

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

PAULA WALTERS

Plaintiff)

)

)

)

vs)

EARL G. MOORE

)

)

)

Defendant

CASE NO. SX-09-SM-0000203

ACTION FOR: DEBT - SMALL CLAIMS

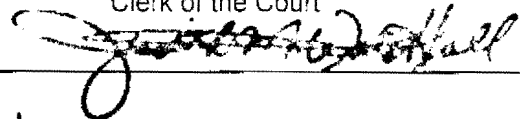
**NOTICE OF ENTRY OF
OPINION**

TO: DOLACE MCLEAN, ESQ.
PAULA WALTERS

Please take notice that on September 27, 2013 a(n) OPINION dated
September 25, 2013 was entered by the Clerk in the above-entitled matter.

Dated: September 27, 2013

Venetia H. Velazquez, Esq.
Clerk of the Court



for

ROBYN MOTTA
STUDENT INTERN

**SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX**

EARL G. MOORE,	)	CASE NO.: SX-09-SM-203
	)	
Petitioner /	)	PETITION FOR REVIEW OF A
Defendant,	)	MAGISTRATE DECISION
	)	
v.	)	ACTION FOR DEBT
	)	
PAULA WALTERS,	)	
	)	
Respondent /	)	
Plaintiff.	)	
	)	

OPINION

THIS MATTER is before the Court on petition for review from a decision of the magistrate court. Respondent Paula Walters filed a complaint with the Small Claims Division of the Superior Court in April 2009, seeking to recover \$5,400 in cash she alleged Petitioner Earl G. Moore took from underneath her car in May 2008. (Compl., filed Apr. 8, 2009.) The magistrate court held a bench trial on July 14, 2009 and heard testimony from Moore, Walters, Walters's daughter, Debbie Walters, as well as Walters's granddaughter, Quieanna Walters. Following trial, the court found in favor of Walters. Moore seeks review of that judgment. For the reasons stated below, the decision of the magistrate court will be affirmed.

FACTS AND PROCEDURAL BACKGROUND

Paula Walters testified that she and Moore had been in a romantic relationship. Before Mother's Day in 2008, Walters and Moore attended a show at the Island Center on St. Croix. Moore spent the night at her house and left the next morning. Walters testified that she gave Moore her keys so he could let himself out and then he passed the keys back to her through her bedroom window. She claimed that sometime between when he left but before passing her keys,

he let himself into her car and removed \$5,400.00 in cash which she kept rolled up in a brown paper bag under the driver's seat. When a few months later Walters went to take out the money from her car, she discovered it was missing. Walters testified that her daughter, Debbie Walters, told her that she saw Moore remove a brown paper bag from the car. Walters filed a police report, but later dropped the charges, telling the police that she only wanted the money back.

Debbie Walters testimony corroborated her mother's testimony. She recalled that one morning, either the day before or the day after Mother's Day, she was in the kitchen and saw Moore take a brown paper bag out from her mother's car. She said that she "thought nothing of it because it was supposed to be [her] mother['s] boyfriend." (July 24, 2009 Trial Tr. 31: 20-21, App'x to Pet'r Br.) When her mother began frantically looking for the money and told her that she kept it in the brown paper bag, Debbie Walters told her mother what she saw.

Quieanna Walters's recalled that her grandmother spent the night at Moore's house, returning alone the next morning. Her testimony differed from her mother's testimony and her grandmother's testimony and actually partially corroborated Moore's testimony.¹

According to Moore, he and Walters attended a show at Island Center on St. Croix around Mother's Day in 2008. They drove to the show in separate vehicles. After the show, Walters phoned Moore at home "around nine to nine-thirty in the night" and asked if she could spend the night with him. (Trial Tr. 5:21-23.) He agreed and, according to him, she spent the evening of May 10, 2008 at his house, leaving the next morning. Moore testified that the next

¹ Although Walters was the plaintiff and therefore had the burden to prove her claims, the magistrate court allowed Moore to testify first. Moore did not object during at trial and his attorney has not objected in his brief on review. While the Rules of the Superior Court governing petitions for review from the Magistrate Division do not contain a corollary to V.I. Supreme Court Rule 22(m), providing that issues not raised before the trial court are deemed waived on appeal, it is a long standing prudential rule that the "failure to raise an issue in the trial court constitutes a waiver of the argument on appeal." *V.I. Port Auth. v. Joseph*, 49 V.I. 424, 428 (internal quotation marks, alterations, and citation omitted). Therefore, the Court finds this issue waived.

morning was May 11th, “a Monday morning.” (Trial Tr. 6: 1-2.) He explained that he did not see Walters again until June 25, 2008 when she unexpectedly showed up outside his home with her daughter and started threatening him. Walters did not mention the missing money at that time. Shortly thereafter, Moore filed a civil domestic violence action against Walters, obtaining a temporary restraining order against her. That matter came on for a hearing on July 15, 2008 on his request for a permanent restraining order.

Following the close of evidence, the magistrate court found that Walters had proven by a preponderance of the evidence that Moore took the brown paper bag containing \$5,400 from Walters. The magistrate court later entered judgment in favor of Walters, awarding her \$5,400 plus \$40 in court costs. (Jgmt, entered July 17, 2009.) Moore attempted to appeal that decision directly to the Supreme Court of the Virgin Islands, which the Supreme Court later dismissed in December 15, 2009 Order, finding that it lacked jurisdiction pursuant to *H&H Avionics, Inc. v. Virgin Islands Port Authority*, 52 V.I. 458 (V.I. 2009), because orders entered by the magistrate court are not final appealable orders under 4 V.I.C. § 32 until first reviewed by a Superior Court judge. *See Moore v. Walters*, S. Ct. Civ. No. 2009-089, slip op. at 4-5 (V.I. Dec. 15, 2009). The Supreme Court then remanded Moore’s appeal to this Court for further proceedings.²

On remand, the Court issued a briefing schedule, later amended, setting the deadlines by which the parties had to file their briefs. (Order, entered Feb. 1, 2012 (granting motion to amend briefing schedule); Order, entered Mar. 6, 2010 (initial briefing schedule).) Moore filed his brief and included a copy of the transcript of the July 2009 trial before the magistrate court. (Pet’r Br.,

² The Court notes that Moore has not paid the \$50 filing fee required by Superior Court Rule 322.1(b)(4). Instead, Moore paid \$105 docketing fee to file an appeal to the Supreme Court of the Virgin Islands, which was later dismissed for lack of jurisdiction. At the time Moore filed his appeal from the magistrate court, however, Rule 322.1 had not yet been adopted by the Court and would not be adopted until November 23, 2010. Therefore, because the filing fee for petitions for review had not yet been set at the time Moore attempted to seek review of the magistrate court’s July 17, 2009 Order, the Court deems that fee waived in this instance.

filed Feb. 14, 2012.) Walters never filed a responsive brief and therefore has forfeited her right to participate further. (See Feb. 1, 2012 Order at 1 (“Respondent’s failure to file a responsive brief . . . shall result in the resolution of the petition for review on the record . . . and the Respondent shall lose any further opportunity to be heard in the review proceedings.”).)

DISCUSSION

Before a decision of the magistrate court is final, it must be reviewed by a judge of the Appellate Division of the Superior Court or the time to seek review in the Appellate Division must elapse. *H&H Avionics*, 52 V.I. at 461; Super. Ct. R. 322.1(c). For all cases within the magistrate court’s original jurisdiction such as small claims cases, the magistrate court is the finder of fact. *In re Estate of Small*, 57 V.I. 416, 429 (V.I. 2011). All evidence must be submitted before the magistrate court and new evidence may be not be submitted to the Appellate Division judge. *Id.* (“[A]llowing a party to create or submit additional factual materials to affect disposition of the appeal to the Superior Court would undermine the integrity of the magistrate fact-finding process and would be unfair; it would deprive a magistrate of information needed for an informed decision in light of all of the evidence and would invite either inefficient or inadequate preparation for magistrate proceedings, or worse, strategic ‘sand bagging’ (since the opponent of the ‘new evidence’ is not given an opportunity to rebut the additional material in the evidentiary proceedings before the magistrate).”). In reviewing the magistrate court’s decision, the Appellate Division judge must accept the facts as determined by the magistrate court unless that the Court concludes that the magistrate court’s “factual determination . . . is completely devoid of minimum evidentiary support or . . . bears no rational relationship to the supportive evidentiary data.” *In re Estate of Small*, 57 V.I. 416, 430 (V.I. 2011) (internal quotation marks and citations omitted).

In his brief, Moore raises three arguments. He first claims that the magistrate court violated his due process rights by refusing to obtain, presumably on its own, a copy of the transcript of the hearing before the Family Division in Moore's 2008 domestic violence case against Walters. (Pet'r Br. 7-9.) Specifically, Moore argues that Walters's gave inconsistent testimony at the July 2009 small claims trial compared with the testimony she gave the year prior during the July 2008 domestic violence hearing.³ But Moore conflates the judge's role as gatekeeper of what evidence is admitted and excluded at trial with the litigant's obligation to prepare and present her or his own defense. While Moore is correct that in the small claims division, Superior Court Rule 64 requires that the court strive to do substantial justice by the parties, contrary to Moore's contention, it was not the magistrate's obligation to obtain evidence and make Moore's case for him. Moreover, Moore never requested that the Court aid him in obtaining the July 2008 transcript. Instead, in attempting rebutting Walters's testimony, Moore explained that Walters never mentioned the missing money during the July 2008 hearing. He then said, "I don't know if you could get a transcript on what Paula says, when we were in the court, July 15, 2008. Okay." (Trial Tr. 42:9-11.) Moore did not request a copy of the transcript, however, or at all indicate that he was unable to obtain it himself. Furthermore, although Moore did not make a "request," the magistrate court also did not "completely ignore" his reference to the transcript. (See Pet'r Br. 12 ("when Mr. Morre [sic] requested that the Court get a copy of the Family Court hearing, the Small Claims judge completely ignored the request.")) Rather, the magistrate court later questioned Walters extensively about the July 2008 hearing and even asked Walters why, as Moore claimed, she did not mention the missing money nearly two

³ Moore cites section 19 of title 14 as the authority by which the magistrate court should have considered Walters's allegedly prior inconsistent statements during the 2008 domestic violence action. (Pet'r Br. 8.) That authority is not controlling, however, because it governed the admissibility of prior inconsistent statements in criminal matters.

months after Mother's Day had passed. (*See generally* Trial Tr. 45:18-47:3.) Walters clarified her testimony, explaining that she did not mention the missing money at the July 2008 hearing because she had not yet learned that it was missing and then noted that she might have been mistaken about the length of time that passed between Mother's Day in May 2008 and when she discovered the money was missing. Although the magistrate court did not expressly reference the Virgin Islands police reports which Walters attached to her complaints, the Court notes that the date of occurrence listed on the police report supports Walters's testimony because the report lists an unknown date in July 2008 as the date when Walters's claimed Moore allegedly took the \$5,400 in cash. (*See* Compl. at Police Rept. # 08A18927, dated Nov. 10, 2008.) For these reasons, the Court rejects Moore's argument that the magistrate court committed any error related to his presentation of a defense at trial.

Moore's second argument is that the magistrate court allowed Walters to perjure herself. The Court rejects that argument as well. "A witness commits perjury if he or she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *Duggins v. People*, 56 V.I. 295, 311 (V.I. 2012) (internal quotation marks and citation omitted). Here, the testimony Moore points to is ancillary, not material, namely which party slept at the other party's home on the night in question. As noted above, the testimony of Moore and Quicanna had Walters spending the night by Moore whereas the testimony of Walters and Debbie had Moore spending the night by Walters. While that testimony was contradictory, there is no indication that it was given willfully with the intent to give false testimony. Moreover, regardless of who slept where, the uncontradicted testimony of Paula Walters testified that she had \$5,400 in cash rolled up in a brown paper bag in her car that she later learned was not where she left it and of Debbie Walters

that she saw Moore removing a rolled-up brown paper bag from her mother's car. Based on this testimony, it was not clearly erroneous for the magistrate court to find that the brown paper bag Debbie Walters saw Moore removing from her mother's car was the same bag that Paula Walters testified went missing. Therefore, the Court rejects Moore's argument that the magistrate committed any error.

Lastly, Moore's final argument is that the magistrate court evidenced bias during the trial, affording Walters "wide latitude" in presenting her case while similarly keeping Moore "on a very short leash." (Pet'r Br. 12.) First, Moore overlooks the fact that Walters had the burden of proving her case and therefore should have been given, particularly pursuant to Superior Court Rule 64, wide latitude to do so. Second, Moore also overlooks the fact that the instances where the magistrate court restricted Moore's defense were instances in which Moore attempted to introduce ancillary testimony. For example, the magistrate court did prevent Moore from calling two witnesses, but because both witnesses, according to Moore were "going to testify [about] the day when Paula came to my home with the daughter and made threats." (Trial Tr. 40:14-16.) That testimony, on its face, had nothing to do with whether Moore took Walters's money from her vehicle on or around Mother's Day in May 2008. Furthermore, as noted above, the magistrate court did extensively question Walters about the July 2008 hearing, a matter Moore raised himself during trial. Such questioning undercuts Moore's claim that the magistrate court "evidenced a keen interest in aiding Paula Walters" and impeding Moore. (Pet'r Br. 11.) Accordingly, the Court also finds that Moore's final argument lacks merit.

CONCLUSION

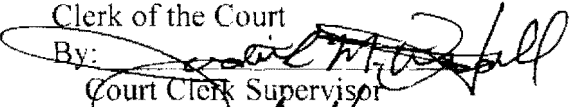
For the reasons stated above, Moore has not shown that the magistrate court's findings are clearly erroneous. Therefore, the judgment of the magistrate court entered July 17, 2009 is **AFFIRMED**. It is further

ORDERED that pursuant to Superior Court Rule 322.7(b) the Judgment entered July 17, 2009 by the magistrate court is **FINAL** and this matter is now **CLOSED**.

DONE AND SO ORDERED this 25th day of September, 2013.

ATTEST

VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 9/27/13



DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court