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SJC-12614

AKKIMA DANNIELLE BRISCOE vs. LSREF3/AH CHICAGO TENANT, LLC.¹

January 25, 2019.

Practice, Civil, Action in nature of mandamus, Summary process.

The plaintiff, Akkima Danielle Briscoe, appeals from a judgment of a single justice of this court dismissing, without a hearing, her complaint seeking relief in the nature of mandamus. There was no error.²

This appeal arises out of the efforts of the defendant, LSREF3/AH Chicago Tenant, LLC, to recover possession of and rent for certain real property occupied by the plaintiff. After judgment entered for the defendant in a summary process proceeding, the plaintiff filed a complaint in the county court generally alleging error in connection with that proceeding and seeking relief from the judgment that entered. The single justice concluded that the plaintiff was not entitled to relief under G. L. c. 249, § 5, because she failed to pursue other

¹ The complaint identifies the defendant as "LSREF3/AH Chicago Tenant LLC," whereas the record on appeal contains some materials that suggest that "LSREF3" and "AH Chicago Tenant, LLC" may be separate entities. It is unnecessary to our decision to resolve the point; our reference to the defendant in the singular includes both possibilities.

² The single justice also correctly denied the plaintiff's motions to amend the judgment and to impound the record.

available remedies.³ See Skandha v. Clerk of the Superior Court for Civil Business in Suffolk County, 472 Mass. 1017, 1018 (2015) (single justice properly denies extraordinary relief where litigant failed to pursue available alternative remedies). See also Callahan v. Superior Court, 410 Mass. 1001, 1001 (1991) ("mandamus will not issue to direct a judicial officer to make a particular decision or to review, or reverse, a decision made by a judicial officer on an issue properly before him or her").

The plaintiff has now filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). The rule only applies where a single justice has denied relief from an interlocutory ruling in the trial court. It does not apply to this appeal because, at the time the plaintiff filed her complaint, judgment had already entered in the summary process proceeding. Regardless, it is clear on the record before us that the plaintiff was not entitled to relief because she could have obtained review of the summary process judgment (and any other claims of error concerning those proceedings) through the ordinary appellate process. See Yahya v. Rocktop Partners I, LP, 479 Mass. 1035, 1036 (2018); Wallace v. PNC Bank, N.A., 478 Mass. 1020, 1020 (2018). See also Salomon S.A. v. LaFond, 463 Mass. 1003, 1003 (2012) (jurisdictional claims may be reviewed on appeal). As the single justice recognized, relief in the nature of mandamus is not available where the ordinary appellate process would suffice. See Myrick v. Superior Court Dep't, 479 Mass. 1012, 1012 (2018).

Moreover, according to the county court's docket, the plaintiff failed timely to claim this appeal from the judgment entered in the county court. See Mass. R. A. P. 4 (a), as amended, 464 Mass. 1601 (2013). The single justice's judgment entered on July 24, 2018, and he denied the plaintiff's motion to amend the judgment on August 6, 2018. The plaintiff's notice of appeal was filed more than thirty days later, on September 24, 2018. This is another reason not to disturb the judgment. See Kellerman v. Kellerman, 390 Mass. 1007, 1008 (1984) ("fact [that appellant] was appearing pro se does not excuse the failure to file the claim of appeal within the applicable time period"). "A pro se litigant is bound by the same rules of procedure as litigants with counsel." International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 847 (1983).

³ We need not address other possible bases for the denial of relief. It suffices to say that it is highly unlikely that mandamus relief would have been appropriate in any event.

Judgment affirmed.

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

Akkima Dannielle Briscoe, pro se.

Jessica Ragosta Early & Jean-Phillip Brignol for the defendant.