

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).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1414

TONY V. BLAIZE

vs.

THALWANTI SINGH.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, a lawyer who represented the defendant in a divorce proceeding, brought this action to recover payment for legal services rendered to the defendant. A Superior Court judge defaulted the defendant for failure to comply with discovery obligations and then held an assessment of damages hearing. On September 12, 2018, a judgment entered against the defendant in the total amount of \$103,110.73. The defendant did not appeal. Nearly nine months later, the plaintiff's request for issuance of an execution on the judgment entered on the docket. The execution that issued, however, contained a clerical error that caused the execution total to reflect the erroneous amount of \$980,499.11. The unserved execution was returned to the court, and a corrected execution of \$114,339.39 (judgment total of \$103,110.73 plus postjudgment interest of

\$11,228.66) issued on August 9, 2019. The defendant thereafter sought to challenge the issuance of the corrected execution by filing various motions, all of which were denied and none of which the defendant appealed.¹

On or about June 26, 2020, the plaintiff moved the court to produce the corrected execution. On June 30, 2020, the court determined that the corrected execution that issued on August 9, 2019, was missing or lost and therefore ordered the clerk's office to reissue the corrected execution. The defendant appeals from the June 30, 2020, order.

On appeal, however, the defendant's arguments are all addressed to challenging either the September 12, 2018, money judgment, or the August 29, 2019, order denying her motion for relief from judgment.² As the defendant failed to timely appeal from that judgment or that order, those claims are not properly before this court. The defendant makes no argument challenging

¹ One of these was a motion for relief from judgment, pursuant to Mass. R. Civ. P. 60 (b), 365 Mass. 828 (1974). In the motion, the defendant argued that she should not have been defaulted because she complied with discovery obligations and that the judge erred in assessing damages. She requested that the judgment be modified to \$65,000. The motion was denied on August 29, 2019.

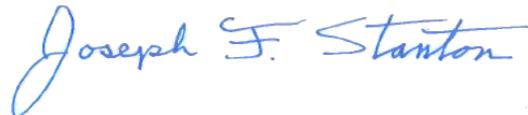
² On appeal, the defendant argues that the plaintiff misrepresented to the judge that the defendant failed to meet her discovery obligations. She also argues that the judge erred in denying her motion for relief from judgment because she had newly discovered evidence that the plaintiff was fraudulently seeking recovery for payment he had already received.

the sole issue that is properly before the court -- the propriety of the June 30, 2020, order directing reissuance of the August 9, 2019, corrected execution.

As a result, the June 30, 2020, order is affirmed.

So ordered.

By the Court (Massing, Singh
& Englander, JJ.³),



Clerk

Entered: June 17, 2022.

³ The panelists are listed in order of seniority.