Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EILEEN M. HARVEY,	)	**S. Ct. Civ. No. 2007-115**
	)	Re: Super. Ct. Di. No. 148/2005
Appellant/Defendant,	)	
v.	)	
	)	
LIONEL C. CHRISTOPHER,	)	
	)	
Appellee/Plaintiff.	)	
	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Argued: October 24, 2008
Filed: January 22, 2009

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

ATTORNEYS:

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St. Croix, U.S.V.I.
Attorney for Appellant

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OPINION OF THE COURT

PER CURIAM.

THIS MATTER comes before the Court as a result of Appellant Eileen Harvey's (hereafter "Harvey") appeal from a September 18, 2007 Superior Court order that, according to Harvey, denied both her motion to reopen case and her motion for reconsideration. The parties timely filed their respective briefs, and this Court heard the parties' oral arguments on October

24, 2008. For the following reasons, we will hold the instant appeal in abeyance and remand to the Superior Court for further proceedings.

I. BACKGROUND

Harvey and Appellee Lionel Christopher (hereafter "Christopher" or "Appellee") were lawfully married to each other on St. Croix on December 1, 1990. While married, Christopher and Harvey resided at Plot No. 515 Estate Sunny Acres (hereafter "Property"). On June 10, 2005, Christopher petitioned the Superior Court for dissolution of the marriage pursuant to title 16, section 101 et seq. of the Virgin Islands Code. Christopher's complaint identified the Property as the marital home and requested entry of an order providing that each party own a fifty percent interest in the Property as tenants in common. On August 19, 2005, Harvey submitted an answer also requesting equitable distribution of the Property. Christopher and Harvey both waived any claims to alimony in their pleadings. The Superior Court granted the divorce on October 4, 2005 and identified the Property as the marital home in its findings of fact and conclusions of law.

On March 21, 2006, Christopher filed a motion to amend his complaint to correct an error, pursuant to Fed. R. Civ. P. 15(a). In his motion, Christopher stated that he was the sole owner of Sunny Acres and that "the listing of [Sunny Acres] as jointly owned property was clearly done in error." (J.A. at 10; Motion to Amend Petition at 1.) In a renewed motion to amend his complaint filed on May 15, 2007, Christopher clarified that he had deeded his interest in the Property to his son, Rosbert, prior to the marriage. The trial court granted Christopher's motion on July 9, 2007, and directed Harvey to file an amended answer within twenty days. Harvey did not file an amended answer during the stated time period.

The Superior Court held a hearing on the issue of distribution of the marital home on

August 15, 2007. At the hearing, Christopher's counsel explained that Christopher bought the property in 1981 with his son, and then transferred all of his interest to his son in 1988—two years prior to the marriage. Thus, Christopher argued that there was no marital home for the court to divide. Christopher's counsel produced the relevant deeds at the hearing, which contained the seal and signature of Bernice Pemberton, the Recorder of Deeds (hereafter "Recorder").

Harvey's counsel stated that a public records search, which was done in conjunction with a recent appraisal performed on the property, found that Christopher, and not his son, was the current record owner of the Property and that an inquiry with the Recorder confirmed that Christopher was the owner. However, Harvey's counsel did not arrive at the hearing with a Title and Encumbrance Certificate (hereafter "Certificate"), but informed the trial court that he could provide it within a couple of days. Although Harvey's counsel did not dispute the authenticity of the deeds Christopher produced at the hearing, he argued that it was inappropriate for the trial court to close the matter without first allowing him to obtain the Certificate and, if that document were to list Christopher as the owner, taking testimony from the Recorder's office to discover the source of the discrepancy.

In response to the concerns raised by Harvey's counsel, the trial judge repeatedly stated that there was no harm in closing the case now, for "[i]f after further investigation the situation or the circumstances should change . . . the Court is always permitted and will gladly reopen the matter so that we can take testimony on that issue." (J.A. at 39; Trial Tr., Aug. 15, 2007, at 15.) The judge represented that she would "put that in today's order so there is no confusion that the matter can be reopened if after further examination it should turn out that what has been presented to the Court is not, in fact, so," and also stated that, "if need be, we can get [the

Recorder] in here if we have to reopen." (J.A. at 39-40; Trial Tr. at 15-16.) After Harvey's counsel requested that his client receive alimony in gross, the trial judge denied the request on the ground that Harvey waived alimony in her initial answer and never submitted an amended answer after Christopher had amended his initial complaint. The judge concluded the hearing by closing the case due to the lack of a marital homestead, while "leaving the opportunity open for the parties to reopen should newly discovered evidence prove otherwise." (J.A. at 47; Trial Tr. at 23.)

The next day—August 16, 2007—the trial court issued an order holding that the Property cannot be classified as a marital homestead and that Harvey waived her claim to alimony by failing to submit an answer to Christopher's amended complaint. On that same day, Harvey's counsel obtained the Certificate, which indicated that Christopher was the current record owner of the Property. On August 24, 2007, Harvey's counsel filed a motion to re-open the case, and on August 27, 2007 the trial court ordered Christopher to respond to that motion within ten days. Subsequently, on August 29, 2007, Harvey's counsel filed a motion for reconsideration of the August 16, 2007 order on the grounds that Harvey did not waive alimony. The motion for reconsideration again requested that the trial court vacate the August 16, 2007 order in light of Harvey's prior motion to re-open the case.

On September 18, 2007, the trial court denied Harvey's motion for reconsideration. This order, however, did not mention Harvey's motion to re-open the case. Nevertheless, Harvey's Notice of Appeal, timely filed on October 9, 2007, characterized the September 18, 2007 order as one "denying [Harvey] any interest in the marital homestead and denying [Harvey's] request to re-open the matter for purposes of determining distribution of the marital homestead."

II. DISCUSSION

Although neither this Court nor the Superior Court is an Article III court, "at least some aspects of Article III's requirement that a court only rule on actual cases and controversies have been incorporated into Virgin Islands jurisprudence." *V.I. Gov't Hosp. and Health Facilities Corp. v. Gov't of the V.I.*, Civ. No. 2007-125, 2008 WL 4560751, at *1 (V.I. Sept. 16, 2008). "The ripeness doctrine, which stems both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction, has been recognized and applied by Virgin Islands courts." *Id.* at 5 (internal quotation marks and citations omitted).

A textbook example of a matter not ripe for appellate review is an issue that has not yet been ruled on by the trial court. *See Rodrigue v. Rodrigue*, 218 F.3d 432, 443 (5th Cir. 2000). In such a situation, it is improper for an appellate court to rule on that issue—even if it has been fully briefed by the parties—because the appeal may become moot if the trial court were to ultimately rule in the appellant's favor. *See General Offshore Corp v. Farrelly*, 743 F. Supp. 1177, 1189 (D.V.I. 1990). Here, the Superior Court's September 18, 2007 order expressly denies Harvey's motion for reconsideration, but does not address her motion to re-open case. Accordingly, the trial court's denial of Harvey's motion to re-open the case is not ripe for review by this Court because the trial court has not yet ruled on this motion.[1]

Furthermore, although the trial court did rule on Harvey's motion for reconsideration, we conclude that this motion, too, is not yet ripe for appellate review. We note that, at the August

[1] We note that Harvey's motion for reconsideration makes reference to the earlier filed motion to re-open case, stating that "Defendant respectfully requests the Court to vacate its determination that the claim for alimony is waived and that in view of Defendant's recent request to have the matter re-opened in order to consider the evidence recently submitted to the Court reflecting that Plaintiff owns #515 Sunny Acres, that the Court's determination with respect to the claims for alimony be vacated and #515 Sunny Acres be determined to be the marital homestead." (J.A. at 69-70; Motion for Reconsideration, at 1-2.) However, we find this fleeting reference to the motion to re-open case, in a motion requesting that the trial court reconsider its denial of alimony in gross, insufficient for a finding that the August 24, 2007 motion to re-open was supplanted by or incorporated into the August 29, 2007 motion for reconsideration.

15, 2007 hearing, the trial court repeatedly informed the parties that, although she was prepared to close the case, she would "keep it upstairs for a few more days" and would "gladly reopen the matter so we can take testimony on that issue" should the Certificate identify Christopher as the Property's current owner. (J.A. at 39; Trial Tr. at 15.) If the trial court were to re-open the case and allow for additional testimony—as it had earlier represented to the parties—a decision on Harvey's appeal of the denial of her motion for reconsideration may become moot, since such additional testimony may cause the trial judge to amend or reconsider her earlier rulings. Therefore, it is appropriate for this Court to defer considering Harvey's appeal of the trial court's denial of her motion for reconsideration until the trial court has first ruled on her motion to re-open case.

Although this Court has the option of dismissing the instant appeal on ripeness grounds, *V.I. Gov't Hosp. and Health Facilities Corp.*, 2008 WL 4560751, at *3, we choose not to take such action at this time. Dismissal of an appeal on procedural grounds after both parties have gone to the expense of submitting briefs on the merits and participated in oral arguments is disfavored when it is likely that the case will eventually return to the appellate court in essentially the same form, for "[t]he net effect will be the multiplication of attorney's fees . . . for the litigants, and additional work for the [trial] judge[] and three other judges of this court who will have to address an issue that stands fully briefed . . . and ready for decision . . . today." *Gioda v. Saipan Stevedoring Co., Inc.*, 855 F.2d 625, 631 (9th Cir. 1988) (Kozinski, J., dissenting). Because of these judicial economy concerns, we choose to hold these proceedings in abeyance until the trial court rules on Harvey's motion to re-open case.

It is well established that subsequent events may ripen a prematurely filed appeal. *See Regional Rail Reorganization Act Cases,* 419 U.S. 102, 139-40, 95 S.Ct. 335, 356-57, 42

L.Ed.2d 320 (1974) (reversing lower court holding that case was not ripe for review because "[i]t is the situation now rather than the situation at the time of the district court's decision that must govern."); *Cape May Greene, Inc., v. Warren*, 698 F.2d 179, 184-85 (3d Cir. 1983) (holding that, while district court's order was not an appealable final judgment at the time the appeal was filed, district court's disposal of remaining claims after appellate briefs were filed cured jurisdictional defect and allowed appellate court to hear appeal on the merits). If the trial court grants Harvey's motion to re-open case, this Court could, at that point, dismiss the instant appeal on mootness grounds. However, if the trial court denies the motion to re-open case, the matter will become ripe for appellate adjudication and this Court may then consider the merits of the instant appeal without unnecessary or duplicate proceedings.

Finally, this Court is compelled to note that the parties' non-compliance with this Court's rules of appellate procedure have contributed to the undesirable situation of a ripeness issue not being detected until after oral arguments have already been heard. Supreme Court Rule 24 expressly states the Appendix jointly prepared by the parties must include "a table of contents with page references and a copy of the notice of appeal; the judgment, order, or decision being appealed;" as well as "a certified list of docket entries from the Superior Court." V.I.S.CT.R. 24(a). Here, the Appendix submitted by the parties lacked a table of contents and did not contain a copy of Harvey's notice of appeal, the trial court's September 18, 2007 order, or a certified list of docket entries from the Superior Court. This Court wishes to remind litigants that failure to comply with Supreme Court Rule 24—in addition to causing unnecessary delays, such as in this case—may result in sanctions, including the denial of all or some of the costs of the appeal.

III. CONCLUSION

Because the trial judge has not ruled on Harvey's motion to re-open case, the instant appeal is not yet ripe for appellate review. Accordingly, we remand the matter to the Superior Court for a ruling on Harvey's motion to re-open case.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court