

MASSACHUSETTS SUPREME JUDICIAL COURT

Belfar v. Lipsett

439 Mass. 1016 (2003) · Decided August 6, 2003

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the denial of William Belfar’s petition for extraordinary relief under G. L. c. 211, § 3, concerning an impoundment order in a Probate and Family Court case. The court held that Belfar failed to satisfy S.J.C. Rule 2:21 because he had not sought relief from the impoundment order in the Probate Court or pursued available review under G. L. c. 231, § 118, first paragraph, or the applicable impoundment rules. The court treated the impoundment order as interlocutory and affirmed the single justice’s judgment.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	August 6, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Belfar sought relief under G. L. c. 211, § 3, from a single justice's denial of relief concerning an impoundment order entered by the Probate and Family Court. The Supreme Judicial Court affirmed the single justice's judgment.
STANDARD OF REVIEW	Under S.J.C. Rule 2:21, the petitioner had to explain why review of the interlocutory trial court decision could not adequately be obtained on appeal from a final adverse judgment or by other available means.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion
PARTIES	William Belfar v. Julie Lipsett

TOPICS

- appellate procedure
- interlocutory appeal
- writ of certiorari
- probate procedure
- family law procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- family law
- probate

QUESTIONS PRESENTED

1. Whether Belfar satisfied S.J.C. Rule 2:21 by showing that review of the interlocutory impoundment decision could not adequately be obtained through an appeal from a final judgment or other available means.
2. Whether Belfar could invoke G. L. c. 211, § 3, without first seeking relief from the impoundment order in the Probate and Family Court and review by a single justice of the Appeals Court.
3. Whether the impoundment order automatically ended because it was not expressly incorporated into the first modification judgment.

HOLDINGS

1. Belfar failed to meet his burden under S.J.C. Rule 2:21 (2) because he did not demonstrate that adequate review could not be obtained on appeal from a final adverse judgment or through other available means.
2. A party seeking to challenge an impoundment order was required in the first instance to seek review from a single justice of the Appeals Court rather than directly invoking the Supreme Judicial Court's extraordinary superintendence power under G. L. c. 211, § 3.
3. The impoundment order did not automatically terminate merely because it was not expressly incorporated into the first modification judgment.

KEY QUOTATIONS

“Belfar, therefore, has not met his burden under rule 2:21 (2).” (439 Mass. at 1017)

FACTUAL BACKGROUND

Lipsett filed a Probate and Family Court complaint seeking modification of a New York divorce decree and sole custody of the parties' son. The probate judge impounded the case file until further order, subject to a ten-year limit. After a later modification action was filed, the Boston Globe moved to terminate the impoundment order; Belfar supported that motion but did not file his own motion or the affidavit required by Rule 10. The probate judge denied the Globe's motion, and Belfar sought extraordinary relief without pursuing the available procedural avenues.

PROCEDURAL HISTORY

Lipsett filed a Probate and Family Court action seeking modification of a New York divorce decree and sole custody of the parties' son. The probate judge entered an impoundment order. After the Boston Globe moved to terminate the order and the motion was denied, Belfar petitioned under G. L. c. 211, § 3, without first seeking relief himself in the Probate and Family Court or review by a single justice of the Appeals Court. A single justice denied the petition, and Belfar appealed to the Supreme Judicial Court.

DISPOSITION

affirmed

CASES CITED

- Costa v. Boviard, 431 Mass. 1004, 1005 (2000)
- Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 596 n. 7 (2000)
- Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 601 (2000)

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