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SJC-13259

THANH C. TRAN vs. LIBERTY MUTUAL GROUP, INC., & others.¹

June 21, 2022.

Attorney at Law, Withdrawal. Practice, Civil, Interlocutory appeal.

Thanh C. Tran appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c 211, § 3. Tran is the plaintiff in a civil action pending in the Superior Court, where he was represented by attorneys of the law firm Messing, Rudavsky & Weliky, P.C. (firm). A judge in the Superior Court allowed the firm's motion to withdraw from the representation. Tran's motion for reconsideration of that order was denied. Tran then filed a petition for relief from a single justice of the Appeals Court pursuant to G. L. c. 231, § 118, first par. The single justice of the Appeals Court denied the petition as untimely and because he discerned no error of law or abuse of discretion. Tran's G. L. c. 211, § 3, petition followed. We affirm the denial of relief.

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." Tran cannot meet his burden under the rule. Even if, as he argues, he could not obtain adequate review of the interlocutory rulings in question on appeal from a final judgment, it is nonetheless clear that he had adequate alternative means to obtain review.

¹ Liberty Mutual Insurance Co.; Liberty Mutual Group Asset Management, Inc.; and Terri Z. Campbell.

Indeed, he has availed himself of such means by seeking review pursuant to G. L. c. 231, § 118, first par. See, e.g., Isijola v. Board of Appeal on Motor Vehicle Liability Policies & Bonds, 488 Mass. 1021, 1022 (2021). See also 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"). The fact that Tran's petition under G. L. c. 231, § 118, was unsuccessful, or that he failed to file it in a timely manner, does not render it an inadequate means of obtaining review. See Guzzi v. Secretary of Pub. Safety, 450 Mass. 1016, 1016, (2007) ("Although his petition pursuant to G. L. c. 231, § 118, was denied, G. L. c. 211, § 3, does not provide a second opportunity as a matter of right for interlocutory relief"). The single justice neither erred nor abused his discretion by denying relief under G. L. c. 211, § 3.²

Judgment affirmed.

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

Thanh C. Tran, pro se.

² It is also possible that Tran could have taken an interlocutory appeal pursuant to the doctrine of present execution. He did not, however, attempt to do so. See McMenimen v. Passatempo, 452 Mass. 178, 186 (2008) (party asserting right to interlocutory appeal may "fil[e] a notice of appeal and test[] the applicability of the doctrine in the trial court and, if necessary, in the appellate court"). It is settled that the doctrine permits an immediate appeal from an order disqualifying a party's attorney. Borman v. Borman, 378 Mass. 775, 778-785 (1979). We have not considered whether the doctrine similarly applies to the allowance of an attorney's motion to withdraw from representing a party, and we need not do so now. In any event, if the doctrine does apply, that would be another adequate alternative remedy, further supporting the denial of extraordinary relief under G. L. c. 211, § 3.