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SJC-12403

CARE AND PROTECTION OF A MINOR.

November 10, 2017.

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

The father of a child who is the subject of a care and protection proceeding in the Norfolk County Division of the Juvenile Court Department filed a petition pursuant to G. L. c. 211, § 3, with a single justice of this court seeking relief pursuant to the court's general superintendence power. The father is an attorney who is representing himself. The record of material he has put before us is confusing, to say the least. It appears that the child has been removed from his parents' custody and that the father contests the removal. In his G. L. c. 211, § 3, petition he sought, among other things, a jury trial in the care and protection proceeding. He also claimed that the Department of Children and Families has violated his due process rights and that "non-party participants" in the care and protection proceeding should have been sequestered during certain motion hearings in the Juvenile Court.

The single justice denied the petition without a hearing on May 5, 2017. The petitioner then filed a petition for a writ of certiorari with the United States Supreme Court on May 10, 2017. While the certiorari petition was pending, the petitioner filed a motion with the single justice, on August 7, 2017, for leave to file a late notice of appeal from the denial of the G. L. c. 211, § 3, petition. The single justice denied the motion on September 12, 2017. The petitioner then filed a notice of appeal from the denial of that motion, and his appeal was entered in this court on September 22, 2017. Shortly

thereafter, the United States Supreme Court denied his certiorari petition, on October 2, 2017.

1. The petitioner's appeal to this court involves only the denial of his motion for leave to file a late notice of appeal. The single, very limited issue that is properly before us is whether the single justice erred or abused his discretion in denying that motion. Nevertheless, the multitude of papers that the petitioner has filed in this court focus almost exclusively on the underlying merits of his G. L. c. 211, § 3, petition, and address only minimally the issue of the late notice of appeal. He has set forth no cogent argument regarding that motion; he has not shown good cause or excusable neglect for his late filing; and he has not put forth any argument at all as to why the single justice erred or abused his discretion. In any event, we find no error.

2. Even if the single justice had authorized a late appeal, the petitioner would have fared no better. It was incumbent on the petitioner "to create a record -- not merely to allege but to demonstrate, i.e., to provide copies of the lower court docket entries and any relevant pleadings, motions, orders, recordings, transcripts, or other parts of the lower court record necessary to substantiate [his] allegations -- showing both a substantial claim of violation of a substantive right and that the violation could not have been remedied in the normal course of a trial and appeal or by other available means." Gorod v. Tabachnick, 428 Mass. 1001, 1001, cert. denied, 525 U.S. 1003 (1998), and cases cited. He did not do this. As we have noted, he has filed a multitude of papers in this court, as he did before the single justice, all of which are difficult to comprehend. His filings do not articulate any clear arguments regarding a violation of a substantive right, or the absence of an adequate alternative remedy. On the basis of the materials before him, the single justice acted well within his discretion in concluding that this case does not present a situation where extraordinary relief from this court is required.

The order denying the motion for leave to file a late notice of appeal is affirmed.

So ordered.

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

Ilya Liviz, pro se.