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SJC-12802

KYL V. MYRICK vs. SUPERIOR COURT DEPARTMENT.

January 10, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Mandamus. Practice, Civil, Assembly of record, Action in
nature of mandamus.

Kyl V. Myrick appeals from a judgment of a single justice of this court denying his petition for relief in the nature of mandamus. Specifically, Myrick sought an order requiring the Superior Court clerk to assemble the record for his appeal in his underlying civil action against Harvard University. We affirm.

Shortly after his appeal was entered in this court, Myrick filed a "memorandum appealing denial" of the single justice's judgment, in an apparent attempt to comply with S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). That rule applies to cases in which a single justice of this court "denies relief from an interlocutory ruling in the trial court." S.J.C. Rule 2:21 (1). The rule is inapplicable here, where there is no interlocutory order of the Superior Court at issue. Nonetheless, it is apparent from Myrick's submission and from the record below that the single justice neither erred nor abused his discretion in denying relief.

As we have frequently observed -- including in another recent appeal by Myrick from a single justice's denial of mandamus relief -- "[i]t would be hard to find any principle more fully established in our practice than the principle that neither mandamus nor certiorari is to be used as a substitute for ordinary appellate procedure or used at any time when there is another adequate remedy." Myrick v. Superior Court Dep't,

479 Mass. 1012, 1012 (2018), quoting Rines v. Justices of the Superior Court, 330 Mass. 368, 371 (1953).

Where a litigant is experiencing delay in the assembly of a record, we have identified several practical and legal steps that are available to prompt action by the trial court, short of seeking extraordinary relief in this court. See Skandha v. Clerk of Superior Court for Civil Business in Suffolk County, 472 Mass. 1017, 1018 (2015), quoting Zatsky v. Zatsky, 36 Mass. App. Ct. 7, 12-13 (1994). From the record before us, it appears that Myrick has not availed himself of these.¹ Here, as we have previously done, we conclude that the single justice was well within his discretion in denying relief where the record does not demonstrate that these alternative avenues of relief were unavailable. Skandha, supra at 1018.

That said, based on our review of the Superior Court docket, the materials that are before us, and the material that was before the single justice, it appears that the record in connection with Myrick's appeal from the November 7, 2018, judgment has yet to be assembled. To the extent there is some problem that prevents the clerk from assembling the record, the clerk should identify it for Myrick and, as appropriate, work with him to resolve it; if there is no problem, we trust that the record will be assembled forthwith.

Judgment affirmed.

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

Kyl V. Myrick, pro se.

¹ Myrick appears to have raised the issue of the delay in the assembly of the record in a "motion for a new trial as a matter of law," filed in the Superior Court. However, the only relief requested in that motion was a new trial, not the actual assembly of the record.