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SJC-13761

GALEN G. vs. HOLDEN H.¹

July 18, 2025.

Practice, Civil, Action in nature of certiorari. Harassment Prevention.

The petitioner appeals from a judgment of the county court denying, without a hearing, his petition for relief in the nature of certiorari under G. L. c. 249, § 4. We affirm.

The petitioner, a physician, was the subject of disciplinary proceedings, including a hearing before the respondent, an administrative magistrate with the Division of Administrative Law Appeals. Those proceedings culminated in the indefinite suspension of the petitioner's license by the Board of Registration in Medicine. Thereafter, in March 2024, the respondent filed a complaint alleging that the petitioner harassed him on three occasions by subjecting him to unwanted contact that was "willful and malicious" and that was intended to cause, and did cause, "fear, intimidation, abuse or damage to property." G. L. c. 258E, § 1 (definition of "harassment"). A judge in the District Court issued an ex parte harassment prevention order against the petitioner pursuant to G. L. c. 258E. Two weeks later, a contested hearing took place before a second District Court judge, who did not extend the order, and it expired later that day. The petitioner appealed to a panel of the Appeals Court. In an unpublished order, the panel dismissed the appeal as moot. The petitioner thereafter filed this petition, in which he argued that the appeal was not moot and sought vacatur of the ex parte order.

¹ The parties' names are pseudonyms.

The single justice did not commit an error of law or otherwise abuse his discretion in denying the petition. "The purpose of a civil action in the nature of certiorari is to correct errors that 'are not otherwise reviewable by motion or by appeal.'" Johnson v. Commonwealth, 463 Mass. 1006, 1007 (2012), quoting G. L. c. 249, § 4. "It would be hard to find any principle more fully established in our practice than the principle that neither mandamus nor certiorari is to be used as a substitute for ordinary appellate procedure or used at any time when there is another adequate remedy." D'Errico v. Board of Registration of Real Estate Brokers & Salespersons, 490 Mass. 1008, 1008 (2022). The petitioner "bears the burden to allege and demonstrate the absence or inadequacy of other remedies." Kim v. Rosenthal, 473 Mass. 1029, 1030 (2016). Under these well-established principles, the petitioner was not entitled to relief in the nature of certiorari, as he cannot show that he lacked an adequate remedy in the ordinary appellate process. After the panel dismissed his appeal, the petitioner could have filed an application for further appellate review pursuant to Mass. R. A. P. 27.1, as appearing in 481 Mass. 1657 (2019). The petitioner also could have moved in the Appeals Court for reconsideration or modification of the panel's decision, see Mass. R. A. P. 27, as appearing in 481 Mass. 1656 (2019). Where the petitioner had these ordinary remedies available to him, the single justice neither erred nor otherwise abused his discretion by denying relief in the nature of certiorari with respect to the panel's decision. "Certiorari simply does not provide an additional or alternative avenue of review." Picciotto v. Superior Court Dep't of the Trial Court, 436 Mass. 1001, 1001, cert. denied, 537 U.S. 820 (2002). We therefore express no view on the merits of the arguments set forth in the petition.

Judgment affirmed.

The case was submitted on briefs.
Galen G., pro se.