

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

04-J-400

RICHARD S. SOUZA & others¹

vs.

THOMAS M. HODGSON.²

ORDER

The defendant seeks relief pursuant to G. L. c. 231, § 118, par. 2, with respect to an injunction entered by a judge of the Superior Court enjoining the defendant from continuing a program of charges imposed on inmates under the defendant's supervision. The injunction, although labeled a "permanent injunction," is, as the defendant observes, interlocutory in nature because there are unresolved matters in the case (specifically, certification of a class and assessment of damages). The second paragraph of § 118 authorizes a party aggrieved by the granting of a preliminary injunction to "appeal therefrom to the appeals court." Such an appeal is to "the appeals court;" a single justice is without authority to act on it. See Demoulas Super Markets, Inc. v. Peter's Market Basket, Inc., 5 Mass. App. Ct. 750, 752 & n.3.

In the alternative, the defendant petitions under G. L.

¹ Wayne Soares, Barry Booker, Richard Centeno, Antone Cruz, William Perry, William Statkiewitz, Jerome Wieczorek, Jr., and others similarly situated.

² Individually and as sheriff of Bristol County.

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c. 231, § 118, par. 1, for a dissolution or a stay of the injunction, presumably to maintain the pre-injunction status quo pending completion of proceedings in the Superior Court and any appeal from the final judgment. I am not persuaded that the defendant is sufficiently likely to prevail on the issue to justify such relief. See Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616-618 (1980). The defendant argues correctly that the control and supervision of county jails is exercised by the sheriff. See G. L. c. 126, § 16. However, it is a considerable leap of logic to conclude that the right to control the jail includes the right to assess fees for the ordinary maintenance of an involuntarily incarcerated population.

Petition denied.

By the Court (Cowan, J.),



Assistant Clerk

Entered: August 19, 2004