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SJC-13003

IN THE MATTER OF YVONNE RICHARD.

November 12, 2021.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Civil, Guardianship proceeding, Moot case.

The petitioner, Carla Richard, appeals from a judgment of a single justice of this court denying her petition for extraordinary relief pursuant to G. L. c. 211, § 3, as moot. We affirm.

The petitioner's mother, Yvonne Richard, was the subject of the underlying guardianship proceeding in the Probate and Family Court. In January 2020, a judge of the Probate and Family Court entered a temporary order expanding the guardianship to include the immediate entry of a do not resuscitate/do not intubate (DNR/DNI) order in the mother's medical file. In February 2020, the petitioner sought to have the DNR/DNI order vacated by a single justice of the Appeals Court pursuant to G. L. c. 231, § 118, first par. The Appeals Court single justice denied the petition on March 6, 2020. Ten days later, the petitioner filed her petition for extraordinary relief pursuant to G. L. c. 211, § 3, in the county court, seeking relief from the March 6, 2020 order of the Appeals Court single justice. The petitioner's mother died in April 2020. Following her death, the underlying guardianship proceeding was dismissed by agreement of the parties. A single justice of this court subsequently dismissed the G. L. c. 211, § 3, petition as moot. The petitioner appealed.

The petition is moot because the relief that the petitioner seeks -- removal of the DNR/DNI order from her mother's medical file -- would be of no effect. See Mullholland v. State Racing

Comm'n, 295 Mass. 286, 289 (1936) (case is moot "[w]hen, at the time of the disposition of a cause, the situation is such that the relief sought is no longer available or of any use to the plaintiffs and a decision by the court will not be applicable to existing rights"). See also Guardianship of Nolan, 441 Mass. 1012, 1012 (2004) (appeal challenging appointment of temporary guardian dismissed as moot after underlying petition for permanent guardianship and decree of temporary guardianship were dismissed). Moreover, we have long held that a petitioner whose request for interlocutory relief has been considered and denied by a single justice of the Appeals Court pursuant to G. L. c. 231, § 118, first par., "is not entitled as a matter of right to further review of that order pursuant to G. L. c. 211, § 3." Montanez v. Flahive, 484 Mass. 1009, 1009 (2020), citing Carista v. Berkshire Mut. Ins. Co., 394 Mass. 1009, 1009-1010 (1985).¹

The single justice did not err or abuse his discretion in denying the petition.

Judgment affirmed.

The case was submitted on briefs.
Carla Richard, pro se.

¹ The petitioner urges us to decide the issues raised in this case despite their mootness. "Although this court has on occasion considered significant issues in moot cases, we only do so where the issue has been fully argued on both sides, where the question was certain, or at least very likely, to arise again in similar factual circumstances, and especially where appellate review could not be obtained before the recurring question would again be moot" (quotation and citation omitted). Martin v. Commonwealth, 452 Mass. 1028, 1029 (2008). We decline to exercise our discretion to do so here.