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SJC-12664

RAYMOND WILSON, THIRD vs. THE STOP & SHOP
SUPERMARKET COMPANY, LLC.

February 11, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Civil, Dismissal of appeal.

Raymond Wilson, III, appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3, in which he sought review of certain rulings in a personal injury action that he commenced in the District Court. Wilson's complaint in that action was dismissed by a judge in the District Court. His appeal from the judgment of dismissal was also dismissed, by a second District Court judge, because Wilson had failed to take the steps required of him as an appellant under the applicable rules of appellate procedure (District/Municipal Courts Rules for Appellate Division Appeals). Two subsequent attempts to appeal were dismissed as well. In addition, a judge in the District Court issued an order precluding Wilson from filing anything further without prior judicial authorization. We affirm the judgment of the county court.

"In seeking relief under G. L. c. 211, § 3, it was [Wilson's] burden to create a record -- not merely to allege but to demonstrate, i.e., to provide copies of the lower court docket entries and any relevant pleadings, motions, orders, recordings, transcripts, or other parts of the lower court record necessary to substantiate [his] allegations -- showing both a substantial claim of violation of a substantive right and that the violation could not have been remedied in the normal course of a trial and appeal or by other available means." Gorod v. Tabachnick, 428 Mass. 1001, 1001, cert. denied sub nom.

Davis v. Tabachnick, 525 U.S. 1003 (1998), and cases cited. Wilson did not do so, but simply filed a two-page handwritten petition asserting, without any supporting documents or other substantiation, that the District Court judge had acted improperly. The single justice would have been justified in denying the petition on this basis alone.

Moreover, "[i]t is incumbent on a party seeking exercise of this court's extraordinary power of general superintendence under G. L. c. 211, § 3, to demonstrate the absence or inadequacy of alternative means of redress." Lasher v. Lasher, 474 Mass. 1003, 1004 (2016). Wilson "failed to allege, much less demonstrate, that the . . . judge's order[s] . . . could not adequately be addressed through the ordinary appellate process." Id. All the rulings he challenges can be rectified, if appropriate, on appeal to the Appellate Division of the District Court, including any claim that his attempt to pursue such an appeal was itself wrongly dismissed.¹

Finally, it appears that Wilson did not serve his petition on the opposing party, that is, the defendant in the underlying District Court action, despite being specifically instructed by the county court clerk's office to do so. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996) (petitioner must "name as respondents and make service upon all parties to the proceeding before the lower court").

Given these serious deficiencies in Wilson's petition, the single justice neither erred nor abused his discretion by denying extraordinary relief.

Judgment affirmed.

¹ We cannot tell from the sparse material before us whether Wilson was attempting at any point to appeal from the dismissal of his original appeal from the District Court judgment. He had a right to pursue such an appeal, which cannot be preempted by a judge or a clerk in the District Court. Skandha v. Clerk of the Superior Court for Civil Business in Suffolk County, 472 Mass. 1017, 1018-1019 (2015), and cases cited. Likewise, he had a right to appeal from the order of the District Court that precluded him from further filings without prior judicial authorization. See Cooper v. CVS Pharmacy, 450 Mass. 1024, 1025 (2008); Russell v. Nichols, 434 Mass. 1015, 1015 (2001). If, in fact, either of those particular rights to appeal were obstructed, he would have a right to have those appeals reinstated.

Kelly Wallace Ianelli for the respondent.
Raymond Wilson, III, pro se, submitted a brief.