was not before the single justice and we therefore need not consider it. See Carvalho v. Commonwealth, 460 Mass. 1014, 1014 (2011), and cases cited. In any event, it appears from the Probate and Family Court docket for each child's case that status conferences in both are currently scheduled for May, 2018.

The single justice did not err or abuse her discretion in denying relief under G. L. c. 211, § 3.

³ LaMonde's petition pursuant to G. L. c. 211, § 3, after a single justice of the Appeals Court had already denied his petition pursuant to G. L. c. 231, § 118, first par., was nothing more than a second attempt to obtain review of the challenged interlocutory rulings of the trial court.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Frank LaMonde, pro se.