For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

CHARMAINE P. DALEY-JEFFERS, Appellant/Plaintiff v. **DR. EMANUEL GRAHAM, GRAHAM UROLOGICAL CENTER, DR. ANGEL LAKE, GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, AND VIRGIN ISLANDS GOVERNMENT HOSPITAL AND HEALTH FACILITIES CORPORATION,** Appellees/Defendants.	)	**S. Ct. Civ. No. 2017-0011** Re: Super. Ct. Civ. No. 378/16 (STX)

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

Argued: July 10, 2018
Filed: November 19, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; **DENISE M. FRANCOIS**,[1] Designated Justice.

APPEARANCES:

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Law Offices of Lee J. Rohn and Associates, LLC
St. Croix, U.S.V.I.
Attorney for Appellant,

Su-Layne Walker, Esq.
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[1] Associate Justice Maria M. Cabret is recused from this matter. By order of this Court entered May 7, 2017, Judge Denise M. Francois, a sitting judge of the Superior Court of the Virgin Islands, sits in her place by designation pursuant to title 4, section 24(a) of the Virgin Islands Code.

OPINION OF THE COURT

HODGE, Chief Justice.

Charmaine Daley-Jeffers appeals from an August 24, 2016 Superior Court order granting the Appellees' motion to dismiss for lack of subject matter jurisdiction and insufficient service of process. For the reasons that follow, we reverse.

I. BACKGROUND

On March 16, 2016, Daley-Jeffers filed a proposed verified complaint with the Medical Malpractice Action Review Committee, pursuant to 27 V.I.C. § 166i. The proposed complaint alleged that, as part of a course of treatment for kidney stones, Dr. Emanuel Graham—an employee of the Governor Juan F. Luis Hospital and Medical Center—had, through his negligence, prescribed a course of action that resulted in severe damage to Daley-Jeffers' ureter and adrenal gland, and the removal of one of her kidneys. On June 28, 2016, after receiving no response from the Committee within the statutory 90-day period, Daley-Jeffers filed the same complaint with the Superior Court.

On July 20, 2016, the Governor Juan F. Luis Hospital and Medical Center and the Virgin Islands Government Hospital and Health Facilities Corporation (collectively "the Government Defendants") jointly filed a motion to dismiss for lack of subject matter jurisdiction. Specifically, they alleged that Daley-Jeffers failed to invoke subject matter jurisdiction by (1) neglecting to state in her complaint that she had first filed a proposed complaint with the Committee, and (2) failing to declare that the Committee did not respond to her proposed complaint within 90 days.[2]

[2] Instead, Daley-Jeffers' complaint states the following: "This Court has jurisdiction over this matter pursuant to 4 V.I.C. § 76 and also the Medical Malpractice Act."

Additionally, on August 5, 2016, Graham filed two motions: (1) a motion to dismiss for lack of subject matter jurisdiction; and, (2) a motion to dismiss for insufficient service of process and lack of subject matter jurisdiction. Graham's motion to dismiss for insufficient service alleged that service on Lucy Perez, the receptionist at the Graham Urological Center, did not effectuate proper service upon him. Notably, in their motions, all Appellees requested that the Superior Court either dismiss the complaint or, in the alternative, grant Daley-Jeffers' leave to amend her complaint.

On August 17, 2016, Daley-Jeffers filed a response to Appellees' motions to dismiss for lack of subject matter jurisdiction, attaching three exhibits: (1) a letter dated March 16, 2016 to the Committee with a verified copy of Daley-Jeffers' proposed complaint and certified mail receipt number; (2) a Superior Court docketing letter and notice of judge assignment listing June 28, 2016 as the date her complaint was docketed[3]; and, (3) a copy of the verified complaint. Additionally, on August 25, 2016, Daley-Jeffers filed a response to Graham's motion to dismiss for insufficient service of process and lack of subject matter jurisdiction. In that motion, Daley-Jeffers attached "Exhibit 4," which demonstrates that she corrected the service error by serving Graham in person on August 22, 2016. On August 23, 2016, the Government Defendants filed a joint reply, and Graham also filed a separate reply. On August 24, 2016, Daley-Jeffers filed a notice of the proof of service on Graham, with the Superior Court.

On August 25, 2016, the Superior Court issued a one-page order granting the motions to dismiss for insufficient service and lack of subject matter jurisdiction. The order, which contains no analysis, instructed Daley-Jeffers to comply with the requirements of section 166i and directed the matter to the Committee. On September 22, 2016, Daley-Jeffers filed a timely motion to set

[3] There are 104 days between March 16, 2016, and June 28, 2016, more than the 90-day review requirement.

aside judgment. On October 6, 2016, Graham filed a motion in opposition to Daley-Jeffers' motion to set aside judgment. Finally, on December 28, 2016, co-defendant Dr. Angel Lake filed a motion to dismiss for failure to timely serve process. The Superior Court never issued an order addressing Daley-Jeffers' motion to set aside judgment, or any other motion for that matter. Pursuant to Rule 5(a)(4) of the Virgin Islands Rules of Appellate Procedure, which deems Daley-Jeffers' motion denied for purposes of appeal,[4] Daley-Jeffers filed a timely notice of appeal with this Court on January 20, 2017.[5]

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Because the Superior Court's August 24, 2016 order granting the Appellees' motion to dismiss for lack of subject matter jurisdiction and insufficient service of process was a final order, and because the Superior Court failed to dispose of Daley-Jeffers' motion to set aside the judgment within 120 days, this Court has jurisdiction over this appeal. V.I. R. APP. P. 5(a)(4); *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013).

[4] According to Rule 5(a)(4), the Superior Court's "failure to dispose of any motion by order entered upon the record within 120 days after the date the motion was filed shall constitute a denial of that motion for purposes of appeal." V.I. R. APP. P. 5(a)(4); *see Companion Assurance Co. v. Smith*, 66 V.I. 562, 570 (V.I. 2017) ("Rule 5(a)(4)'s 120-day provision denying the motion for purposes of appeal divested the Superior Court of jurisdiction to rule on the post-trial motion once the 120 days expired.").

[5] There are 120 days between September 22, 2016 and January 20, 2017.

This Court exercises *de novo* review over the Superior Court's application of law, and reviews factual findings for clear error. *St. Thomas—St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). Additionally, "'[t]he appropriate standard of review for the denial of a motion to reconsider is generally abuse of discretion but, if the trial court's denial was based upon the interpretation or application of a legal precept, then review is plenary.'"[6] *Beachside Assocs. v. Fishman*, 53 V.I. 700, 711 (V.I. 2010) (quoting *Worldwide Flight Servs. v. Gov't*, 51 V.I. 105, 108 (V.I. 2009)). Moreover, "'this Court exercises plenary review over questions relating to the Superior Court's subject matter jurisdiction.'" *Ottley v. Estate of Bell*, 61 V.I. 480, 487 (V.I. 2014) (quoting *Brunn v. Dowdye*, 59 V.I. 899, 904 (V.I. 2013)). Finally, this Court "exercise[s] plenary review of questions of statutory construction." *V.I. Public Servs. Comm'n v. V.I. Water & Power Auth.*, 49 V.I. 478, 483 (V.I. 2008).

B. Subject Matter Jurisdiction

Pursuant to the Revised Organic Act of 1954, "[t]he Superior Court shall have original jurisdiction in all civil actions regardless of amount in controversy." 48 U.S.C. § 1611(b); 4 V.I.C. § 76(a). However, section 166i of title 27 of the Virgin Islands Code establishes a pre-filing jurisdictional requirement before a plaintiff may commence a medical malpractice action under

[6] We note that Daley-Jeffers' September 22, 2016 motion seeking to set aside the Superior Court's August 25, 2016 dismissal order was in actuality a motion seeking either a new trial, or to alter or amend a judgment. As in effect at the time, Superior Court Rule 50 provided that "Rules 59 to 61, inclusive, of the Federal Rules of Civil Procedure" applied to such motions. Rules 59(b) and 59(e) of the Federal Rules of Civil Procedure prescribed the time limits within which motions seeking a new trial and motions seeking to amend or set aside a judgment, respectively, were required to be filed. Both Rules 59(b) and 59(e) provided that these types of motions were required to be filed "no later than 28 days after . . . entry" of the judgment. Accordingly, regardless of whether Daley-Jeffers' motion is construed as a motion for new trial under Rule 59(b), or a motion seeking to set aside or alter a judgment under Rule 59(e), she timely filed her motion within 28 days of the August 25, 2016 dismissal order.

the jurisdiction of the Superior Court. 27 V.I. § 166i; *see Brady v. Cintron*, 55 V.I. 802, 815 (V.I. 2011) (concluding that section 166i imposes pre-filing jurisdictional limitations on the Superior Court's ability to hear medical malpractice claims). Section 166i states, in relevant part:

> (b) No action against a health care provider may be commenced in court before the claimant's proposed complaint has been filed with the Committee and the Committee has received the expert opinion as required by this section, provided, that *if said opinion is not received by the Committee within ninety days from the date the complaint was filed with the Committee, the claimant may commence his action against the health care provider in court*; Provided further, That the commencement of the court action shall not prevent the Committee from obtaining the expert opinion.
>
> (c) The proposed complaint shall be deemed filed when a copy is delivered or mailed by registered or certified mail to the Commissioner of Health . . . [.]

27 V.I.C § 166i(b)-(c) (emphasis added). The purpose of this requirement is "to arrange for expert review of all malpractice claims before actions based upon such claims are commenced in court." 27 V.I.C. § 166i(a); *see Brady*, 55 V.I. at 813 ("The purpose of the MMA and the Committee review process is to 'eliminate claims lacking merit and encourage prompt settlement of meritorious claims[]'. . . [and] it specifically seeks to prevent actions from being filed in courts until after the statutory requirements of the MMA are fulfilled.") (quoting *Berry v. Curreri*, 837 F.2d 623, 626 (3d. Cir. 1988)).

As a threshold matter, we note that the Superior Court dismissed Daley-Jeffers's complaint for failure to comply with the MMA without providing any explanation for its decision. We have consistently held that when a Superior Court order fails to provide sufficient analysis from which this Court may engage in meaningful appellate review, we should automatically reverse. *See e.g.*, *Bryan v. Fawkes*, 61 V.I. 416, 476 (V.I. 2014) ("As this Court has previously emphasized, a court can never exercise its discretion to simply ignore a claim that a party has brought squarely before it."); *In re Q.G.*, 60 V.I. 654, 664 (V.I. 2014) ("[M]eaningful appellate review is impossible where

the Superior Court fails to explain reasons for its actions."); *Rivera v. People*, 57 V.I. 659, 668 (V.I. 2012) ("Meaningful review is not possible where the trial court fails to sufficiently explain its reasoning."). In fact, such a failure itself constitutes grounds for reversal. *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 313 (V.I. 2014). Nevertheless, "[w]hen, on appeal, this Court exercises a plenary standard of review to the underlying Superior Court decision, it can, 'in the interests of judicial economy, exercise [its] discretion' to overlook the Superior Court's procedural error and analyze the legal issue for the first time on appeal." *Id.* (quoting *Browne v. Gore*, 57 V.I. 445, 453 n.5 (V.I. 2012)). Since we exercise plenary review over the issue of subject-matter jurisdiction, *Ottley*, 61 V.I. at 487, and Appellees have set forth legal arguments to defend the dismissal order, we shall overlook the Superior Court's failure to explain its decision and consider the jurisdictional issue as part of this appeal.

Appellees contend that by failing to plead compliance with the jurisdictional requirements of section 166i, Daley-Jeffers' complaint failed to establish on its face that the Superior Court's subject matter jurisdiction over her claim had vested. In other words, they argue that although Daley-Jeffers stated in her complaint that "[t]his Court has jurisdiction over this matter pursuant to 4 V.I.C. § 76 and also the Medical Malpractice Act[,]" she never expressly averred that she had already filed with the Committee and waited 90 days before commencing court action. (J.A. 10.) According to Appellees, this omission warrants dismissal under Federal Rule of Civil Procedure 12(b)(1), which establishes lack of subject matter jurisdiction as an affirmative defense to a claim for relief.[7] To support this claim, Appellees rely on an unpublished decision of the Superior Court

[7] At the time the Superior Court decided this case, many provisions of the Federal Rules of Civil Procedure were made applicable to Superior Court proceedings by virtue of former Superior Court Rule 7, including Federal Rule 12(b)(1). Although the Virgin Islands Rules of Civil Procedure went into effect on March 31, 2017, we apply the procedural rules that applied to this case when

which held that in order to invoke subject matter jurisdiction, a plaintiff must plead that she has filed a proposed complaint with the Committee, and cannot rely on a "single conclusory allegation" that she has done so. *James-St. Jules v. Thompson*, Super. Ct. Civ. No. 09/136 (STX), 2015 WL 13187393, at * 4 (V.I. Super. Ct. June 15, 2015) (unpublished).

We disagree with Appellees' interpretation of the MMA. Where a statute's language is plain and unambiguous, no further interpretation is required. *See Smith v. Henley*, 67 V.I. 965, 973 (V.I. 2017). As this Court has previously explained, the MMA is a jurisdiction limiting statute which prohibits a claimant from commencing a suit against a health care provider in the Superior Court before the claimant has filed her proposed complaint with the Committee. *Brady*, 55 V.I. at 814. Once the claimant has filed her complaint with the Committee, she may proceed to court after one of two things happens: (1) the Committee has received the expert opinion; or (2) the Committee has not received an expert opinion and 90 days have passed. 27 V.I.C. § 166i. Nowhere does the statute state that *pleading* compliance with the requirements of section 166i is a precursor to invoking the subject matter jurisdiction of the Superior Court. Section 166i is clear; statutory restrictions on the Superior Court's jurisdiction are inapplicable once the claimant has satisfied the statutory pre-filing conditions. *See Brady*, 55 V.I. at 820 ("[T]he requirements of section 166i are non-waivable jurisdictional conditions that must be satisfied in order to vest the Superior Court with subject matter jurisdiction to hear an individual's medical malpractice claims."). The record

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it was adjudicated by the Superior Court. *See supra* note 6; *see also Blyden v. People*, 53 V.I. 637, 658 n.15 (V.I. 2010) ("[T]his Court applies on appeal the evidentiary rules that were in effect at the time [the underlying case] was tried in the Superior Court.") (citing *Black v. M & W Gear Co.*, 269 F.3d 1220, 1228 n.3 (10th Cir. 2001) (declining to apply amended rules of evidence on appeal when prior rules had been in effect during trial). We note, however, that Rule 8 of the Virgin Islands Rules of Civil Procedure emphasizes that the Virgin Islands is a notice pleading jurisdiction, *see* V.I. R. CIV. P. 8(a)(2), and only requires that a plaintiff provide "a short and plain statement of the grounds for the court's jurisdiction." V.I. R. CIV. P. 8(a)(1).

before this Court clearly demonstrates that Daley-Jeffers filed a proposed complaint with the Committee, satisfying the first condition of section 166i. After the Committee did not respond within 90 days, the second condition was met, and Daley-Jeffers was free to file her complaint with the Superior Court.[8] At that point, the Superior Court had jurisdiction to hear her claim under 4 V.I.C. § 76(a), and no other action was necessary—pleading or otherwise—to invoke the Superior Court's subject matter jurisdiction. While the Superior Court may have appreciated a clarifying statement of pre-filing compliance in Daley-Jeffers' pleading, none was necessary to invoke the subject matter jurisdiction that the Superior Court already possessed. [9]

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[8] In their motions and appellate briefs, Appellees contend that the Superior Court could not have taken Daley-Jeffers' supplemental motions and exhibits demonstrating compliance with section 166i into consideration because facial attacks on subject matter jurisdiction restrict the Superior Court's review to the complaint itself. We disagree that Appellees' attack was facial. Appellees' motions to dismiss alleged lack of jurisdiction based on noncompliance with the pre-filing requirements of the MMA. That is the only legal reason why the Superior Court might not have jurisdiction and it depends on *facts*, including whether Daley-Jeffers filed the proposed complaint with the Committee at least 90 days before filing in court, and whether the Committee failed to respond within the statutory period. When an attack on subject matter jurisdiction is factual, the Superior Court is free to evaluate the merits of jurisdictional claims and may look beyond the face of the complaint to make this determination. *See e.g.*, *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) ("In resolving a factual attack on jurisdiction, the . . . court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment."). Therefore, even if section 166i required Daley-Jeffers to plead compliance in order to invoke the Superior Court's subject matter jurisdiction over her claim—which it did not—her supplemental motions and exhibits would have satisfied that requirement. This Court has no indication if or how the Superior Court reviewed these materials, however, because the Superior Court provided no explanation or reasoning for the dismissal. As explained above, this judicial failure merits automatic reversal. *See e.g.*, *Bryan*, 61 V.I. at 476; *Rivera*, 57 V.I. at 668.

[9] Additionally, the Superior Court cannot fault Daley-Jeffers, as Appellees suggest, for filing the same complaint with both the Committee and the Superior Court. A *proposed* complaint is necessarily identical to the final complaint, since only the issues raised in the proposed complaint are preserved for review by the Superior Court. *See Berry v. Curreri*, 837 F.2d 623, 628 (3d Cir. 1988) (finding that "the submission to the jury of claims of malpractice never presented to the Committee violated 27 V.I.C. § 166i, and this error require[ed] [a] new trial"). An expert retained by the Committee can only render an opinion on the claims alleged in the proposed complaint, and

Moreover, as both this Court and the United States Supreme Court have emphasized, even if the Superior Court believed that Daley-Jeffers' complaint was defective, its refusal to reach the merits was improper where Daley-Jeffers satisfied the statutory jurisdictional prerequisites and a dismissal without prejudice would lead to a repeat filing.[10] *See Matthews v. Diaz*, 426 U.S. 67, 75 n.9 (1976) (expressing preference for supplemental filing to cure a defective pleading in order to avoid needless extra litigation to get back to the same issue after dismissal without prejudice); *see also Brady*, 55 V.I. at 818-19 (citing *Diaz*, 426 U.S. at 75 n.9). Here, instead of ordering Daley-Jeffers to amend her complaint—which even the Appellees requested as an alternative to dismissal in their motions—the Superior Court simply dismissed Daley-Jeffers' case without prejudice and directed her to re-file the same complaint with the Committee. Not only does this needlessly duplicative disposition run contrary to the standard for curing procedural or technical defects, but either outcome would have been unwarranted because, as we have explained, Daley-Jeffers' complaint was not defective.

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can do so even after the commencement of court action. 27 V.I.C. § 166i(b); *see also Berry*, 837 F.2d at 625-26. Therefore, the complaints in both forums should be the same. Naturally, the proposed complaint filed with Committee will not include language demonstrating compliance with section 166i. A proposed complaint resubmitted to the Superior Court will be equally devoid of such purported jurisdiction language which, as explained above, section 166i does not require.

[10] Further, Appellees were on notice that Daley-Jeffers complied with the requirements of section 166i. *See* 27 V.I.C. § 166i(c) (". . . [W]hen a copy [of the proposed complaint] is delivered or mailed by registered or certified mailed to the Commissioner of Health, [s/he] *shall immediately forward a copy to each health care provider named as a defendant*[.]") (emphasis added). We prefer to assume that Appellees held a bona fide belief that Daley-Jeffers' complaint was insufficient to invoke subject matter jurisdiction. We note, however, our concern for the apparent disingenuousness of Appellees' attempt to needlessly prolong litigation by moving to have the Superior Court direct Daley-Jeffers to amend her complaint to represent that she had complied with the pre-filing procedures when Appellees were already aware that she had, in fact, done so.

C. Dismissal for Insufficient Service of Process

Finally, this Court holds that the Superior Court's dismissal of Daley-Jeffers' claim for insufficient service of process amounted to an abuse of discretion. Daley-Jeffers' motion and exhibits filed in response to Graham's motion to dismiss for insufficient service of process clearly evidenced that she timely remedied her initially deficient service.[11] As we have noted, the Superior Court's order does not address Daley-Jeffers' motions or exhibits, leaving this Court with no explanation of why the Superior Court did not accept this timely cure of the insufficient service claim. Generally, where service of process is insufficient, courts allow a plaintiff the opportunity re-serve the defendant, provided that service is not futile. *See Gregory v. United States Bankr. Ct.*, 942 F.2d 1490, 1500 (10th Cir. 1991) ("The general rule is that 'when a court finds that service is insufficient but curable, it generally should quash the service and give the plaintiff an opportunity to re-serve the defendant.'") (quoting *Pell v. Azar Nut Co.*, 711 F.2d 949, 950 n.2 (10th Cir. 1983)), *cert. denied,* 112 S. Ct. 2276 (1992). Here, Daley-Jeffers not only took it upon herself to promptly cure her insufficient service of process of Graham, but she did so before the applicable service window expired. Finding no support for dismissal under these circumstances and having no analysis from the Superior Court to guide our understanding of its reasoning, we reverse the Superior Court's grant of Graham's motion to dismiss for insufficient service of process.

[11] At the time Daley-Jeffers filed her complaint, service of process was governed by former Superior Court Rule 27, which provided, in pertinent part, that "[t]he summons and process shall be served in the same manner as required to be served by Rule 4 of the Federal Rules of Civil Procedure." At the time, Federal Rule 4 required that service be effectuated within 90 days. FED. R. CIV. P. 4(m). Effective March 31, 2017, the Virgin Islands Rules of Civil Procedure have extended the service period to 120 days. *See* V.I. R. CIV. P. 4(m).

III. CONCLUSION

For the foregoing reasons, we reverse the Superior Court's order granting Appellees' motion to dismiss for lack of subject matter jurisdiction and Graham's motion to dismiss for insufficient service of process. We remand for further proceedings not inconsistent with this holding.

Dated this 19th day of November, 2018.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court