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SJC-12796

IVELISSE MONTANEZ vs. NANCY FLAHIVE.

February 24, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Civil, Appeal, Requests for findings and rulings.

The petitioner, Ivelisse Montanez, filed a petition in the county court pursuant to G. L. c. 211, § 3, seeking an order requiring a single justice of the Appeals Court to state findings and more detailed reasons for denying a prior petition for interlocutory review that she had filed pursuant to G. L. c. 231, § 118, first par., in the Appeals Court.¹ A single justice of this court denied the petition. We affirm.

"[T]he extraordinary remedy of general superintendence is meant for situations where a litigant has no adequate alternative remedy." McMenimen v. Passatempo, 452 Mass. 178, 185 (2008). At bottom, the petitioner sought interlocutory review from a single justice of the Appeals Court of various orders in a civil action that had been commenced by her, and which was then pending, in the Superior Court. She pursued the legislatively prescribed avenue for seeking review of

¹ Although the petitioner claims that certain interlocutory rulings of the Superior Court are erroneous, the relief requested in the G. L. c. 211, § 3, petition was an order requiring the Appeals Court to address the issues presented for interlocutory review, pursuant to G. L. c. 231, § 118. In that circumstance, S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), does not apply. See G.G. v. L.R., 478 Mass. 1022, 1023 (2018). Contrast Picciotto v. Zabin, 433 Mass. 1006, 1007 n.3 (2001) (where "focus of the petition under G. L. c. 211, § 3, is on the action of the trial court," rule 2:21 applies).

interlocutory orders, see G. L. c. 231, § 118, first par., by filing a petition in the Appeals Court. See Guzzi v. Secretary of Pub. Safety, 450 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 [G. L.] c. 231, § 118, would suffice"). The Appeals Court single justice denied the petition, concluding that "the petitioner has not demonstrated a clear error of law or abuse of discretion on the part of the Superior Court judge." Whether directly or indirectly, by means of seeking to compel a further explanation for the Appeals Court single justice's order, the petitioner is not entitled as a matter of right to further review of that order pursuant to G. L. c. 211, § 3.² See Carista v. Berkshire Mut. Ins. Co., 394 Mass. 1009, 1009-1010 (1985). "Although [her] petition pursuant to G. L. c. 231, § 118, was denied, G. L. c. 211, § 3, does not provide a second opportunity as a matter of right for interlocutory relief," Guzzi, supra at 1016, irrespective of whether it is couched as review of the adequacy of the order denying the G. L. c. 231, § 118, petition or as review of the underlying Superior Court orders.

Moreover, the court's extraordinary superintendence power under G. L. c. 211, § 3, "should be exercised only in exceptional circumstances, when necessary to protect substantive rights." Cappadona v. Riverside 400 Function Room, Inc., 372 Mass. 167, 169 (1977), quoting Healy v. First Dist. Court of Bristol, 367 Mass. 909, 909 (1975). Such circumstances are not

² Relying primarily on Commonwealth v. Grassie, 476 Mass. 202 n.12 (2017), the petitioner claims that the Appeals Court single justice was required to provide findings and a detailed explanation for his ruling denying the G. L. c. 231, § 118, petition. That is incorrect. Grassie involved a direct appeal from a conviction of murder in the second degree and from an order of the trial judge denying a motion to reduce the verdict in accordance with Mass. R. Crim. P. 25 (b) (2), as amended, 420 Mass. 1502 (1995). It did not involve an interlocutory ruling on a petition pursuant to G. L. c. 231, § 118, first par., and the reasons for our holding in that case are inapplicable here. We have never held, nor has the Appeals Court held, that a single justice of the Appeals Court is obligated to make findings and give a detailed explanation of his or her reasons on an interlocutory petition under G. L. c. 231, § 118, first par. Cf. Commonwealth v. Robinson, 477 Mass. 1008, 1009 n.2 (2017) (reliance on Grassie misplaced on appeal of "a final and unreviewable decision of the gatekeeper pursuant to G. L. c. 278, § 33E").

present here, because the petitioner will have an opportunity to pursue her claims at trial, and if she is unsuccessful at trial, she can challenge the various orders of the trial court on appeal. See Guzzi, 450 Mass. at 1016; Carista, 394 Mass. at 1010.³

Judgment affirmed.

Greg T. Schubert for the petitioner.
Aaron R. White for the respondent.

³ We need not, and therefore do not, consider any arguments and requests for relief asserted by the petitioner that were not made before the single justice in the county court, whose ruling is the matter before us. In the county court, the petitioner expressly indicated that "the only relief sought by the petitioner" was a remand to the Appeals Court for a "decision" on the issues for which she sought interlocutory review.