

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DONNA SLACK,	)	S. Ct. Civ. No. 2017-0033
Appellant/Respondent,	)	Re: Super. Ct. DI. No. 003/2014 (STT)
	)	
v.	)	
	)	
RUDOLPH SLACK,	)	
Appellee/Petitioner.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Denise A. Hinds-Roach

Considered: June 12, 2018
Filed: August 15, 2019

Cite as: 2019 VI 28

BEFORE: **MARIA M. CABRET**, Associate Justice; **ROBERT A. MOLLOY**, Designated Justice; and **JOMO MEADE**, Designated Justice.¹

APPEARANCES:

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OPINION OF THE COURT

CABRET, Associate Justice.

¹ Chief Justice Rhys S. Hodge and Associate Justice Ive Arlington Swan are recused from this matter. The Honorable Robert A. Molloy, Judge of the Superior Court of the Virgin Islands, and the Honorable Jomo Meade, Judge of the Superior Court of the Virgin Islands, have been designated to sit in their places pursuant to 4 V.I.C. § 24(a).

¶ 1 In our previous opinion entered in this matter,² we considered Donna Slack’s appeal from the Superior Court’s amended final decree of divorce and accompanying order, entered February 10, 2017. Among other things, Donna argued that the court erred by: (1) summarily denying her request for legal fees and costs; and (2) failing to recognize Donna’s monthly interest payments on her credit card debt as necessary expenses for purposes of computing the award of alimony and pendente lite support. In that opinion, we held that the Superior Court erred in failing to explain its decisions with respect to those two issues and remanded the record in this matter for clarification. In response, on September 6, 2018, the Superior Court entered an order on remand explaining its decision as to each issue. In light of these explanations and for the following reasons, the Superior Court’s February 10, 2017 order is reversed in part, as to the denial of legal fees and costs, and is affirmed in part, as to the court’s decision to omit Donna’s credit card debt interest from its computation of necessary expenses.

¶ 2 Because we remanded only the record in this matter for clarification of the trial court’s decisions on these two issues, and did not remand the case in its entirety, we retain jurisdiction over this appeal from the Superior Court’s February 10, 2017 amended final decree of divorce under Title 4, Section 32(a) of the Virgin Islands Code. *See Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 684 (V.I. 2015) (“In a record remand, ... jurisdiction over the case remains with [the appellate] court, but the record [alone] is returned to the trial court.”). We review the Superior Court’s rulings with respect to attorney’s fees and costs and alimony for abuse of discretion. *See In re Guardianship of Smith*, 58 V.I. 446, 449 (V.I. 2013) (“This Court reviews the Superior Court’s ruling on a motion for attorney’s fees and costs for abuse of discretion. . . [but] [t]o the

² For a description of the relevant factual and procedural background of this case prior to remand, please refer to our previous opinion entered in this matter: *Slack v. Slack*, 69 V.I. 567 (V.I. 2018).

extent the review implicates an interpretation of law, however, we review that interpretation de novo.”); and *Berrios-Rodriguez v. Berrios*, 58 V.I. 477, 480 (V.I. 2013) (“[T]his Court reviews an alimony determination solely for abuse of discretion, unless the Superior Court based its alimony award on a misapplication of the law or a clearly erroneous factual finding.”).

I. Attorney’s Fees and Costs

¶ 3 As we noted in our last opinion:

On July 10, 2014, Donna filed a motion requesting, among other things, that Rudolph be required to pay Donna’s legal fees and expenses. Later, Donna renewed that request in both her closing brief of March 1, 2016, and by renewed motion, filed November 15, 2016. In support of her request, Donna argued that she was in “serious financial need” with respect to her ability to defend against Rudolph’s petition for divorce, and therefore, that she was entitled to such an award under 16 V.I.C. § 108.³ Yet the body of the Superior Court’s February 10, 2017 memorandum opinion lacks any mention of Donna’s request for legal fees and costs. Instead, without providing any reasoning or explanation, the court summarily denied Donna’s request in the penultimate line of the accompanying order, stating only “that the parties shall be responsible for their respective attorney’s fees and costs.” On appeal, Donna argues that the Superior Court’s failure to state its reasons for denying her request constitutes error.

Slack v. Slack, 69 V.I. 567, 571-72 (V.I. 2018) (footnote in original).

¶ 4 In its order on remand, the Superior Court explained that it analyzed Donna’s request for attorney’s fees and costs under the framework provided in Title 5, Section 541 of the Virgin Islands Code. The court concluded that there was no “clear prevailing party” in the case because “most of Ms. Slack’s litigative requests” were denied. For this reason, the Superior Court ordered each party to bear its own costs and fees. However, in its order on remand, the court acknowledges that it failed to consider Donna’s request under 16 V.I.C. § 108(1), which allows for an award of costs

³ 16 V.I.C. § 108 provides in relevant part: “After the commencement of an action, and before a judgment therein, the court may, in its discretion, provide by order . . . that a party in need obtain from the other party such funds as may be necessary to enable the party in need to prosecute or defend the action, as the case may be. . . .”

and fees during the pendency of the litigation based upon the requesting party's financial need. In apparent recognition of its error, the Superior Court explained that although it was not permitted to amend its prior ruling on record remand, if the case were remanded in its entirety, the court would "proceed to consider Ms. Slack's request for attorney's fees under 16 V.I.C. § 108."

¶ 5 Title 16 Virgin Islands Code § 108 provides in relevant part: "After the commencement of an action, and before a judgment therein, the court may, in its discretion, provide by order . . . that a party in need obtain from the other party such funds as may be necessary to enable the party in need to prosecute or defend the action, as the case may be. . . ." Thus, unlike the attorney's fees provision in Title 5—which only allows for the award of fees and costs to the prevailing party at the conclusion of litigation—§ 108 allows the trial court, during the pendency of the litigation, to award a party in need a sufficient amount of funds to litigate his or her case. Because the Superior Court denied Donna's request for legal fees and costs solely on the basis of its determination that Donna was not a prevailing party, without any consideration of her financial need at the time of the litigation, we conclude that the court abused its discretion by wholly failing to consider Donna's request for legal fees and costs under 16 V.I.C. § 108. *See Mahabir v. Heirs of George*, 63 V.I. 651, 667 (V.I. 2015) (noting that the trial court's failure to address the party's arguments concerning a petition for attorney's fees and costs, itself "constituted error, since the Superior Court cannot simply ignore arguments that a party has properly presented"). Accordingly, we reverse the Superior Court's February 10, 2017 order requiring each party to bear his or her own fees and costs, and remand this matter for the court to determine whether Donna is entitled to an award of attorney's fees and costs under 16 V.I.C. § 108.

II. Credit Card Debt Interest as a Necessary Expense

¶ 6 As we previously noted:

Donna also argues on appeal that . . . the Superior Court erred by failing to account for Donna’s credit card debt and “remand with instructions that the credit card interest [of approximately \$300 per month] be calculated as a necessary expense.”⁴ A review of the record makes clear that Donna identified her credit card interest payments as regular monthly expenses both in her responses to interrogatories and in her renewed motion for *pendente lite* support, filed November 15, 2016. However, the Superior Court’s February 10, 2017 opinion is entirely silent on this issue. The Superior Court listed Donna’s monthly essential expenses as follows: mortgage (\$1,120); food (\$800); clothing (\$400); medical and dental (\$25); transportation (\$250); insurance (\$565); taxes (\$120); telephone (\$300); and utilities (\$170).⁵ And although the opinion notes Donna’s assertion that her credit card debt increased from about \$3,000 to approximately \$30,000 following her separation from Rudolph, the Superior Court failed to recognize, let alone address, Donna’s argument that her monthly credit card interest payments constitute necessary expenses.

Slack, 69 V.I. at 579-80 (footnotes in original). Thus, we concluded that the Superior Court erred in failing to address this issue and remanded the record for the court to “clarify its decision to exclude Donna’s monthly interest payments on her credit card debt from the list of necessary expenses it used to compute Donna’s alimony and *pendente lite* support.” *Id.* at 580.

¶ 7 In its order on remand, the Superior Court explained that it declined to consider Donna’s monthly credit card interest payments in its calculation of necessary expenses because evidence in the record reflected that Donna’s credit card debt—and consequently the interest accrued on that debt—was incurred, not only to cover her necessary living expenses, but also to cover certain business expenses in connection with her travel agency. However, Donna failed to introduce any

⁴ It is unclear from her brief whether Donna seeks to have the credit card interest considered as a necessary expense with respect to her award of *pendente lite* support, or with respect to her award of prospective alimony, or both.

⁵ In an accompanying footnote, the court explicitly found that Donna’s testimony concerning the existence of two alleged personal loans was not credible, and on that basis, excluded the loans from its calculation of Donna’s debt. However, the court made no finding as to the credibility of Donna’s testimony regarding her credit card debt, failing to address this issue entirely.

evidence from which the court could reasonably determine the proportion of Donna’s credit card debt interest payments allocable to her necessary expenses, as opposed to her business expenses. Therefore, the Superior Court concluded that any attempt to apportion the interest payments would be founded purely on speculation.

¶ 8 A party seeking an award of alimony or *pendete lite* support bears the burden of proving all elements of his or her claim, including, as part of demonstrating the need for alimony, establishing his or her necessary living expenses. *See Fabien v. Fabien*, 69 V.I. 809, 815 (V.I. 2018) (explaining that wife seeking alimony “bore the burden of substantiating her claim that she has the need for alimony and that [her husband] has the financial ability to pay for her purported living expenses”) (citing *Berrios-Rodriguez*, 58 V.I. at 490 (noting that a plaintiff seeking an award of alimony has “the burden of proving all the elements of [t]he[] claim for alimony”)). Here, Donna failed to introduce sufficient evidence to establish, beyond the level of speculation, that her monthly credit card debt interest payments constituted necessary living expenses rather than business expenses. Thus, the Superior Court did not abuse its discretion in declining to consider these interest payments as necessary expenses in either its computation of alimony or *pendente lite* support. *See Cabe v. Cabe*, 201 S.E.2d 203, 204–05 (N.C. Ct. App. 1973) (noting that even if it “seems obvious that [a party seeking alimony] has other monthly expenses... the court is not permitted to speculate, as to the amount,” that “[t]he courts are not blind to the fact that day to day living is expensive, but each person's situation is different,” and that “[e]ach case presents different circumstances and the burden is upon the applicant for alimony, or alimony pendente lite, to offer evidence to establish the [extent of the pertinent] need”). Accordingly, we affirm the Superior Court’s February 10, 2017 amended final decree of divorce as to this issue.

III. Conclusion

¶ 9 Because the Superior Court erred in wholly failing to consider Donna's request for attorney's fees and costs during the pendency of the litigation under Title 16, the court's February 10, 2017 order is reversed in part as to the requirement that each party bear his or her own fees and costs, and this matter is remanded for the court to determine whether Donna is entitled to an award of attorney's fees and costs pursuant to 16 V.I.C. § 108. However, because Donna failed to establish, beyond the level of speculation, that her monthly credit card debt interest payments constituted necessary expenses for the purposes of awarding alimony and *pendente lite* support, the Superior Court did not abuse its discretion in omitting these payments from its consideration and the court's February 10, 2017 amended final decree of divorce is affirmed in this respect.

Dated this 15th day of August, 2019.

BY THE COURT:

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court