

DIVISION OF ST. THOMAS AND ST. JOHN

Respondent.

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) **CASE NO. ST-12-SM-362**
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Pending before the Court is Petitioner Florise Chow's petition for review challenging a Judgment issued in the Magistrate's Division. For the following reasons, the Judgment will be affirmed.

On July 26, 2012, Respondent filed a Complaint alleging destruction of property in the amount of \$163.00. Petitioner filed a Counterclaim for damages associated with defending the claim on August 7, 2012. The Magistrate held a hearing on the matter on October 3, 2012, and, on October 9, 2012, issued a Judgment in favor of Petitioner for \$260.00 plus \$50.00 in court costs. Petitioner filed her petition on November 16, 2012.

“Final orders or judgments of magistrates resolving completely the merits of cases ... are immediately reviewable by the judges of the Superior Court.”¹ The Superior Court reviews a Magistrate’s factual determinations for “clear error” and legal findings

¹ Super. Ct. R. 322.3(a).

are “afforded plenary review.”² A petition for review of a Magistrate’s final order or judgment “must be filed with the Clerk of Court [of the Superior Court of the Virgin Islands] within ten (10) days after entry of the order sought to be reviewed.”³

ANALYSIS

In a letter to the Clerk of Court, dated November 2, 2012, and date stamped November 16, 2012, Petitioner indicated that she received the Judgment on October 31, 2012, and was requesting to file a petition for review. Thus, the petition for review was not filed within 10 days after the entry of the Magistrate’s Judgment as required by Superior Court Rule 322.1(b)(2)(A).

Notwithstanding, Superior Court Rule 10 allows a thirty day extension of the filing period for an appeal upon a party’s motion establishing excusable neglect. And, in *Payne v. Lehtonen*,⁴ the Court determined that the rule governing extensions for filing an appeal are applicable to appeals from the Magistrate’s Division.⁵

Here, Petitioner did not file a motion for an extension, but since she is proceeding *pro se*, her letter to the Court would suffice as one.⁶ In addition, her letter to the Court indicates that there was a delay in her receipt of the Judgment because she resides in Georgia. As a result, Petitioner has provided sufficient evidence of excusable neglect to warrant the Court to grant her an extension to file her petition. And, as Petitioner filed her

² Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black’s Law Dictionary, Eighth Edition.

³ Superior Court Rule 322.1(b)(2)(A).

⁴ 55 V.I. 286, 291 (Sup. Ct. 2011).

⁵ The *Payne* court referred to Sup. Ct. R. 9, but the applicable rule is Sup. Ct. R. 10.

⁶ See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (“A document filed pro se party is to be liberally construed”).

petition within the thirty day extension period permitted by Superior Court Rule 10, her petition will be deemed to be timely filed.

Petitioner's appeal brief consists of a letter that contains no citation to case law or other authority. Petitioner discusses many issues that were never part of her Counterclaim and were never discussed before the Magistrate. For instance, Petitioner indicates that Respondent's actions have cost over \$10,000.00 in lost revenue because he allowed a known squatter to live on the property that they jointly own. She also discusses how the property was generally mismanaged. Since none of these issues were reviewed by the Magistrate, they are not properly before the Court.⁷

Elsewhere in her brief, Petitioner discusses how the stress of the case affected her health, how Respondent called the police instead of speaking with Petitioner after discovering that a bedroom door on their jointly owned property was damaged, and how Petitioner spent money on a flight to attend a hearing that had been continued to a later date. The Magistrate had made findings of fact that it was the Court, and not Respondent, that was responsible for failing to clearly communicate to Petitioner that the original hearing date had been continued.⁸ The Magistrate also found that Respondent had filed a frivolous and vexatious lawsuit and awarded Petitioner nominal punitive damages and nominal actual damages based on the stress that the case caused Petitioner.⁹

⁷ See, e.g., *In re Secivanovic*, 04-2381, 2005 WL 1583357 (3d Cir. July 7, 2005) (precluding party from attempting to raise new arguments on appeal). Respondent also contests the Judgment requesting damages in the amount of \$450.00. Respondent did not seek these damages in his Complaint and did not file a petition of review challenging the Magistrate's Judgment. As a result, Respondent's potential claims are also not properly before the Court.

⁸ Hearing transcript, at page 62.

⁹ Hearing transcript, at page 64.

Petitioner has failed to indicate how the Magistrate committed clear error in his findings of fact. Because Petitioner has not met her burden of proof by establishing that the Magistrate's Judgment should be reversed, the Judgment will be affirmed.

An Order consistent with this Opinion shall follow.

Dated: May 12, 2014

ATTEST: Estrella George
Acting Clerk of Court

by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 5/15/2014


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

All of these facts were considered by the Magistrate