Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: FLORENCE ROYER, Petitioner.	))))	**S. Ct. Civ. No. 2014-0023** Re: Super. Ct. Civ. No. 515/2004 (STX)

On Petition for Writ of Mandamus
Superior Court Judge: Hon. Harold W.L. Willocks

Considered and Filed: June 30, 2014

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

APPEARANCES:

Lee J. Rohn, Esq.
Lee J. Rohn & Associates, LLC
St. Croix, U.S.V.I.
Attorney for Petitioner.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a petition for writ of mandamus filed by Florence Royer. In her petition, Royer requests that this Court direct the Superior Court judge presiding over the underlying matter and the Acting Clerk of the Superior Court to immediately sign and enter judgment on the jury verdict received in *Royer v. Coastal Air Transport*, Super. Ct. Civ. No. 515/2004 (STX). For the reasons that follow, we deny the petition.

I. BACKGROUND

On November 18, 2013, a jury trial began in the underlying civil matter. After trial concluded on November 21, 2013, the jury rendered a verdict in favor of Royer and her co-plaintiff, the Estate of Edward Royer, awarding them, respectively, $100,000 and $105,000.

Royer filed a proposed judgment on December 4, 2013, and moved for an award of costs on December 6, 2013. The defendant, Coastal Air Management, filed a renewed motion for judgment as a matter of law on December 20, 2013, which Royer opposed on January 23, 2014. To date, the Superior Court has taken no action on any of these filings.

Royer filed her petition for writ of mandamus with this Court on April 11, 2014. In her petition, Royer notes that Superior Court Rule 49 provides that "[u]pon determination of an action by a judge, the judge shall sign the judgment which shall take effect, for purposes of appeal, upon entry by the clerk, unless otherwise ordered by the court." According to Royer, Superior Court Rule 49 establishes that entry of judgment is a ministerial act over which a judge and clerk lack any discretion to refuse to perform. Moreover, Royer alleges that the failure to enter judgment in this case has resulted in prejudice because Coastal Air Transport is purportedly selling assets that could be used to satisfy the jury verdict once judgment is entered.

This Court, in a May 7, 2014 Order, directed the Clerk of the Superior Court to transmit the record, in the form of complete certified docket entries. Now that this Court has received these materials, this matter is ripe for decision.[1]

II. DISCUSSION

This Court possesses jurisdiction over original proceedings for extraordinary writs, including a writ of mandamus. *See* 4 V.I.C. § 32(b). "To obtain a writ of mandamus, 'a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable.'" *In re Rogers*, S. Ct. Civ. No. 2014-0024, 2014 V.I. Supreme LEXIS 31, at *6 (V.I. May 27, 2014) (unpublished) (quoting *In re People of the*

[1] Pursuant to this Court's rules, "[i]f the panel of the Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition." V.I.S.CT.R. 13(b). Because no member of the panel has requested an answer, we resolve this matter based solely on Royer's mandamus petition and the portions of the record provided to us.

V.I., 51 V.I. 374, 382 (V.I. 2009)). But "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *In re Joseph*, S. Ct. Civ. No. 2013-0015, 2013 V.I. Supreme LEXIS 14, at *8 (V.I. Apr. 5, 2013) (unpublished) (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004)).

We conclude that Royer's right to immediate entry of judgment is not clear and indisputable. We agree with Royer that Superior Court Rule 49 requires the judge to sign, and the clerk to enter, a judgment "[u]pon determination of an action." However, Royer ignores that a final determination of her action has not yet occurred, given the pendency of Coastal Air Transport's renewed motion for judgment as a matter of law. Since such a motion is cognizable under the Rules of the Superior Court, *see* SUPER. CT. R. 50, a judge is under absolutely no obligation to enter judgment on the jury verdict when that verdict could potentially be set aside if the motion for judgment as a matter of law is granted. *Cf. Woodmen of the World Life Ins. Co. v. Davenport*, 159 S.W.2d 913, 916 (Tex. App. 1941) ("In the absence of any motion for new trial or mistrial by either party, the discretionary power of the court was not invoked. Therefore, the rendition and entry of a judgment for defendant upon the jury findings became a ministerial duty, rather than a matter of discretion in the trial judge.") (collecting cases).

And even before Coastal Air Transport moved to set aside the jury verdict, Royer herself moved for a cost award which, if granted, would serve to increase her recovery. While the filing of a motion for costs does not, without more, toll the time to take an appeal, *Terrell v. Coral World*, 55 V.I. 580, 583 n.1 (V.I. 2011), when—as here—a party moves for costs *before* entry of judgment on the primary claim has occurred, "the better practice is for the trial court to defer entry of the written judgment until after a ruling is made on the issue of attorney's fees, and

incorporate all of its rulings into a single, written judgment." *McClure v. County of Jackson*, 648 S.E.2d 546, 551 (N.C. Ct. App. 2007). Such a practice, if followed, "will result in only one appeal, from one judgment, incorporating all issues in the case." *Id.* at 551-52. Significantly, this Court has already adopted the rule that the Superior Court should not adjudicate a costs or attorney's fees motion after a notice of appeal has been filed, but instead await the result of the appeal in case there is a change in the prevailing party. *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 280-81 (V.I. 2008). In other words, by declining to enter judgment on the jury verdict while motions from both Royer and Coastal Air Transport remain pending, the judge has exercised his discretion in a manner that furthers judicial economy and prevents piecemeal appeals. Thus, Royer has failed to meet the criteria for mandamus relief.[2]

III. CONCLUSION

For the foregoing reasons, we deny the petition for writ of mandamus.

Dated this 30th day of June, 2014.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

[2] Given our holding that Royer failed to meet her burden of establishing a clear and indisputable right to the relief requested, we need not determine whether she has no other adequate means of attaining the desired relief, or whether issuance of a writ of mandamus would be in the public interest. Because Royer has only asked that this Court order immediate entry of judgment, we also express no opinion as to whether the Superior Court's seven-month delay in ruling on Royer's costs motion and six-month delay in ruling on Coastal Air Transport's motion for judgment as a matter of law is tantamount to a failure to exercise jurisdiction. *See In re Elliot*, 54 V.I. 423, 429 (V.I. 2010).