

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

GLORIA FRANCOIS McGOWAN, PAUL) **S. Ct. Civ. No. 2013-0018**
HOFFMAN, and JANE HOFFMAN) Re: Super. Ct. Civ. No. 340/1988 (STT)
WALKER,)
Appellants/Plaintiffs,)
v.)
INEZ MATHIAS HODGE, CYNTHIA)
MILLER, and all other persons claiming an)
interest in the property known and)
described as Parcel No. 14-1 Estate John’s)
Folly Coral Bay Quarter, St. John, United)
States Virgin Islands,)
Appellees/Defendants.)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Harold W. L. Willocks

Considered and Filed: June 20, 2017

BEFORE: **MICHAEL C. DUNSTON**, Designated Justice; **DOUGLAS A. BRADY**, Designated Justice; and **DENISE A. HINDS ROACH**, Designated Justice.¹

APPEARANCES:

Maria T. Hodge, Esq.
Hodge & Francois
St. Thomas, U.S.V.I.
Attorney for Appellants,

Joseph B.W. Arellano, Esq.
Arellano & Associates
St. Thomas, U.S.V.I.
Attorney for Appellees.

¹ Chief Justice Rhys S. Hodge and Associate Justices Maria M. Cabret and Ive Arlington Swan are recused from this matter. The Honorable Michael C. Dunston, Douglas A. Brady, and Denise A. Hinds Roach, all judges of the Superior Court of the Virgin Islands, have been designated in their place pursuant to title 4, section 24 of the Virgin Islands Code.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a motion for full panel review of the denial of two motions to dismiss, filed by Cynthia Miller, on grounds that Gloria Francois McGowan, Paul Hoffman, and Jane Hoffman Walker (collectively “Appellants”) purportedly filed their notice of appeal 69 months late. For the reasons that follow, we re-affirm the denial of the motion to dismiss, and—because disposition of that motion is inextricably intertwined with the merits of the appeal—vacate the underlying Superior Court orders and remand the case for further proceedings.

I. BACKGROUND

The instant appeal relates to a nearly fifty-year dispute over land located on St. John, the facts of which were previously stated by this Court in its November 10, 2008 opinion. *Hodge v. McGowan (McGowan I)*, 50 V.I. 296, 299-304 (V.I. 2008). Almost three weeks before Miller and her co-defendant, Inez Mathias Hodge, filed the notice of appeal in *McGowan I* with this Court on April 12, 2007, Appellants filed a motion for attorney’s fees and costs with the Superior Court on March 23, 2007. While the *McGowan I* appeal was pending, the Superior Court signed an order, dated May 17, 2007, denying that motion.

After this Court issued its decision in *McGowan I* on November 10, 2008, Appellants filed a renewed motion for an award of costs and attorney’s fees with the Superior Court on January 7, 2009, which re-stated the original clam for attorneys fees and did not reference the May 17, 2007 order. After the death of the judge assigned to the matter, the case was re-assigned to a different Superior Court judge, who held a hearing on March 22, 2012, and permitted further filings from the parties. During this period, Appellants discovered that the May 17, 2007 order had been entered on the docket, but advised the Superior Court that they had never received a copy of it.

The Superior Court held a hearing on October 29, 2012, and issued an opinion and order on February 6, 2013. First, the Superior Court concluded that although “it is possible that an error occurred during distribution” of the May 17, 2007 order, it “does not excuse the almost two-year lapse in action,” since Appellants “should have made a good faith effort to determine if an order had been entered on the original motion.” (J.A. 316.) The Superior Court then construed the January 7, 2009 motion as a motion for reconsideration of the May 17, 2007 order, and denied it on the basis that the original determination was not clearly erroneous. (J.A. 318.)

Appellants timely filed their notice of appeal with this Court on March 7, 2013. Although the parties filed merits briefs, Miller concurrently filed two motions to dismiss the appeal for lack of jurisdiction, the first on June 11, 2013, and the second on August 16, 2013. Due to the recusal of the Chief Justice and Associate Justices of this Court, the motions were referred to the only Designated Justice who had been appointed to hear this case at the time. After the Designated Justice denied both motions, and two additional Designated Justices were appointed to the panel, Miller filed a motion on November 4, 2013 requesting that the entire panel review that decision *de novo*. See V.I.S.CT.R. 24(c).

II. DISCUSSION

In her motions to dismiss, Miller maintains that this Court should dismiss this action because (1) Appellants’ appeal is untimely since it seeks to challenge the May 17, 2007 order; and (2) the February 6, 2013 opinion and order is not a final judgment because Miller’s motion for attorneys fees, filed on February 21, 2013, remains pending in the Superior Court.² With respect

² Miller also notes that motions filed by various non-parties, who never sought, nor received, permission to intervene, are also pending in the Superior Court. However, collateral motions filed by non-parties—to the extent they are even properly before the Superior Court, *see In re Simon*, 490 Fed.Appx. 488, 488 (3d Cir. 2013)—do not affect the finality of a judgment. *See Moorhead*

to the first claim, Appellants have not appealed from the May 17, 2007 order; rather, they state in their notice of appeal that they “hereby appeal . . . from the order of the Superior Court entered February 6, 2013.” While Appellants maintain that this order should be reversed because it gave effect to the May 17, 2007 order, it is well-established that February 6, 2013 represents the time from which the 30-day period for filing a notice of appeal began to run. *Accord, Ernest v. Morris*, 64 V.I. 627, 636 (V.I. 2016) (notice of appeal was timely filed on August 23, 2013, when appellant appealed from a July 24, 2013 order denying a motion to set aside judgments entered on August 14, 1997, and January 24, 2008 as void). Consequently, Appellants timely filed their notice of appeal of the February 6, 2013 order on March 7, 2013. *See* V.I.S.Ct.R. 5(a)(1) (a party may file a notice of appeal in a civil case within 30 days of the order appealed from).

Miller’s contention that the February 6, 2013 order is not a final judgment because her own attorneys’ fees motion remains pending in the Superior Court raises a more critical question. In one of its earliest decisions, this Court has held that “[t]he ripeness doctrine applies to motion[s]” and that “[a] ruling on a motion for attorney’s fees must be vacated on ripeness grounds when the presence of ongoing litigation”—such as an appeal—“precludes an informed determination of whether the moving party is in fact entitled to attorney’s fees under the relevant law.” *V.I. Gov’t Hosps. & Health Facilities Corp. v. Gov’t of the V.I.*, 50 V.I. 276, 280 (V.I. 2008) (emphasis added). This Court has repeatedly re-affirmed this principle in more recent decisions as well. *See, e.g., Mahabir v. Heirs of George*, 63 V.I. 651, 665 (V.I. 2015); *Hodge v. Bluebeard’s Castle, Inc.*, 62 V.I. 671, 700 (V.I. 2015); *Simon v. Joseph*, 59 V.I. 611, 629 (V.I. 2013). Because the Superior Court cannot rule on Miller’s attorney’s fees motion while this appeal is pending, the pendency of

v. Mapp, 62 V.I. 595, 598 (V.I. 2015) (“a final appealable judgment” is one that “resolve[s] all claims between the parties”).

an attorney's fees motion does not defeat the finality of an otherwise final judgment. *See Khalil v. Guardian Ins. Co.*, 59 V.I. 892, 897 (V.I. 2013); *Simpson v. Golden*, 56 V.I. 272, 274-75 (V.I. 2012); *accord*, V.I.S.Ct.R. 5(a)(4).

But just as our precedents provide that the Superior Court cannot rule on Miller's February 21, 2013 motion for attorney's fees during the pendency of this appeal, the Superior Court also could not have ruled on Appellants' March 23, 2007 motion for attorney's fees while *McGowan I* remained pending with this Court. Rather, the Superior Court should have "refus[ed] to exercise jurisdiction" over the motion. *Hodge*, 62 V.I. at 700 (quoting *V.I. Gov't Hosps. & Health Facilities Corp.*, 50 V.I. at 280-81). Thus, the Superior Court's May 17, 2007 order constitutes a nullity—regardless of whether or not it was duly served on Appellants—in that it was issued despite an effective notice of appeal having been filed with this Court. *See In re Rogers*, 56 V.I. 325, 342 (V.I. 2012) ("[A]n effective notice of appeal of a final order typically divests the trial court of jurisdiction."). Yet even though the May 17, 2007 order lacked legal effect, the Superior Court, in its February 6, 2013 opinion, granted it deference, and expressly stated that it would only issue a different attorney's fees determination if necessary to correct a manifest error. (J.A. 317.) In doing so, the Superior Court applied the incorrect legal standard, since the May 17, 2007 order, as a nullity, was without legal effect. *Vanterpool v. Gov't of the V.I.*, 63 V.I. 563, 572 (V.I. 2015). Consequently, this appeal presents no substantial question, in that the disposition is wholly controlled by prior precedent, *see Mustafa v. Camacho*, 59 V.I. 566, 570 (V.I. 2013) (citing V.I. S.Ct. I.O.P. 9.4), and we thus summarily vacate the February 6, 2013 opinion and order and direct the Superior Court, on remand, to adjudicate Appellants' March 23, 2007 motion without reference to or deference towards the May 17, 2007 order.

III. CONCLUSION

For the foregoing reasons, we deny both of Miller's motions to dismiss because Appellants filed a timely notice of appeal from a final judgment. However, since the Superior Court applied a heightened manifest error standard to Appellants' March 23, 2007 motion, even though the May 17, 2007 order denying their earlier motion for attorney's fees constituted a nullity, we vacate the Superior Court's February 6, 2013 opinion and order and direct it, on remand, to instead consider Appellants' motion under the correct legal standard.

Dated this 20th day of June, 2017.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court