

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

LINDA RAYMOND,)	S. Ct. Civ. No. 2018-0020
Appellant/Plaintiff,)	Re: Super. Ct. Civ. No. 185/2015 (STT)
)	
v.)	
)	
DR. KIDANE ASSEFA D/B/A THE EYE)	
CLINIC,)	
Appellee/Defendant.)	
)	
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IN THE MATTER OF THE PERSONAL)	S. Ct. Civ. No. 2018-0053
REPRESENTATIVE OF THE ESTATE)	Re: Super. Ct. MS. No. 053/2018 (STX)
OF LINDA RAYMOND.)	
)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judges: Hon. Michael C. Dunston (S. Ct. Civ. No. 2018-0020) &
Hon. Jomo Meade (S. Ct. Civ. No. 2018-0053)

Considered and Filed: December 3, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
 IVE ARLINGTON SWAN, Associate Justice.

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OPINION OF THE COURT

PER CURIAM.

These matters come before the Court pursuant to a motion filed by counsel to Appellant Linda Raymond, who died during the pendency of *Raymond v. Assefa*, S. Ct. Civ. No. 2018-0020,

advising this Court that the Superior Court refused to consider the petition for appointment of a personal representative on the merits due to a standing order of the Presiding Judge directing that such petitions not be docketed outside of probate matters, as well as a direct appeal of that order. Because the Presiding Judge lacks the authority to unilaterally establish court procedures that conflict with the Virgin Islands Rules of Civil Procedure or the Virgin Islands Rules of Appellate Procedure, or that effectively require other judges to comply with the Presiding Judge's interpretation of Virgin Islands statutory law, we direct the Superior Court to issue a merits ruling on the petition for appointment on an expedited basis.

I. BACKGROUND

On February 28, 2018, Raymond filed a notice of appeal with this Court from a January 29, 2018 order of the Superior Court granting summary judgment in favor of the appellee, Dr. Kidane Assefa. However, Raymond died three days before the deadline for her to file her brief and the Joint Appendix. To preserve her former client's rights, her counsel filed a motion for extension of time to file a brief, citing the need to identify an heir who would be able to file an appropriate motion to be substituted as a personal representative. In a May 1, 2018 order, this Court construed the motion as a suggestion of death pursuant to Rule 34(a) of the Virgin Islands Rules of Appellate Procedure and held the matter in abeyance pending a motion to substitute by the personal representative.

On June 29, 2018, Raymond's daughter—Shemeka Raymond-Benjamin—filed with the Superior Court an emergency petition to have her appointed as the personal representative of Raymond's estate in accordance with title 5, sections 76 to 78 of the Virgin Islands Code. In her petition, Raymond-Benjamin specifically cited the need to substitute a personal representative to continue this appeal.

The Clerk of the Superior Court docketed Raymond-Benjamin's petition as a miscellaneous case and assigned it to the Honorable Jomo Meade. On July 13, 2018, Judge Meade issued an order providing, in pertinent part, as follows:

THIS MATTER comes before the Court on the Petition of Shemeka Raymond-Benjamin to be appointed the Personal Representative of the Estate of Linda Raymond, pursuant to Title 5 V.I.C. § 76-78. Petitioner alleges that her appointment is necessary to continue litigation of a matter in the Virgin Islands Supreme Court.

The Clerk of the Court docketed the petition as Misc. No. 53/2018. By Order of the Presiding Judge, Honorable Michael C. Dunston dated June 20, 2018 *nunc pro tunc* July 27, 2015, the Clerk's Office should not "accept any petition for appointment of a personal representative unless such request is submitted in conjunction with a petition for probate or a petition for administration."

In the Matter of the Personal Representative of the Estate of Linda Raymond, Super. Ct. Misc. No. 52/2018 (STX), slip op. at 1 (V.I. Super. Ct. July 13, 2018). Judge Meade then dismissed the petition and advised that it may be re-filed if Raymond-Benjamin complies with the Presiding Judge's June 20, 2018 standing order.

On August 16, 2018, Raymond's counsel filed a motion with this Court in S. Ct. Civ. No. 2018-0020 advising it of the Superior Court proceedings and arguing that the Presiding Judge's June 20, 2018 standing order conflicts with the plain language of Rule 17 of the Virgin Islands Rules of Civil Procedure. The motion requests that this Court exercise its powers under title 4, section 32(b) of the Virgin Islands Code¹ to either direct the Superior Court to rule on the petition to appoint Raymond-Benjamin as personal representative, or for this Court to appoint Raymond-

¹ "The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands, including those orders necessary for the supervision of the judicial branch of the Virgin Islands. The Supreme Court has supervisory jurisdiction over the Superior Court of the Virgin Islands and all other courts of the judicial branch of the Virgin Islands. The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction." 4 V.I.C. § 32(b).

Benjamin in the first instance. Although nearly two months have passed, Assefa has not filed a response to the motion. *See* V.I. R. APP. P. 21(a) (“Any party may file a response in opposition to a motion within 14 days after service of the motion.”).

In addition, on August 14, 2018, Raymond’s counsel filed a notice of appeal of the Superior Court’s July 13, 2018 order denying the petition for appointment of a personal representative. That appeal was docketed as S. Ct. Civ. No. 2018-0053 and is now fully briefed. Consequently, the motion in S. Ct. Civ. No. 2018-0020 and the appeal in S. Ct. Civ. No. 2018-0053 are both ripe for decision.

II. DISCUSSION

Rule 34(a) of the Virgin Islands Rules of Appellate Procedure provides, in pertinent part, that if a party dies after a notice of appeal is filed, “the personal representative of the deceased party may be substituted as a party on motion filed by the representative,” but that “[i]f the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct.” In S. Ct. Civ. No. 2018-0020, this Court directed that the appeal be held in abeyance pending the filing of a motion to substitute by the personal representative.

As Raymond’s counsel correctly recognized, the wording of our order in S. Ct. Civ. No. 2018-0020 contemplated that a personal representative would be appointed by the Superior Court—the court which possesses original jurisdiction over such matters²—and that the personal

² “Subject to the original jurisdiction conferred on the District Court by section 22 of the Revised Organic Act of 1954, as amended, effective October 1, 1991, the Superior Court shall have original jurisdiction in all civil actions regardless of the amount in controversy; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and

representative would then file a motion to substitute under Appellate Rule 34(a). Nevertheless, the Superior Court declined to rule on the petition, citing as the sole authority for doing so the June 20, 2018 standing order issued by the Presiding Judge. The standing order provides, in pertinent part, as follows:

IT IS ORDERED that effective July 27, 2015 the Clerk's Office **SHALL NO LONGER ACCEPT** requests for appointment of a personal representative by petition. The practice of filing and accepting such petitions as miscellaneous probate matters designated by case type “MP” is hereby **DISCONTINUED**.

The Virgin Islands Code allows a personal representative to substitute himself in a civil action in place of a plaintiff or a defendant who died while the lawsuit was pending. *See* 5 V.I.C. § 78. Similarly, a personal representative can file a lawsuit, or be sued, on behalf of someone who died before the lawsuit was filed. *See id* § 37(a)-(b); *accord* 15 V.I.C. § 601. But in each instance an estate should be opened because any monies recovered (whether through settlement or judgment) form part of the decedent’s estate. *See, e.g.*, 5 V.I.C. § §§ 76(e)(6), 77. Similarly, any monies owed by a decedent would have to be paid out of that person’s estate. *See id.* § 37(b).

Accordingly, the Clerk’s Office is **ORDERED** not to accept any petition for appointment of a personal representative unless such request is submitted in conjunction with a petition for probate or a petition for administration.

In re Petitions for Appointment of Personal Representatives, Super. Ct. Misc. No. 41/2018 (STT), slip op. at 1 (V.I. Super. Ct. June 20, 2018).³

In her August 16, 2018 motion in S. Ct. Civ. No. 2018-0020, as well as in her appellate brief in S. Ct. Civ. No. 2018-0053, Raymond’s counsel maintains that the Presiding Judge’s standing order contradicts the text of Rule 17 of the Virgin Islands Rules of Civil Procedure.⁴ Rule

changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.” 4 V.I.C. § 76(a).

³ It is not clear why the Presiding Judge’s standing order establishes a July 27, 2015 effective date even though the order was not promulgated until June 20, 2018.

⁴ The Virgin Islands Rules of Civil Procedure went into effect on March 31, 2017, more than a year prior to the date of the Presiding Judge’s June 20, 2018 order.

17 provides, in pertinent part, as follows:

In wrongful death suits filed under 5 V.I.C. §76 and in survival actions filed under 5 V.I.C. § 77, the action may be prosecuted in the name of a plaintiff identified in the complaint as acting as a personal representative. The named plaintiff shall serve as personal representative throughout the proceeding unless replaced by order of the court.

V.I. R. CIV. P. 17(e).⁵ Importantly, the accompanying Advisory Committee Note emphasizes that the purpose of Rule 17(e) is to clarify that a probate estate need not be opened as a prerequisite to appointment of a personal representative under sections 76 or 77:

Subpart (e) is a provision dealing specifically with wrongful death and survival actions under 5 V.I.C. §76 and § 77. To avoid any unnecessary requirement to open an estate, and to permit swift commencement of proceedings where required for statute of limitations or other purposes, this subpart of the rule provides that an action may be prosecuted in the name of a plaintiff who is identified in the complaint as acting as a personal representative, although court appointment to that position has not at that time been made. The named plaintiff will serve as personal representative throughout the proceeding unless replaced by order of the court.

V.I. R. CIV. P. 17 ADVISORY COMMITTEE NOTE (emphasis added).

As a threshold matter, we note that the Virgin Islands Rules of Civil Procedure were adopted by this Court pursuant to its authority under title 4, section 32(f)(2) of the Virgin Islands Code to adopt rules of practice and procedure for all the courts of the Virgin Islands, including the rules of civil procedure.⁶ While the Superior Court may nevertheless “adopt the rules of court for

⁵ It is not necessarily clear that 5 V.I.C. § 77—and by extension, Rule 17(e)—applies to the instant matter, in that the Superior Court resolved Raymond’s complaint while she was alive by entering summary judgment against her. However, as Raymond’s counsel implies in her brief, section 77 may be implicated as a result of this appeal in the event this Court were to reverse the grant of summary judgment and reinstate her causes of action. Moreover, the Superior Court apparently believed that 5 V.I.C. § 77 was implicated in this case, in that it rejected the petition for appointment of personal representative by relying exclusively on the June 20, 2018 standing order, which based its reasoning on the Presiding Judge’s interpretation of section 77 and related statutes.

⁶ “The Supreme Court shall adopt rules governing civil and criminal procedure, evidence, judicial discipline, disability, ethics, admission to and governance of the bar of the Virgin Islands, the

the Superior Court of the Virgin Islands,” such rules are “subject to the approval of the Supreme Court.” 4 V.I.C. § 32(f)(1).

It is not clear whether the June 20, 2018 order represents an attempt by the Superior Court to propose a local rule as provided for in section 32(f)(1), or the Presiding Judge unilaterally exercising his authority as administrative head of the Superior Court. If the intent of the June 20, 2018 order is to propose a local rule, it was never approved by this Court—in fact, it was never submitted to this Court for review—and so cannot serve as a binding court rule, regardless of whether it conflicts with Rule 17 of the Virgin Islands Rules of Civil Procedure or any other rule promulgated by this Court.

To the extent the order is not a rule proposal but instead represents a desire by the Presiding Judge to exercise his administrative authority, it is well-established that the statutory power of the Presiding Judge to oversee the work of other Superior Court judges “only permit *administrative*, not *judicial*, action.” *In re Fleming*, 56 V.I. 460, 468 (V.I. 2012) (emphasis in original). Consequently, the Presiding Judge has never had the authority to issue orders or take other action that bind other judges of the Superior Court on legal questions. *Gov’t of the V.I. v. Thomas*, 341 F. Supp. 2d 541, 534 (D.V.I. App. Div. 2004) (holding that the powers of the Presiding Judge are limited solely “to resolv[ing] administrative problems, not the power to review rulings of the trial court on legal questions”). Significantly, the June 20, 2018 order clearly governs a legal question, in that less than a year prior to its issuance, a Superior Court judge held that the Virgin Islands Rules of Civil Procedure “unambiguously eliminated the requirement to open an estate as a

administration of the judiciary and the practice and procedure in the courts of the judicial branch of the Virgin Islands and other matters of judicial administration.” 4 V.I.C. § 32(f)(2).

prerequisite for bringing or maintaining a wrongful death action or a survival claim.” *Augustin v. Hess Oil V.I. Corp.*, 67 V.I. 488, 519 (V.I. Super. Ct. 2017). When the judges of the Superior Court disagree on a legal question, the appropriate course of action is to await resolution of the question by this Court on appeal, or, if the question is one of procedure rather than substantive law, to reach consensus through the rule-making process. To permit the Presiding Judge to resolve the conflict by issuing an order that would bind the other judges would impermissibly transform the role of the Presiding Judge from a “first among equals” to the “boss” of his fellow judges. *See* Jessica A. Roth, *The Culture of Misdemeanor Courts*, 46 Hofstra L. Rev. 215, 232 (2017) (citing Brian J. Ostrom et al., *The High Performance Court Framework*, in *FUTURE TRENDS IN STATE COURTS 2010*, at 141 (Carol R. Flango et al. eds., 2011)).

We recognize, however, that the Presiding Judge serves as “the administrative head of the Superior Court,” 4 V.I.C. § 72b, and in that capacity “shall retain the administrative power . . . to appoint and oversee the Clerk of the Superior Court.” 4 V.I.C. § 31(d)(5). Since the June 20, 2018 order directs the Office of the Clerk of the Superior Court to not accept petitions for appointment of personal representatives unless filed as part of a probate action, it is likely that it was issued pursuant to that administrative authority.

However, the power of the Presiding Judge to oversee the Clerk of the Superior Court is made contingent on those directives being “not inconsistent with the rules of practice and procedure promulgated by the Supreme Court.” 4 V.I.C. § 31(d)(5). Civil Rule 17(e) expressly states that the purpose of the enactment is “[t]o avoid any unnecessary requirement to open an estate.” *Augustin*, 67 V.I. at 519; *accord*, *Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017) (relying on Reporter’s Note to determine the meaning of a provision in the Virgin Islands Rules of Civil Procedure). And by directing the Clerk of the Superior Court to not even accept such

petitions unless accompanied with a petition for probate or administration, the June 20, 2018 order also conflicts with Rule 5 of the Virgin Islands Rules of Civil Procedure, which provides that “[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or local practice.” V.I. R. Civ. P. 5(d)(4).

For these reasons, we agree with Raymond’s counsel that it has become necessary for us to exercise our inherent power “to issues all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands” and to exercise “supervisory jurisdiction over the Superior Court of the Virgin Islands and all other courts of the judicial branch of the Virgin Islands.” 4 V.I.C. § 32(b). Although this Court has appellate jurisdiction over this appeal from a final judgment of the Superior Court, and has exercised its authority under Rule 34(a) of the Virgin Islands Rules of Appellate Procedure to establish a procedure for this appeal to proceed despite Raymond’s death, the refusal of the Superior Court to even consider the petition for appointment of a personal representative on the merits has frustrated our ability to adjudicate this appeal in a timely manner. Since the June 20, 2018 standing order issued by the Presiding Judge is the only reason given for the Superior Court’s failure in this regard, we declare that order to be invalid, and remand this matter to the Superior Court for the limited purpose of issuing a ruling on the merits of the petition for appointment of a personal representative no later than 90 days from today’s date.⁷

III. CONCLUSION

The June 20, 2018 standing order issued by the Presiding Judge is not a valid exercise of

⁷ Because we only direct the Superior Court to issue a ruling on the merits of the petition, rather than directing a particular result, we express no opinion as to whether the Superior Court should grant or deny the petition for Raymond-Benjamin to serve as the personal representative of Raymond’s estate.

the Superior Court's rule-making authority, for approval for the practice was never obtained—or even sought—from this Court. The order also is not a valid exercise of the Presiding Judge's power to oversee the work of the other Superior Court judges, since it does not address an administrative issue, but seeks to bind other judges on a legal question. And while the Presiding Judge may oversee the Clerk of the Superior Court, the exercise of that oversight power must be consistent with the rules of practice and procedure promulgated by this Court, including the Virgin Islands Rules of Civil Procedure. Accordingly, we declare the June 20, 2018 standing order to be invalid, vacate the July 13, 2018 order denying appointment of a personal representative, and remand this matter to the Superior Court for the limited purpose of ruling on the merits of the petition for appointment of a personal representative within 90 days. The appeal in S. Ct. Civ. No. 2018-0020 shall be held in abeyance pending the Superior Court's determination of the petition.

Dated this 3rd day of December, 2018.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court