

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

WILLIAM DE BOER,) **S. Ct. Civ. No. 2015-0059**
Appellant/Petitioner,) Re: Super. Ct. CS. No. 21/2007 (STX)
)
v.)
)
RACHEL SICA)
Appellee/Respondent.)
)
)
)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Denise A. Hinds Roach

Considered: March 8, 2016
Filed: June 6, 2016

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

APPEARANCES:

William de Boer
St. Croix, U.S.V.I.
Pro se,

Rachel Sica
Lake, N.C.
Pro se.

OPINION OF THE COURT

HODGE, Chief Justice.

Appellant William de Boer appeals from a Superior Court order entered June 8, 2015, denying enforcement of a child custody and visitation agreement because he failed to submit himself to an alcohol and drug dependency assessment. For the reasons that follow, we affirm.

I. BACKGROUND

De Boer filed this action for custody of his two minor children on August 23, 2007, against the children's mother Rachel Sica. Both parties agree that they are the biological parents of the two children. After years of court proceedings, de Boer and Sica appeared before the Superior Court for a final determination of custody on December 15, 2014. During the hearing, de Boer presented a proposed stipulated visitation agreement to the Superior Court and Sica to end the custody dispute. The Superior Court then recessed, giving the parties time to confer, and the parties reached an agreement for custody and visitation. After setting forth the stipulated terms, the court was left to determine two issues: 1) de Boer's request to set-off future child support liability; and 2) Sica's request for de Boer to submit a satisfactory drug and alcohol assessment as a condition precedent before the visitation provision in the settlement agreement could be made effective. The court then heard argument and considered the requested child support set-off and declined to determine the issue, delegating it instead to the Virgin Islands Paternity and Child Support Division of the Virgin Islands Department of Justice.

With regard to the requested drug and alcohol assessment, the court had previously heard testimony about alleged alcohol and drug abuse, and informed the parties that it would consider that evidence for purposes of the December 15, 2015 hearing. At that proceeding, de Boer was given the opportunity to present additional evidence related to alcohol and drug sobriety in opposition to the requested pre-condition. But, de Boer declined to present evidence, arguing instead that the allegations were baseless. After considering the evidence presented, the court concluded it was in the children's best interest to require de Boer to submit himself to an alcohol and drug dependence/use assessment. As a result, it granted Sica's request, determining that the visitation and custody agreement would become effective only upon a separate or amended

Superior Court order after de Boer provided the court with a satisfactory drug and alcohol assessment by a qualified licensed professional.

In an attempt to comply with the court's order, de Boer moved to amend the December 17, 2014 order and submitted a medical examination and assessment by Dr. Akere Prasad,¹ which concluded that he was physically healthy and fit for work. Attached to Dr. Prasad's assessment was a negative drug test, which indicated that the reason for the test was for employment purposes. After considering the motion and reviewing the report, the Superior Court determined in a June 5, 2015 order that Dr. Prasad's report and a single negative drug test did not qualify as an assessment for alcohol and drug dependency/use sufficient to enforce the visitation provision of the agreement and convince the court of sustained sobriety. De Boer timely filed his notice of appeal with this Court on July 2, 2015. *See* V.I.S.CT.R. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

“The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court.” V.I. CODE ANN. tit. 4, § 32(a); *see also* 48 U.S.C. § 1613a(d) (“Upon the establishment of the appellate court provided for in section 1611(a) of this title all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court.”). Section 32(a) embodies the final judgment rule, which means that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits. *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010) (citing

¹ There is a discrepancy in the spelling of Dr. Prasad's given name. Because we are uncertain of the correct spelling of the physician's first name, we address him here as “Dr. *Akere* Prasad,” because that is the name most prominently used in the record provided to this Court.

Enrietto v. Rogers Townsend & Thomas PC, 49 V.I. 311, 315 (V.I. 2007)). The concept of finality is well-established in this jurisdiction as when a decision that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment” has been entered. *Bryant*, 53 V.I. at 400 (citations and internal quotation marks omitted). It is “one which disposes of the whole subject, gives all the relief that was contemplated, provides with reasonable completeness for giving effect to the judgment and leaves nothing to be done” except “execution of the decree.” *Id.* (citations and internal quotation marks omitted). Because the Superior Court’s December 17, 2014 order adjudicated all of the issues regarding child custody between the parents, it is a final order within the meaning of section 32(a). Accordingly, this Court has jurisdiction over the June 5, 2015 order requiring de Boer to submit himself for a drug and alcohol assessment to comply with the court’s December 17, 2014 order, as this appeal “arises from” that final order. 4 V.I.C. § 32(a).

This Court examines the Superior Court’s application of law *de novo*, while the trial court’s factual findings are reviewed for clear error. *Moorehead v. Mapp*, 62 V.I. 595, 598-99 (V.I. 2015) (citing *Rawlins v. People*, 58 V.I. 261, 268 (V.I. 2013)). “The Superior Court’s custody determination is reviewed for an abuse of discretion.” *Jung v. Ruiz*, 59 V.I. 1050, 1057 (V.I. 2013) (citing *Madir v. Daniel*, 53 V.I. 623, 630 (V.I. 2010)).

B. Drug and Alcohol Assessment

De Boer contends that the Superior Court erred by finding that he failed to meet its condition precedent to enforce the child custody and visitation agreement because Dr. Prasad’s report was sufficient evidence of continued sobriety. We disagree.

On questions involving child custody, the trial court considers and resolves disputes considering the best interest of the children. *James v. Faust*, 62 V.I. 554, 558-59 (V.I. 2015). Here, de Boer does not challenge the Superior Court’s custody assessment *per se*; rather, he alleges that

he submitted himself to a drug and alcohol assessment in accordance with the court order. At the December 15, 2014 hearing, de Boer acquiesced to the court's final determination as to the child support set-off, and its requirement that he submit himself for a drug and alcohol assessment before visitation with his children could commence. De Boer never challenged the court's imposition of the drug assessment; instead, he alleges that he complied with the court's order. As a result, we consider only whether the Superior Court abused its discretion in finding that it was not in the best interest of the children to accept Dr. Prasad's report as sufficient to satisfy the drug and alcohol assessment.

After hearing evidence regarding de Boer's alleged drug and alcohol abuse, the Superior Court determined that it was in the best interests of the children for de Boer to submit himself to a satisfactory drug and alcohol dependency assessment for the visitation and custody agreement to be enforced. De Boer argues that he sufficiently complied with the Superior Court's order by him submitting Dr. Prasad's medical examination and assessment which concluded that he was physically healthy and ready to work. Certainly, de Boer submitting himself to only one drug test, and no assessment for alcohol at all, does not qualify as alcohol and drug assessment for dependency or use that evidences sustained sobriety. Accordingly, we conclude that the Superior Court did not abuse its discretion in rejecting Dr. Prasad's report.

III. CONCLUSION

Because de Boer has failed to undergo an alcohol and drug assessment in accordance with the Superior Court's December 17, 2014 order, we affirm the decision of the Superior Court.

Dated this 6th day of June 2016.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court