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SJC-13267

JAMES A. WILLITTS, SR. vs. THERESA BROGAN & others.<sup>1</sup>

August 1, 2022.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, James A. Willitts, filed a letter in the county court in which he appeared to be seeking relief from various trial court rulings and judgments in four different District and Superior Court cases. The single justice treated the letter as a petition pursuant to G. L. c. 211, § 3, and denied it.

Willitts appeals. As best we can discern from the record before us, Willitts performed certain plumbing work for defendants Theresa and Dan Brogan. The four trial court cases -- one of which was commenced by the Brogans and the other three of which were commenced by Willitts -- all stem from that work. In one of those cases Willitts also named the town of Holliston as a defendant; his claims against the town appear similarly related to the work that he performed for the Brogans. Each of the four cases suffers from the same, clear problem, for purposes of relief pursuant to G. L. c. 211, § 3 -- Willitts has an adequate alternative remedy. Relief pursuant to G. L. c. 211, § 3, "is properly denied where there are other routes by which the petitioning party may adequately seek relief." Sabree v. Commonwealth, 432 Mass. 1003, 1003 (2000). We address each of the cases in turn.

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<sup>1</sup> Dan Brogan and the town of Holliston.

1. James Allan Willitts, Sr. vs. Dan Brogan & another,<sup>2</sup> Milford District Court, No. 1966SC000152. Willitts commenced this small claims action in the Milford District Court in March 2019. Judgment entered in his favor, and the Brogans subsequently satisfied that judgment in November 2019. By choosing to proceed under the small claims procedure, Willitts chose to forgo certain rights that he would otherwise have in a regular civil case. See D.R. Peck Excavating, Inc. v. Machado, 481 Mass. 1033, 1033-1034 (2019). He was not entirely without remedy, if, after the judgment, he was dissatisfied for any reason. He could have asked the judge to exercise his or her discretion to report the matter to the Appellate Division. See Id. at 1034. He does not, however, have any basis for relief pursuant to G. L. c. 211, § 3.

2. Theresa Brogan vs. James Willitts, Milford District Court, No. 1966SC00757. This action was also commenced as a small claims action in the Milford District Court, by Theresa Brogan, in November 2019. Before the case was tried, Willitts sought to transfer the case out of the small claims session to the regular District Court civil docket, as he was entitled to do under the small claims procedure. See D.R. Peck Excavating, Inc., 481 Mass. at 1034.<sup>3</sup> That motion was denied. After a trial before a clerk-magistrate, judgment entered for Brogan. Willitts thereafter appealed to the jury session of the District Court, which he was, again, entitled to do. See G. L. c. 218, § 23. A jury found in favor of Brogan. At that point, as in the earlier small claims action, Willitts could have asked the judge to report the matter to the Appellate Division. Again, in the context of the small claims cases, that was Willitts's adequate alternative remedy.

3. James A. Willitts, Sr. vs. Dan Brogan & another,<sup>4</sup> Worcester District Court, No. 2161CV00176-EF. Willitts commenced the District Court case in December 2021, and at the time he filed his G. L. c. 211, § 3, petition, it does not appear, from the docket in that case, that Willitts had taken

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<sup>2</sup> Theresa Brogan.

<sup>3</sup> Willitts sought to transfer the case to the District Court or the Superior Court. There is no right to transfer a small claims action to the Superior Court. See G. L. c. 218, § 23 ("No such cause may be removed for trial in the superior court department").

<sup>4</sup> Theresa Brogan.

any action in that case other than filing his complaint. Indeed, while his appeal has been pending in this court, that case was dismissed for failure to make service within ninety days. Willitts could, appeal from that dismissal, if he believes the dismissal was improper. Relief does not lie pursuant to G. L. c. 211, § 3.

4. James A. Willitts, Sr. vs. Town of Holliston & others,<sup>5</sup> Superior Court, No. 2185CV00431 (Worcester County). Willitts commenced this action in April 2021 against the town of Holliston and the Brogans. After Willitts filed his complaint, the town and the Brogans separately moved to dismiss, in June 2021. Their motions were denied, but Willitts later filed a notice of voluntary dismissal, in July 2021, pursuant to Mass. R. Civ. P. 41 (a) (1) (i), 365 Mass. 803 (1974). Pursuant to that rule, the dismissal is without prejudice. In the circumstances, Willitts might be free to file a new complaint, although we express no view on the timing of any such new complaint or the applicable statute of limitations. In any event, it is clear that there is no basis on which Willitts might be entitled to relief pursuant to G. L. c. 211, § 3, here, where the complaint was dismissed on his own motion.

None of these four cases presents a type of exceptional circumstance that requires the exercise of this court's extraordinary power of general superintendence pursuant to G. L. c. 211, § 3. Additionally, Willitts appears to be raising several issues in his appeal to this court that were not raised in the county court. Where those issues were not raised before the single justice, we need not consider them. See Carvalho v. Commonwealth, 460 Mass. 1014, 1014 (2011), and cases cited.

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

Judgment affirmed.<sup>6</sup>

The case was submitted on briefs.  
James A. Willitts, Sr., pro se.

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<sup>5</sup> Dan Brogan and Theresa Brogan.

<sup>6</sup> In light of our decision affirming the judgment of the single justice, no action need be taken on the defendants' respective motions to dismiss the petitioner's appeal.