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SJC-13020

RASHID JAHM vs. MALL AT LIBERTY TREE, LLC.

April 14, 2021.

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

The petitioner, Rashid Jahm, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

In December 2014, Jahm commenced a personal injury action against the respondent, Mall at Liberty Tree, LLC (Mall at Liberty Tree), claiming that he was injured when he slipped and fell at a shopping mall that it owned and operated. The case proceeded to a jury trial. After the close of evidence but prior to closing arguments, Jahm -- who was, as he is now, appearing pro se -- indicated that he no longer wanted to continue with the trial. The judge discussed the decision with Jahm at length, indicating to him that, if he chose to end the case at that point, the judge would dismiss the complaint with prejudice and that Jahm would have no right to appeal. Jahm chose not to continue, and the judge dismissed the complaint. Jahm subsequently filed a notice of appeal. The Mall at Liberty Tree, in response, filed a motion in the trial court to dismiss the appeal, which was allowed. Jahm then filed a second notice of appeal, which the Mall at Liberty Tree again moved to dismiss. The trial judge then held a hearing because he wanted to "make things as clear as [he] possibly could" for Jahm. The judge struck the second notice of appeal and informed Jahm that if he filed any further notices or motions in the case, the documents would be docketed but no action would be taken on any such filings. Approximately two years later, Jahm filed his G. L. c. 211, § 3, petition, asking the court to declare a

mistrial and order a new trial. A single justice denied the petition without a hearing.

The papers that Jahm filed in this court do not constitute adequate appellate argument and do not establish a basis for the specific relief he sought in his petition, i.e., an order from the county court granting a mistrial or a new trial in the underlying litigation. See Mass. R. A. P. 16 (a) (9), as appearing in 481 Mass. 1628 (2019). To the extent that Jahm now asks this court, on appeal from the single justice's judgment, to order a judgment in his favor on the merits of his underlying claims, that relief also is improper. Jahm is not entitled to that or any other relief from this court on the underlying complaint.

That said, we observe that Jahm had an absolute right to appeal from the judge's order striking his first notice of appeal and thereby to challenge the correctness of that order. His second notice of appeal apparently was an attempt to exercise that right. It was not for the judge to preempt that right by striking the second notice of appeal. See Elles v. Zoning Bd. of Appeals of Quincy, 450 Mass. 671, 673 (2008), and cases cited. See also Skandha v. Clerk of the Superior Court for Civ. Business in Suffolk County, 472 Mass. 1017, 1019 (2015); Reznik v. District Court Dep't of the Trial Court, 456 Mass. 1001, 1001 (2010). For that reason, while we affirm the single justice's judgment on the petition that was before her, we also remand this matter to the Superior Court (a) for entry of an order vacating the order striking Jahm's second notice of appeal and (b) with instructions to the clerk's office in that court to process the second notice of appeal. We trust that, in these circumstances, Jahm will be afforded a reasonable amount of time by the court to comply with his obligations as the appellant.¹

So ordered.

The case was submitted on briefs.
Rashid Jahm, pro se.
Gino Spinelli for the respondent.

¹ The appeal will of course be limited to the question whether the judge erred in striking the first notice of appeal. We express no view on the merits of the appeal.