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SJC-13187

ALAN SCOTT vs. WM OAK GROVE VILLAGE, LLC.

December 15, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

Alan Scott appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. We affirm the judgment.

Scott, along with another person, was a defendant in a summary process action commenced in the Housing Court by WM Oak Grove Village, LLC (landlord). After a trial, a judge in that court awarded possession to the landlord. Scott appealed from the judgment. The trial judge set an appeal bond and ordered Scott to make use and occupancy payments. Scott sought review of that order in the Appeals Court pursuant to G. L. c. 239, § 5 (f). A single justice of the Appeals Court affirmed the appeal bond and reduced the amount of the use and occupancy payments. Scott then filed a motion to stay the single justice's order, which the single justice denied. His G. L. c. 211, § 3, petition ensued. A single justice of this court treated the petition as one seeking relief from the affirmance of the appeal bond and, with that understanding, correctly denied relief on the ground that Scott had an adequate alternative remedy. See Matter of an Appeal Bond (No. 1), 428 Mass. 1013, 1013 (1998).

The case is before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a party challenging an interlocutory ruling of the trial court to "set forth the reasons why 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." However, rule

2:21 does not apply here, where the summary process case has gone to final judgment and Scott's G. L. c. 211, § 3, petition did not challenge any interlocutory ruling of the trial court. Nonetheless, on the record before us, it is clear that Scott is not entitled to extraordinary relief.

Scott argues that the single justice mistakenly understood his G. L. c. 211, § 3, petition to be seeking relief from the decision of the single justice of the Appeals Court on the appeal bond and use and occupancy payments. In fact, Scott argues, his petition sought only a stay of execution of the judgment of the Housing Court while his appeal from the judgment is pending. We accept that to be true. Nevertheless, relief under G. L. c. 211, § 3, was not necessary. Although the Housing Court docket indicates that Scott sought a stay of execution in that court, it does not appear in the record, or from our independent review of the Appeals Court docket, that he sought such a stay from the Appeals Court.<sup>1,2</sup> See Mass. R. A. P. 6 (a) (1), as appearing in 481 Mass. 1608 (2019) (motion for stay pending appeal in civil case must be made in lower court in first instance, but may then be made to appellate court or single justice). Because Scott had this alternative means to seek a stay pending appeal, relief under G. L. c. 211, § 3, was properly denied. Linardon v. Boston Hous. Auth., 487 Mass. 1006, 1007 (2021).

Judgment affirmed.

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

Alan Scott, pro se.

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<sup>1</sup> The record shows that Scott filed an "emergency motion to stay single justice order" after the single justice of the Appeals Court issued her decision. That motion appears to have sought a stay only of the single justice's order that he make use and occupancy payments, not a stay of execution of the underlying Housing Court judgment pending appeal.

<sup>2</sup> The Housing Court docket indicates that an execution has issued, but the record does not show whether the landlord has actually effected the execution and taken possession of the premises. If the landlord has not already carried out the execution, we trust that it will give Scott a reasonable time (we suggest not less than fourteen days from the date of this opinion) to request a stay pending appeal from the Appeals Court before doing so.