

99 Mass.App.Ct. 1131

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace v. Curran*, 71 Mass. App. Ct. 258, 260 n.4 (2008).

Appeals Court of Massachusetts.

Bodhisattva SKANDHA

v.

COMMISSIONER OF CORRECTION.

20-P-1261

|

Entered: June 25, 2021.

By the Court (Sullivan, Neyman & Hand, JJ.¹)MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

*1 The plaintiff, Bodhisattva Skandha, appeals from the dismissal of a complaint which he sought to file as the next friend of fellow inmate David A. Proulx. We affirm.

The plaintiff is a pro se litigant who has been enjoined from filing further litigation without the prior review and approval

of the regional administrative justice. See *Skandha v. Clerk of the Superior Court for Civil Business in Suffolk County*, 472 Mass. 1017, 1019 (2015). The regional administrative justice dismissed the plaintiff's complaint challenging the denial of Proulx's petition for medical parole on the grounds that the plaintiff was not authorized to serve as next friend of his fellow prisoner.

We review the decision whether to appoint a next friend for an abuse of discretion. *Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dept. of Mental Retardation (No. 4)*, 424 Mass. 476, 478-479 (1997) ("*Rotenberg*"). Under Mass. R. Civ. P. 17 (b), as appearing in 454 Mass. 1402 (2009), "a judge has the discretion to appoint a next friend when it appears that an incompetent person is not adequately represented." *Id.* at 478.² See G. L. c. 190B, § 1-404; *Sullivan v. Judges of the Superior Court*, 271 Mass. 435, 437-438 (1930).

The judge ruled that Proulx's affidavit did not establish that he needed a next friend. This ruling was well supported by the record. Proulx's affidavit states that he has various illnesses, which are taxing, but do not rise to the level of incompetence or incapacity. Skandha, who the judge found has a "history as a vexatious litigant," has also failed to establish that he is an adequate representative capable of protecting Proulx's interests.³ As the judge noted, Proulx may seek counsel from the Committee for Public Counsel Services or proceed pro se with respect to his claims regarding the denial of medical parole. The judge did not err in dismissing the case. See *Rotenberg*, 424 Mass. at 480. Cf. *Whitmore v. Arkansas*, 495 U.S. 149, 163-166 (1990).

*2 Judgment affirmed.

All Citations

99 Mass.App.Ct. 1131, 170 N.E.3d 367 (Table), 2021 WL 2742739

Footnotes

¹ The panelists are listed in order of seniority.

² Rule 17 (b) incorporates by reference the definition of incapacitated person found in G. L. c. 190B, § 5-101 (9), which provides that an incapacitated person is "an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate

decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.”

- 3 Skandha has filed two previous appeals of the denial of next friend status, one of which involved Proulx. In each case the dismissal was affirmed. [Skandha v. Commonwealth](#), 98 Mass. App. Ct. 1113 (2020) (unpublished decision issued pursuant Mass. R. A. P. 23, as appearing in 97 Mass. App. Ct. 1017 (2020)); [Skandha v. Middlesex Superior Court](#), 97 Mass. App. Ct. 1113 (2020) (unpublished decision issued pursuant to our former rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]).

End of Document

© 2021 Thomson Reuters. No claim to original U.S.
Government Works.