

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DWIGHT SMITH,) **S. Ct. Civ. No. 2019-0089**
Appellant/Defendant,) Re: Sup. Ct. Civ. No. 621/2009 (STT)
)
v.)
)
KATHY MCLAUGHLIN)
Appellee/Plaintiff.)
)
)
)
_____)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas-St. John
Superior Court Judge: Hon. Renée Gumbs-Carty

Considered: November 9, 2021
Filed: February 8, 2023

Cite as 2023 VI 2

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

APPEARANCES:

Namosha Boykin, Esq.
The Boykin Law Firm
St. Thomas, U.S.V.I
Attorney for Appellant

Robert A. Eberhart, Esq.
Law Offices of Robert A. Eberhart
St. Thomas, U.S.V.I
Attorneys for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Dwight Smith appeals the Superior Court’s judgment, which ordered Smith to pay Appellee Kathy McLaughlin’s attorney’s fees and costs. Smith also appeals the Superior

Court's order granting in part Smith's claim for recovery of attorney's fees and costs in preparing for the original trial date on May 11, 2017. For the reasons that follow, we conclude that this Court does not have jurisdiction to review the Superior Court's unquantified award of attorney's fees and costs to McLaughlin, and accordingly, we dismiss that appeal. However, we also conclude that we do have jurisdiction to review the Superior Court's order partially granting Smith's claims for attorney's fees arising from the May 11, 2017 trial date, and we affirm that order.

I. BACKGROUND

¶ 2 On May 23, 2009, McLaughlin was involved in a vehicular accident with a vehicle driven by a tourist on St. John. McLaughlin and Smith, who operates a towing and automobile repair business, entered into an agreement on June 22, 2009 to repair McLaughlin's Toyota 4Runner SUV within a period of three weeks for \$8,795 (J.A. 26, 222, 230; 276, 281.). Smith purchased parts needed for the repair of McLaughlin's vehicle and began the repairs on June 29, 2009. (J.A. 279.)

¶ 3 After three weeks passed, Smith had not completed the repairs as agreed. (J.A. 235-36.) McLaughlin continued contacting Smith throughout August and September. (J.A. 172-75; 236-38.) But the repairs never seemed to be completed and Smith kept promising to have the vehicle ready within new specified dates. *Id.* Smith failed to complete the repairs within each new promised time period.

¶ 4 On September 16, 2009, McLaughlin hired an attorney, who contacted Smith and inquired when the repairs to McLaughlin's car would be completed. Smith promised to have the vehicle ready by September 22, 2009. (J.A. 241-42.) On September 21, 2009, the day before the repairs were to be completed, Smith provided an additional estimate of \$650 to repair the frame of the

vehicle, which raised the price to \$9,445. On September 29, 2009, McLaughlin decided to remove her vehicle from Smith's possession. (J.A. 243-44.) However, she was unable to do so, and Smith told her the vehicle would be ready by October 3rd. (J.A. 245-46.) Smith also agreed to pay McLaughlin's rental car expenses until he fixed and returned her 4Runner. (J.A. 245.) McLaughlin initially accepted the new offer, but after going home and thinking it over, she returned the next day and removed her vehicle from Smith's property. (J.A. 244-45). McLaughlin took the vehicle to another mechanic, where she had to order additional parts to complete the repairs and paid \$5,595 to repair the 4Runner vehicle. (J.A. 247; 252.)

¶ 5 Smith filed a complaint in the Small Claims Division of the Superior Court on November 4, 2009, requesting damages in the amount of \$9,445. McLaughlin filed an answer and counterclaim on December 10, 2009 requesting that the case be transferred to the Civil Division of the Superior Court as her claimed damages exceeded \$10,000. (J.A. 20.)¹ The case was transferred to the Civil Division and set for trial on May 11, 2017. (J.A. 336.) However, McLaughlin failed to appear, and trial was continued to May 19, 2017. (J.A. 346.) As a result of the continuance, the Superior Court ordered McLaughlin to pay Smith's attorney's fees for his appearance for the continued trial date. Pursuant to the court's order, Smith filed a motion for costs and attorney's fees on June 12, 2017 detailing the services and time spent on the matter. The Superior Court granted the motion in part on October 23, 2019.

¶ 6 The parties' claims went to trial on May 19, 2017. The Superior Court entered its memorandum decision, order and judgment on October 23, 2019 ("Memorandum Decision and

¹ Between 2009 and 2017, the parties went to mediation unsuccessfully, several trial dates were scheduled and cancelled, and the case was transferred to different Superior Court judges on two occasions.

Order”). (J.A. 23.) The court determined that the parties created multiple contracts for the repairs and that Smith breached them each time he failed to complete the repairs as agreed. (J.A. 29.) The court found that McLaughlin was “entitled to a reimbursement of \$8,173.85, which reflected the \$6,922.55 she expended in costs for a suitable car rental from June through November 2009 and the additional \$1,251.20 she expended in ordering parts from Toyota to complete her vehicle repairs.” However, the court also found that McLaughlin had a duty to pay and reimburse Smith for the parts he ordered to fix her vehicle and to compensate him for his labor. Therefore, because the court concluded that McLaughlin could not be unjustly enriched, it concluded that she owed Smith \$9,445. (J.A. 29.) The court then offset the \$6,922.55 awarded to McLaughlin and entered judgment in favor of Smith in the amount of \$1,271.15. (J.A. 31-32.) The court also ordered Smith to pay McLaughlin’s attorney’s fees and costs. (J.A. 32.) Pursuant to the court’s order, McLaughlin filed her motion for attorney’s fees and costs on November 22, 2019, detailing the work of two attorneys and the time spent on the matter. (J.A. 41.) The Superior Court has not ruled on this motion. Smith filed his notice of appeal on November 20, 2019. (J.A. 21.)

II. DISCUSSION

A. JURISDICTION

¶ 7 “The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court.” 4 V.I.C. § 32(a); see also 48 U.S.C. § 1613a(d). A final judgment is one that “ends the litigation on the merits, leaving nothing else for the court to do except execute the judgment.” *Toussaint v. Stewart*, 67 V.I. 931, 939 (V.I. 2017) (citations omitted). The Superior Court’s October 23, 2019 Memorandum Decision and Order and judgment resolved the litigation on the merits and is thus a final judgment under section 32(a).

¶ 8 Smith presents no issue to this Court regarding the underlying merits of the case. Therefore, all substantive claims that Smith could have raised based upon the Memorandum Decision and Order are waived. *See Bernhardt v. Bernhardt*, 51 V.I. 341, 346 (V.I. 2009) (explaining that issues not raised on appeal are waived); V.I. R. APP. P. 22(m).²

1. *Superior Court's October 23, 2019 Award of Costs and Attorney's Fees*

¶ 9 Smith only appeals the Superior Court's award of costs and attorney's fees to McLaughlin, granted in the October 23, 2019 Memorandum Decision and Order. (Appellant's Br. at 9; J.A. 34.) Generally, "a trial court's grant or denial of attorney's fees is a final judgment, provided that the lower court has quantified the award if it has awarded fees." *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008). The quantification requirement "avoid[s] [a] piecemeal appellate review of trial court decisions which do not terminate the litigation." *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010) (citing *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315 (V.I. 2007)).

¶ 10 Since the award of costs to McLaughlin has not been quantified, we cannot exercise jurisdiction over it.³ Any other conclusion would frustrate the purpose of the final judgment rule

² Notably, the pending determination of McLaughlin's attorneys' fees and costs does not give Smith a second opportunity to raise the waived substantive issues. As this Court explained in *Simpson v. Golden*, a motion for attorney's fees does not defeat the finality of an otherwise final judgment. 56 V.I. 272, 274-75 (V.I. 2012); *see also* V.I. R. APP. P 5(a)(4) (listing motions that extend the time for filing a notice of appeal).

³ Other courts addressing whether an appeal from an order within the trial court's judgment that orders a party to pay attorney's fees and costs but does not set the amount have determined that that an appellate court does not have jurisdiction to review such order. *See Guy v. Whitsitt*, 469 P.3d 546 (Colo. Ct. App. 2020) (finding that Court of Appeals did not have jurisdiction over award of attorney's fees because trial court had not yet issued final order determining amount of fees.); *Khawam v. Wolfe*, 84 A.3d 558, 574-75 (D.C. 2014) ("An order awarding attorney's fees but not determining the amount of the fees is not final."); *Threadgill v. Nishimura*, 222 So.3d 633, 635

and allow a piecemeal appeal. That is, regardless of whether we determine that the award of attorney's fees and costs was proper or not, Smith could then file another appeal if he does not agree with the amount awarded to McLaughlin on remand. Such action by this Court would go against the principle of avoiding piecemeal dispositions.

¶ 11 Accordingly, we will dismiss as unripe, the appeal of the Superior Court's order awarding unquantified attorneys' fees and costs to McLaughlin.

2. *Order Partially Granting Smith's Attorney's Fees and Costs*

¶ 12 Smith also appeals the Superior Court's order granting in part his motion for recovery of costs and attorney's fees entered on October 23, 2019. (J.A. 33). The court ordered McLaughlin to pay Smith's attorney's fees and costs incurred as a sanction for McLaughlin's failure to appear for the trial scheduled on May 11, 2017. McLaughlin's attorney agreed that Smith was entitled to "receive some sort of award for their attorney's fees." (J.A. 346.) On May 15, 2017, the Superior Court issued an oral order stating that McLaughlin was to pay Smith's attorney's fees and costs associated with the aborted May 11, 2017 bench trial. (J.A. 3.) In response, Smith submitted a motion for costs and attorney's fees with an affidavit detailing the amount he was requesting that McLaughlin pay. Unfortunately, neither the order nor the motion states whether the Superior

Fla. Dist. Ct. App. 2017); *Cupit v. Dry Basement, Inc.*, 592 S.W.3d 417, 422 (Mo. Ct. App. 2020) ("An unresolved claim for attorney's fees can arrest the finality of a judgment."); *Medlin v. N. C. Specialty Hosp.*, 756 S.E.2d 812, 821 (N.C. Ct. App. 2014) ("An appeal from an award of attorney's fees may not be brought until the trial court has finally determined the amount be awarded."); *Ferrous Fin. Servs. v. Wagon*, 689 P.2d 974, 981 (Or. Ct. App. 1984) ("Although there is a final judgment as to the substantive claims of the parties, there is no judgment awarding costs and disbursements, and we lack jurisdiction to consider the assignment.") *Grittins v. Smithfield City*, 185 P.3d 1133, 1133 (Utah Ct. App. 2008) ("Where attorney fees are awarded to party, there is no final judgment for the purposes of appeal until the amount of the fees has been ascertained and granted.").

Court is holding McLaughlin in civil contempt or if it is imposing the attorney's fee award as a sanction under another rule.

¶ 13 We do not, however, limit ourselves to the caption used in a motion or order but rely on its substance. *See Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) (“[T]he substance of a motion, and not its caption, shall determine under which rule that motion is construed.”). “A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.” *In re Meade*, 63 V.I. 681, 685 (V.I. 2015) (quoting *In re McIntosh*, S.Ct. Civ. Nos. 2012-0013,0025, 2013 V.I. Supreme LEXIS 11, at *11, 2013 WL 991250 (V.I. Mar. 14, 2013) (unpublished)).

¶ 14 Here, the Superior Court issued an order on February 22, 2017 that the trial would be held on May 11, 2017. (J.A. 7.) McLaughlin filed a motion for continuance on May 5, 2011, but the court did not rule on that motion. Instead, on May 11, 2017, McLaughlin informed her attorney that she had food poisoning and could not attend trial. Therefore, McLaughlin herself disobeyed a clear and unambiguous order from the court that the hearing would be held on May 11, 2017. Although her counsel was ready to proceed, McLaughlin was the only witness in her case and her attorney could not proceed without her presence. Finally, McLaughlin's alleged food poisoning could be treated as a mitigating factor in considering the third element; however, the trial court did not consider it and McLaughlin's attorney conceded that a sanction imposing recovery of some level of costs and attorney's fees was appropriate. There is, therefore, no need to address the third element of the civil contempt standard.

¶ 15 When a court’s sanction order seeks to compensate a party, it is holding the other party in civil contempt. *In re Rogers*, 56 V.I. 325, 335 (V.I. 2012). One way it can compensate a party is by awarding reasonable attorney’s fees incurred. *Dow Chem. Co. v. Chem Cleaning, Inc.*, 434 F.2d 1212, 1215 (5th Cir. 1970) (collecting cases) (“A court has discretion to award reasonable attorney’s fees and other expenses necessary to make an innocent party whole.”) “The Superior Court has both statutory and inherent power to compel obedience to its orders by way of contempt.” *In re Rogers*, 56 V.I. at 334 (citing 4 V.I.C. §243(4)). Therefore, the Superior Court’s order bears all of the hallmarks of the court sanctioning McLaughlin for civil contempt.

¶ 16 A civil contempt order against a party to the proceeding is immediately appealable when the order is made in connection with a judgment or order that is itself appealable. *See Crucians In Focus, Inc. v. VI 4D*, 57 V.I. 529, 534 (V.I. 2012); *see also In re Najawicz*, 52 V.I. 311, 326 (V.I. 2009 (“Although an adjudication of civil contempt by a party is not generally deemed appealable . . . [courts] have held otherwise when it [was] issued in connection with another order that is appealable, such as an underlying preliminary injunction.”). Since McLaughlin is a party to the case, this court will only have jurisdiction over the contempt order if there is an appealable order. As established above, the Memorandum Decision and Order, which resolved all issues between the parties, is a final and appealable judgment. Accordingly, we have jurisdiction over the civil contempt order.

¶ 17 We review a civil contempt order for abuse of discretion. “According to this standard, we will uphold factual findings in the absence of clear error, but will review legal questions *de novo*.” *In re Rogers*, 56 V.I. at 334. The Superior Court awarded Smith \$240 in attorney’s fees and \$50 in costs associated with attending the May 11, 2017 hearing. According to Smith’s motion and affidavit for attorney’s fees and costs, his attorney’s hourly rate is \$200 and she spent 0.3 hours

responding to McLaughlin's motion to continue on May 5, 2017 and 0.9 hours attending the May 11 trial.⁴ These time entries amount to \$240 in attorney's fees in addressing the issue of McLaughlin's request for a continuance and time spent attending the May 11, 2017 trial. Compensating Smith's attorney for these fees was reasonable.⁵ Additionally, Smith had to travel from St. John to St. Thomas, which resulted in a \$50 cost to attend the hearing. Accordingly, the Superior Court did not abuse its discretion in finding McLaughlin in contempt and awarding reasonable attorney's fees and costs in the amount of \$290. Therefore, we affirm the Superior Court's contempt order granting in part Smith's motion for attorney's fees and costs.

III. CONCLUSION

¶ 18 This Court declines to exercise jurisdiction to review the Superior Court's unripe award of costs and attorney's fees to McLaughlin as the Superior Court has not quantified the award. Accordingly, we dismiss Smith's appeal of that award. However, concluding that we have jurisdiction to review the Superior Court's order partially granting Smith's attorneys fees for the May 11, 2017 trial date, we affirm that order.

⁴ In Smith's motion for attorney's fees and costs, he requested a total of \$2,770.00 in attorney's fees and \$50 in costs. (J.A. 35-40.)

⁵ Although the amount requested was much larger, Smith's attorney was requesting time she would have had to expend in preparing for the trial, regardless of McLaughlin's failure to appear. Therefore, the trial court properly rejected those charges as not associated with McLaughlin's failure to appear at the May 11, 2017 trial.

Dated this 8th day of February, 2023.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Kobe Potter
Deputy Clerk II

Dated: February 8, 2023