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SJC-12406

CHRISTINE HILTON & others¹ vs. CENTRAL DIVISION OF THE HOUSING COURT DEPARTMENT.²

April 10, 2019.

Summary Process. Housing Court. Supreme Judicial Court,
Superintendence of inferior courts.

This case is one of three that we decide today involving self-represented litigants engaged in summary process proceedings in the Central Division of the Housing Court Department (Housing Court). See Adjarthey v. Central Div. of the Housing Court Dep't, 481 Mass. (2019); Evans v. Federal Home Loan Mtge. Corp., 481 Mass. (2019). The complexities of summary process proceedings and the challenges that self-represented litigants face in such proceedings are set forth in detail in our opinion in the Adjarthey case and its Appendix. Although most of the petitioners in this case are also petitioners in the Adjarthey case, and although the two cases have broad areas of overlap -- including arguments that the petitioners are being treated unfairly in the Housing Court on the basis of, among other things, their pro se status -- the specific complaints that the petitioners raise here are not addressed in the Adjarthey case.

¹ Ismail Abdelhamed, Ruth Adjarthey, Vesta Ballou, Lori Cairns, Jackeline Cucufate, Marjorie Evans, Gerard Hughes, Maria Navedo, Paul Norris, and John Schumacher.

² The Worcester Division of the Housing Court Department, named as the respondent, is now part of the Central Division. See Adjarthey v. Central Div. of the Housing Court Dep't, 481 Mass. , n.2 (2019). The court is a nominal party only. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996).

In this case, the petitioners filed a petition in the county court pursuant to G. L. c. 211, § 3, claiming that the Housing Court violated their substantive and procedural due process rights as well as various other constitutional rights, including their rights to free association and free speech. The Housing Court opposed the petition, and the single justice denied it without a hearing. Shortly thereafter, the petitioners filed several additional papers, including a motion for reconsideration and an amended G. L. c. 211, § 3, petition, all of which the single justice denied.³

Each of the petitioners is or was involved in an eviction action stemming from the foreclosure of his or her home.⁴ Each of them is also a member of the Worcester Anti-Foreclosure Team (WAFT), a "mutual aid organization" in which "[e]very member helps every other member" work through the various stages of summary process. The petitioners have appeared pro se in the Housing Court, as they do here, and collectively assert that they have been subject to disparate treatment in the Housing Court on the basis of their pro se status and their membership in WAFT.⁵

More specifically, they argue that at least one judge in the Housing Court has questioned the activities of WAFT and whether individual petitioners drafted their own motions and briefs or whether other WAFT members drafted the materials on their behalf (questioned, in other words, whether any of the self-represented litigants are improperly being represented by other individuals or are engaged in the unauthorized practice of

³ The original petition included three petitioners. The amended petition (which was filed without leave of court) included all of the petitioners named here. The general claims and issues raised in the two petitions are the same. We acknowledge the amicus brief submitted by more than thirty individuals.

⁴ It appears that at least some of the petitioners continue to reside in their homes.

⁵ Although the petitioners also suggest they have been subject to disparate treatment on the basis of certain other factors, including indigency and disability, their G. L. c. 211, § 3, petition focuses largely on issues related to their pro se status and their membership in the Worcester Anti-Foreclosure Team.

law) and, in the petitioners' view, generally treated WAFT members differently from other parties in summary process proceedings.⁶ They assert that they sought various forms of relief in the Housing Court by, for example, moving for the judge's recusal or seeking a change of venue, but that their efforts were unsuccessful.

The petitioners ask this court to transfer their cases to judges who will, in their view, treat them fairly. They also ask the court, among other things, to issue "[a] preliminary injunction against all executions issued against members of the WAFT" and to order the Housing Court not "to seek criminal evidence [against] pro se litigants helping each other."

The petitioners have not, however, met their burden "to demonstrate the absence or inadequacy of other remedies," as they must for purposes of G. L. c. 211, § 3. See, e.g., Russell v. Nichols, 434 Mass. 1015, 1016 (2001).⁷ Relief under G. L. c. 211, § 3, is extraordinary and to be used sparingly. See MacDougall v. Commonwealth, 447 Mass. 505, 510 (2006), citing Soja v. T.P. Sampson Co., 373 Mass. 630, 631 (1977). A single justice may properly deny a request for this type of extraordinary relief, as the single justice in this case did, "where there are adequate and effective routes other than [G. L.] c. 211, § 3, by which the petitioning party may seek relief." Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019 (1996). We recognize the difficulties that these petitioners may face as they navigate the judicial system without attorneys, and the potential complexities of their individual proceedings, but this does not exempt them from the requirements of G. L.

⁶ Self-represented litigants facing eviction are, of course, free to work informally with one another and with other nonattorneys to help them understand how to navigate their way through summary process cases. See Adjarthey, 481 Mass. at , citing Rental Prop. Mgt. Servs. v. Hatcher, 479 Mass. 542, 549 n.8 (2018). What they cannot do, however, is represent each other, see, e.g., Varney Enters., Inc. v. WMF, Inc., 402 Mass. 79, 82 (1988) ("A person appearing pro se does not represent another . . ."), or engage in the unauthorized practice of law, see Adjarthey, supra; LAS Collection Mgt. v. Pagan, 447 Mass. 847, 850-851 (2006).

⁷ We note as well that the petitioners have failed to comply with S.J.C. Rule 2:22, 422 Mass. 1302 (1996), which requires them to "name as respondents and make service upon all parties to the proceedings before the lower court."

c. 211, § 3. See International Fid. Ins. v. Wilson, 387 Mass. 841, 847 (1983) (unrepresented litigants are bound by same procedural rules as represented litigants).

For example, the denial of a request for a particular judge's recusal could have been adequately addressed in a direct appeal from an adverse final judgment. See Haddad v. Gonzalez, 410 Mass. 855, 860-862 (1991) (considering denial of plaintiff's motion for recusal on direct appeal of summary process action). See also Mani v. United Bank, 458 Mass. 1027, 1028 (2011) (petitioners "did not demonstrate why the judge's or the clerk's allegedly improper actions could not be adequately addressed in a regular appeal from the final judgment"). Similarly, the petitioners are free to raise issues of disparate treatment or denial of any particular rights in a direct appeal of their summary process cases. Indeed, the petitioners generally aver that WAFT members "continue to appeal on an individual basis in their own cases" (although they do not specifically state whether any of the petitioners in this case are doing so or elaborate on their statement that "the majority" of WAFT members who have sought to appeal have "had their appeals rights blocked").

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

Judgment affirmed.

Maryanne Reynolds, Assistant Attorney General, for the Central Division of the Housing Court Department.

Brian Linehan for Federal Home Loan Mortgage Corporation.

Marjorie Evans, pro se.

Christine Hilton, pro se.

John Schumacher, pro se.

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