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SJC-12822

KATHLEEN TRAHAN vs. STANLEY J. PELCZAR.

January 10, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Civil, Disqualification of judge.

The petitioner, Kathleen Trahan, appeals from a judgment of a single justice of this court denying her petition pursuant to G. L. c. 211, § 3, and related motions. We affirm.

Trahan and the respondent, Stanley J. Pelczar, are in the midst of civil litigation in the Superior Court over payments owed to Trahan under a settlement agreement. Thus far, Trahan has prevailed on the issue of liability in her claims against Pelczar, and a judge in that court has ordered that a portion of certain monthly payments Pelczar was to receive under a divorce settlement be placed into escrow.¹ Some remaining counterclaims by Pelczar, as well as the issue of damages concerning Trahan's claims, continue to be litigated. Following the allowance of certain additional discovery related to Pelczar's counterclaims, Trahan moved for the Superior Court judge to recuse himself. The judge denied the motion.

In her petition pursuant to G. L. c. 211, § 3, Trahan requested an order requiring the Superior Court judge to recuse himself. She also filed motions in the county court to amend the attachment and escrow arrangements that the Superior Court had put into place and to restrain Pelczar from pursuing a contempt action in the Essex Division of the Probate and Family Court Department related to the payments subject to escrow. The

¹ Pelczar's former wife is named as a reach-and-apply defendant in the underlying Superior Court action.

single justice denied the petition and all other relief sought in Trahan's motions. This appeal followed.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a showing that "review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." S.J.C. Rule 2:21 (2). We see no reason why Trahan could not have sought interlocutory review of the judge's rulings under G. L. c. 231, § 118, first par. See Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019-1020 (1996) ("Review under G. L. c. 211, § 3, does not lie where review under c. 231, § 118, would suffice."). And, as to the motion to recuse, "there is no reason why the denial of any such motion could not be adequately addressed in a direct appeal from any adverse judgment." Jian Jiang v. Qilun Liu, 481 Mass. 1024, 1024 (2019), citing Bloise v. Bloise, 437 Mass. 1010, 1010 (2002).

The single justice did not err or abuse her discretion in denying relief.

Judgment affirmed.

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

Steven E. Kramer for the petitioner.