

421 Mass. 1010
Supreme Judicial Court of Massachusetts.

COMMISSIONER OF MENTAL RETARDATION
v.
JUDGE ROTENBERG EDUCATIONAL CENTER,
INC., & others.¹
Jan. 12, 1996.

Supreme Judicial Court, Appeal from order of single justice. Practice, Civil, Interlocutory appeal.

Attorneys and Law Firms

Judith S. Yogman, Assistant Attorney General, for plaintiff.

*1011 Roderick MacLeish, Jr., Michael P. Flammia, and Peter F. Carr II, Boston, for Judge Rotenberg Educational Center, Inc.

Opinion

The Commissioner of Mental Retardation (commissioner), brought a petition pursuant to G.L. c. 211, § 3 (1994 ed.), seeking to stay injunctive and receivership orders entered as part of a contempt judgment of the Bristol Division of the Probate and Family Court Department. A single justice of this court denied the relief requested in the petition. (A motion to stay the challenged injunctive and receivership orders had been previously heard and denied by the Probate and Family Court judge who decided the case and by a single

justice of the Appeals Court, see Mass.R.Civ.P. 62[a], 365 Mass. 829 [1974]; Mass.R.A.P. 6[a], as amended, 378 Mass. 924 [1979]). The single justice entered a judgment denying the stay sought by the commissioner. The commissioner has appealed from that judgment under the procedure set forth in S.J.C. Rule 2:21, *post* 1303 (1995). The commissioner has also moved separately that the full court grant a stay of the challenged orders pending decision of the appeal from the judgment entered by the single justice. The defendant Judge Rotenberg Educational Center, Inc., has moved to dismiss the commissioner’s appeal from the judgment entered by the single justice.

The commissioner’s motion for a stay pending appeal is denied. Since the question of a stay was the subject in issue before the single justice, our denial of the stay renders the present appeal moot, and we shall order it dismissed, noting as well that the appeal has not been properly pursued under rule 2:21(1), which pertains only to the denial of relief by a single justice from a “challenged interlocutory ruling in the trial court.” The commissioner, if he chooses, may renew his request for a stay of the injunctive and receivership orders in his brief filed on the merits of the appeal.

The commissioner’s motion for stay pending appeal addressed to the full court is denied. The commissioner’s appeal from the judgment entered by the single justice is dismissed.

So ordered.

Footnotes

¹ The Bristol Division of the Probate and Family Court Department, the Superior Court Department of the Trial Court for the county of Bristol, and the Appeals Court as nominal parties.