For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

STEPHEN EVANS-FREKE, Appellant/Petitioner, v. **VALERIE EVANS-FREKE,** Appellee/Respondent.	)	**S. Ct. Civ. No. 2019-0046** Re: Super. Ct. DI. No. 166/2016 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Debra S. Watlington

Considered: July 14, 2020
Filed: December 30, 2021

Cite as: 2021 VI 25

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

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Stephen Evans-Freke appeals from an April 16, 2019 opinion and order of the Superior Court granting the motion of his wife, Valerie Evans-Freke, to dismiss his petition for divorce.

For the reasons that follow, we reverse the judgment below and order that, upon remand, the Superior Court shall immediately enter a decree of divorce and exercise jurisdiction over all outstanding issues that remain between the parties.

I. BACKGROUND

¶ 2 Stephen and Valerie were married in Norfolk, Connecticut, on December 27, 1990. In 1999, they purchased a home in New York. Stephen and Valerie resided jointly in their New York home until 2008, when Stephen moved to St. Thomas while Valerie remained in their New York home with their two children. Stephen has resided in the Virgin Islands since moving to St. Thomas in 2008 and has continued to be Valerie's only source of financial support, which has included paying all bills for their New York home as well as other bills that Valerie sent to him for payment. He also sent Valerie monthly payments from his Virgin Islands bank accounts and provided her with health insurance through Auven Therapeutics Management L.P, the Virgin Islands-based company that he co-founded and from which he derives his primary income.

¶ 3 On November 14, 2016, Stephen filed a petition for divorce with the Superior Court, seeking dissolution of his marriage to Valerie. While Stephen's petition was pending, Valerie filed a separate petition for divorce in New York on February 17, 2017, and on February 21, 2017, filed an answer to Stephen's divorce petition alleging that the Superior Court lacked personal jurisdiction over her and that in any event the Virgin Islands divorce proceeding should be dismissed in favor of the New York action. On April 18, 2017, Valerie filed with the Superior Court a motion to dismiss, based on these same arguments.

¶ 4 Stephen opposed the New York action, and on June 8, 2017, the New York court dismissed Valerie's divorce petition on *forum non conveniens* grounds, finding that the Virgin Islands constituted a more appropriate forum. The New York court held that "complicated and significant

issues in the action will arise from the identification, valuation and equitable distribution of marital assets," the majority of which are in the Virgin Islands. (J.A. 391.) The New York court also determined that "compelling [Valerie] to litigate the action in the USVI would appear considerably less disruptive and more efficient than compelling [Stephen] to litigate in New York" because "[Stephen] continues to be actively involved in his businesses" and that the complexity of the financial issues would likely require "the participation of experts, not [Valerie]." (J.A. 392.) However, the New York court acknowledged that Valerie had moved to dismiss the Virgin Islands divorce action and held that it would dismiss the New York action without prejudice should Valerie succeed in getting the Virgin Islands action dismissed.

¶ 5 The next day, Stephen filed the New York court's dismissal order with the Superior Court. However, the Superior Court took no immediate action on Stephen's divorce petition or Valerie's motion to dismiss. Therefore, on March 23, 2018, Stephen filed a motion for partial summary judgment solely on the issue of divorce, which Valerie opposed on the merits on April 19, 2018. On July 24, 2018, the Superior Court issued an order denying Stephen's motion for partial summary judgment without prejudice and referring the matter to mediation. However, the July 24, 2018 order gave no reasons for denying the summary judgment motion and did not rule on Valerie's pending motion to dismiss. Valerie refused to mediate, and the Superior Court never acted on Stephen's subsequent attempts to enforce the July 24, 2018 order, including his August 30, 2018 motion to hold Valerie in contempt.

¶ 6 On November 15, 2018, Stephen filed a renewed motion for partial summary judgment, requesting the granting of a divorce decree based not only on the grounds originally noted in his earlier March 23, 2018 motion, but on the fact that he was in a relationship with another woman who he desired to marry, but could not without first obtaining a legal divorce from Valerie. On

December 9, 2018, Valerie filed an opposition to the renewed motion which again opposed such bifurcation on the merits.

¶ 7 The Superior Court issued a ruling on Valerie's motion to dismiss in an April 16, 2019 opinion and order. In its opinion, the Superior Court determined that it lacked personal jurisdiction over Valerie after concluding that Stephen failed to establish that Valerie's activities established personal jurisdiction under the Virgin Islands Long Arm Statute, 5 V.I.C. § 4903, and that even if they did, those contacts did not satisfy constitutional due process. Moreover, the Superior Court held in the alternative that—even if it could exercise personal jurisdiction over Valerie—the Virgin Islands nevertheless represented an inconvenient forum and that the divorce proceeding should instead be adjudicated in New York. Stephen filed a timely notice of appeal with this Court on May 14, 2019. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 8 This court has appellate jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court." 4 V.I.C. § 32(a). Because the Superior Court's April 16, 2019 opinion and order dismissed all of Stephen's claims, it is a final order within the meaning of section 32(a). *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 535 (V.I. 2015).

¶ 9 This Court applies plenary review over all questions of law, including a determination by the Superior Court that it lacked personal jurisdiction. *Molloy v. Independence Blue Cross*, 56 V.I. 155, 169 (V.I. 2012). However, we review the dismissal of an action on *forum non conveniens* grounds for abuse of discretion. *Gayanich v. Gayanich*, 69 V.I. 583, 588 (V.I. 2018). "A [trial] court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal

premises, or commits an error of law." *Molloy*, 56 V.I. at 168 (quoting *United States v. Thompson-Riviere*, 561 F.3d 345, 348 (4th Cir. 2009)) (internal quotation marks omitted).

B. Personal Jurisdiction

¶ 10 In his appellate brief, Stephen contends that the Superior Court erred when it dismissed his divorce petition after concluding that it lacked personal jurisdiction over Valerie.[1] We agree.

¶ 11 "Personal jurisdiction, also called *in personam* jurisdiction, is the court's power to bring a person into its adjudicative process." *Estate of Skepple v. Bank of Nova Scotia*, 69 V.I. 700, 719 (V.I. 2018) (internal citations and quotation marks omitted). However, unlike challenges to subject matter jurisdiction, "[o]bjections to personal jurisdiction . . . are personal defenses that are waived if not raised in a timely manner." *Id.* at 745 (citing *In re Najawicz*, 52 V.I. 311, 338-39 (V.I. 2009)). The defense of lack of personal jurisdiction is ordinarily raised in a timely manner when

[1] The concurrence asserts that Stephen challenges the Superior Court's subject matter jurisdiction as part of this appeal. However, Stephen does no such thing—in fact, he expressly states in his brief that "[t]he Superior Court of the Virgin Islands . . . had jurisdiction to adjudicate the Verified Complaint for Divorce and accompanying issues pursuant to V.I. Code Ann tit. 16, § 106." (Appellant's Br. 1.) Nor did the Superior Court dismiss his petition based on a belief that it lacked subject matter jurisdiction: on the contrary, it expressly stated in its April 16, 2019 opinion that "[a]s both parties acknowledge, this Court has subject matter jurisdiction over the marriage and can dissolve the marital relationship." (J.A. 18.)

Because the existence of subject matter jurisdiction is obvious and has not been challenged by either party nor questioned by the Superior Court, we decline the concurrence's invitation to engage in extensive statutory analysis of section 106 and related statutes. We must, however, expressly reject the concurrence's characterization of the Family Division of the Superior Court as the "Family Court" and its description of it as a "court of general, but limited, subject matter jurisdiction." The Legislature has identified the Superior Court and the Supreme Court as the only courts of the Virgin Islands, *see* 4 V.I.C. § 2(a), has provided that the Superior Court consist of multiple divisions, including a family division, *see* 4 V.I.C. § 79(a), and vested the Superior Court with original jurisdiction over all civil and criminal actions, subject to the concurrent jurisdiction of the United States District Court of the Virgin Islands, *see* 4 V.I.C. § 76. To elevate the Family Division to the level of a separate court as proposed by the concurrence is beyond the authority of this Court and is tantamount to impermissible judicial amendment or rewriting of the Virgin Islands Code. *See In re Reynolds*, 60 V.I. 330, 337 n.7 (V.I. 2013).

it is asserted in a defendant's answer or pre-answer motion to dismiss. *See* V.I. R. CIV. P. 12(b)(2); 12(h)(1); *see also* V.I. R. FAM. P. 1(i) ("When no Rule is included addressing a procedure, provisions of the Virgin Islands Rules of Civil Procedure . . . may be used, adapted as necessary."). However, even if the defense is properly preserved in an answer or pre-answer motion, it may nevertheless be waived if the party, whether personally or through an agent, engages in conduct that expressly or implicitly consents to the court's power. *Skepple*, 69 V.I. at 744-45 (collecting cases). Perhaps the textbook example of such a waiver is when a party asserts the defense of personal jurisdiction but then "actually litigates the underlying merits or demonstrates a willingness to engage in extensive litigation in the forum." *In re Texas E. Transmission Corp. PCB Contamination Ins. Coverage*, 15 F.3d 1230, 1236 (3d Cir. 1994).

¶ 12 We note that Valerie may have waived the defense of personal jurisdiction. Although Valerie raised lack of personal jurisdiction in her February 21, 2017 answer and April 17, 2017 motion to dismiss, her April 19, 2018 opposition to Stephen's partial summary judgment motion did not renew that defense, and in fact did not mention personal jurisdiction (or the absence thereof) at all; rather, her filing opposed Stephen's motion entirely on the merits. Moreover, Valerie repeated this conduct again on December 9, 2018, when she opposed Stephen's renewed motion for partial summary judgment on the merits without referencing her personal jurisdiction defense.

¶ 13 In any event, we need not decide whether Valerie waived the personal jurisdiction defense through her subsequent conduct because that defense fails on the merits. In its April 16, 2019 opinion, the Superior Court acknowledged that it was not in dispute, among other things, that Valerie sent her bills to Stephen in the Virgin Islands, which he paid from monies obtained from his Virgin Islands-based business; received her health insurance from that business; and otherwise

received substantial financial assistance from Stephen as the providing spouse from income derived exclusively from the Virgin Islands. Although the Virgin Islands Long-Arm Statute authorizes the Superior Court to exercise personal jurisdiction over a person based on "a claim for relief arising from the person's (1) transacting any business in this territory," 5 V.I.C. § 4903(a), the Superior Court held that Valerie's activities did not qualify under this provision because "the contacts did not involve a commercial interest." (J.A. 11.) However, this Court has already held that the phrase "transacting any business in this territory" is "a term of art" which does not require that a defendant participate in business or commercial activities but only that "a defendant engage in some type of purposeful activity within the territory." *Molloy*, 56 V.I. at 176. And because Valerie's activities were purposeful and directed to the Virgin Islands, and sufficiently related to the claims that would be litigated as part of Stephen's divorce action, permitting the exercise of personal jurisdiction under the Virgin Islands Long Arm Statute would comport with due process.[2] *Id.* at 183-84. Accordingly, the Superior Court erred when it concluded that it lacked personal jurisdiction over Valerie.

C. Inconvenient Forum

¶ 14 Stephen also asserts that the Superior Court erred when it alternatively dismissed his divorce petition on *forum non conveniens* grounds. Unlike lack of personal jurisdiction, the

[2] In its April 16, 2019 opinion, the Superior Court held that Valerie's activities were not purposefully directed to the Virgin Islands because she "did not 'purposefully direct' her actions to this forum, as much as she directed action to her husband." (J.A. 11.) The sole authority the Superior Court relied upon for creating such a distinction was the decision of the Supreme Court of the United States in *Kulko v. Superior Court of California*, 436 U.S. 84, 97 (1978), where it held that a father who resided in New York but sent his daughter to live in California and paid child support to the mother in California had not purposefully availed himself of any benefits in California. However, that is precisely the opposite of the situation in this case, in that unlike the father in *Kulko*, Valerie did not send money to the Virgin Islands, but received money from the Virgin Islands, which she actively solicited.

defense of *forum non conveniens* is not subject to waiver if not timely asserted or sufficiently renewed. *See* V.I. R. CIV. P. 12(b); *see also Yavuz v. 61 MM, Ltd.*, 576 F.3d 1166, 1173 (10th Cir. 2009); *UFJ Bank Ltd. v. Ieda*, 123 P.3d 1232, 1240 (Haw. 2005). Nevertheless, we agree with Stephen that the Superior Court erred when it dismissed his petition on this basis.

¶ 15 Under Virgin Islands law, a court may "stay or dismiss" an action "[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum." 5 V.I.C. § 4905. In its April 16, 2017 opinion, the Superior Court applied a three-factor test to determine whether to dismiss an action on *forum non conveniens* grounds in which it considered and weighed (1) the existence of an alternative forum; (2) private interests; and (3) public interests. It determined that these factors were controlling not based on any interpretation of the language of section 4905 but based on the factors identified by the Supreme Court of the United States in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). However, the United States Supreme Court in *Gulf Oil* did not interpret section 4905, or any federal statute which the Virgin Islands used to model section 4905. Rather, the United States Supreme Court adopted the *Gulf Oil* factors through its inherent authority to determine federal common law and established a standard to only govern the *forum non conveniens* defense in federal courts. "While over thirty states, as a matter of state law, apply a *forum non conveniens* standard that closely tracks the standard federal courts apply," others have not, with some abolishing the doctrine entirely. Laurel E. Miller, *Forum Non Conveniens and State Control of Foreign Plaintiff Access to U.S. Courts in International Tort Actions*, 58 U. CHI. L. REV. 1369, 1371 (1991). Therefore, rather than uncritically adopting the *Gulf Oil* factors, the Superior Court should instead have analyzed the question through the lens of section 4905.

¶ 16 Section 4905 is based on section 1.05 of the Uniform Interstate and International Procedure Act ("UIIPA"), which was adopted by the National Conference of Commissioners on Uniform

State Laws ("NCCUSL") in 1962 and enacted by the Virgin Islands in 1965. *See* Act No. 1339 § 1. The UIPPA, however, was only wholly adopted by five jurisdictions other than the Virgin Islands—Arkansas, the District of Columbia, Louisiana, Massachusetts, and Pennsylvania—before it was withdrawn by the NCCUSL in 1977, although some jurisdictions adopted certain specific provisions. *See* Prefatory Note, UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT (2007). As such, case law from other jurisdictions interpreting section 1.05 of the UIIPA, and particularly the phrase "substantial justice"—is extraordinarily limited.

¶ 17 Nevertheless, this Court is not without guidance. Section 1.05 of the UIPPA had been "drafted by the Columbia Law School Project on International Procedure, in collaboration with the Advisory Committee to the Commission on International Rules of Judicial Procedure," with the intent of allowing the "unrestricted application of the doctrine of *forum non conveniens* when statutory requirements for the exercise of personal jurisdiction are satisfied but other factors indicate that the forum is inconvenient." *Pain v. United Technologies Corp.*, 637 F.2d 775, 794 n.106 (D.C. Cir. 1980), *overruled on other grounds by Nemariam v. Federal Democratic Republic of Ethiopia*, 315 F.3d 390 (D.C. Cir. 2003). The comment accompanying section 1.05 of the UIPPA reflects that the drafters intended for trial courts to consider a nearly unlimited number of factors, including "amenability of the parties to personal jurisdiction, party and witness convenience, conflict of law rules," as well as "any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial," *Commonwealth Land Title Ins. Co. v. Pugh*, 555 N.W.2d 576, 579 (N.D. 1996) (quoting Comment, UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.05)), with the "central concern [being] furthering the just, speedy and inexpensive determination of the action." *Pain*, 637 F.2d at 794.

¶ 18 Certainly, the three *Gulf Oil* factors themselves are highly relevant to any such inquiry

under a statute modeled after section 1.05 of the UIPPA and must be considered by the trial court. *See, e.g., Oxford Global Resources, LLC v. Hernandez,* 106 N.E.3d 556, 569-70 (Mass. 2018) (considering public and private interests when applying the Massachusetts-equivalent of section 1.05). However, the court may consider other relevant factors, and is not bound by federal case law delineating the meaning of the terms "public interest" and "private interest." For example, because federal substantive law is uniform throughout the nation, a federal district court located in one state will, except in rare circumstances, apply the same substantive law to a cause of action as a federal district court located in another state. But this is not the case with state and territorial laws, where statutes of limitations or even the very existence of a cause of action may differ markedly. *See Littmann v. Littmann*, 203 N.W.2d 901, 906-07 (Wis. 1973) (rejecting "the complete applicability of the federal procedure" because a transfer from one federal court to another "is not a transfer or a surrender of a case to another judicial system" but is effectively just a "change of venue to another courtroom of the same judicial system."). Consequently, a court applying section 1.05 may consider factors such as the substantive law of the other jurisdiction, or whether the party seeking dismissal on *forum non conveniens* grounds has agreed to waive the statute of limitations and other defenses that would preclude a merits adjudication in the other jurisdiction. *See Johnson v. G.D. Searle & Co.*, 552 A.2d 29, 37-38 (Md. 1989); *Mills v. Aetna Fire Underwriters Ins. Co.*, 511 A.2d 8, 13 (D.C. 1986).

¶ 19 Section 1.05 of the UIPPA differs from the federal framework in another important respect. In *Gulf Oil*, the United States Supreme Court identified dismissal as the appropriate action for a federal district court to take upon determining that a case had been filed in an inconvenient forum. Section 1.05 does not mandate dismissal as the remedy, but provides that the court may "stay or dismiss" the action. The drafters of section 1.05 chose this language in recognition of the important

conceptual differences between the federal system and other court systems – in particular, the structural reality that the courts of one state cannot order the courts of another state to do anything. The option of a stay permits the court to retain jurisdiction so that it may "compel the foreign [party] to cooperate in bringing about a fair and speedy hearing in the foreign forum" and "can resume proceedings if the foreign action is unreasonably delayed or fails to reach a resolution on the merits." *Archibald v. Cinerama Hotels*, 544 P.2d 947, 950 (Cal. 1976). In other words, a court that stays an action "can protect . . . the interests of the [in-state] resident pending the final decision of the foreign court." *Id.* However, "[a] court which has dismissed a suit on grounds of *forum non conveniens* . . . has lost jurisdiction over the action and in relinquishing that jurisdiction deprived itself of the power to protect the interests of the [in-state] resident." Consequently, a dismissal on *forum non conveniens* grounds under section 1.05 requires a substantially higher showing than that required for a stay, and dismissal without a stay has been characterized as an "extraordinary" remedy under the statute. *Id.* at 951.

¶ 20 Applying this standard, the Superior Court erred when it dismissed Stephen's petition on *forum non conveniens* grounds. The Superior Court recognized in its April 16, 2019 opinion that the New York court had already dismissed Valerie's petition because it determined that New York was an inconvenient forum due to Stephen's business assets being situated in the Virgin Islands. Nevertheless, without holding an evidentiary hearing and based solely on the parties' filings, the Superior Court reached the opposite conclusion from that of the New York court based on a different interpretation of essentially the same undisputed facts. We recognize, of course, that the Superior Court is not required, in all cases, to uncritically defer to findings made by a court in another jurisdiction, even in litigation involving the same parties. *See, e.g.*, *In re Hailey*, 73 V.I. 575 (V.I. 2020); *Bryan v. Fawkes*, 61 V.I. 416 (V.I. 2014). But in this instance, a Virgin Islands

law—5 V.IC. § 4905—mandated that the Superior Court accept jurisdiction over Stephen's divorce petition unless "substantial justice" required otherwise. Since the New York court had already dismissed Valerie's divorce petition on *forum non conveniens* grounds after concluding that the Virgin Islands represented the most appropriate forum, the Superior Court failed to "further[] the just, speedy and inexpensive determination of the action" by refusing to exercise jurisdiction on *forum non conveniens* grounds based on a reweighing of the same evidence. *Pain*, 637 F.2d at 794. The Superior Court then exacerbated this error by dismissing the divorce action rather than staying it, thus creating the very real risk that Stephen could not obtain a divorce in any forum if the New York court still refused to accept jurisdiction. Thus, the Superior Court actively contributed to the denial of substantial justice by unnecessarily prolonging the underlying divorce proceedings by declining to hear a case within its jurisdiction and instead referring it to another state which had already declined to exercise jurisdiction under its own laws. Therefore, we conclude that the Superior Court erred when it dismissed Stephen's divorce petition on *forum non conveniens* grounds.

D. Partial Summary Judgment

¶ 21 Finally, in his appellate brief, Stephen maintains that the Superior Court erred when it refused to grant him a divorce. As a threshold matter, the Superior Court certainly abused its discretion when it denied his motion for partial summary judgment—which sought an immediate divorce and deferred adjudication of all other issues—without providing any explanation at all for its decision. *Slack v. Slack*, 69 V.I. 567, 572-73 (V.I. 2018). But while this Court may reverse the July 24, 2018 order on that ground alone, *see id.*, we may, in our discretion, consider on appeal whether Stephen is entitled to partial summary judgment, given that we review the grant or denial of a motion for summary judgment *de novo* based on the same standard as the Superior Court,

without providing it with any deference. *See Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 392 (V.I. 2014).

¶ 22 Rule 56 of the Virgin Islands Rules of Civil Procedure, made applicable to divorce proceedings pursuant to Rule 1(i) of the Virgin Islands Rules of Family Division Procedure,[3] provides that "[a] party may move for summary judgment" by "identifying each claim or defense—*or the part of each claim or defense*—on which summary judgment is sought." V.I. R. CIV. P. 56(a) (emphasis added). Thus, Rule 56, by its own terms, permits a party to seek partial summary judgment on only part of a claim and elect to have all other matters addressed at trial. That a party may seek partial summary judgment in such a manner is consistent with Rule 1 of the Virgin Islands Rules of Civil Procedure, which provides that "[t]hese rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." V.I. R. CIV. P. 1. Therefore, Stephen was authorized to seek summary judgment with respect to his claim for divorce and request that all other matters, including division of property, be deferred to trial.[4]

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[3] The Virgin Islands Rules of Family Division Procedure took effect on June 1, 2019. *See In re Adoption of V.I. Rules of Family Div. Proc.*, S. Ct. Prom. No. 2019-0009, 2019 WL 2343864 (V.I. May 29, 2019). Although Stephen filed his divorce petition on November 14, 2016, Family Rule 1(e) provides that "[t]hese rules, and subsequent amendments, govern . . . proceedings in any action pending on the effective date of the rules or amendments, unless . . . the Superior Court makes an express finding that applying them in a particular previously pending action would be infeasible or would be unjust." V.I. R. FAM. P. 1(e). Since the Superior Court made no such finding, the Rules of Family Division Procedure, including Family Rule 1(i) incorporating the Virgin Islands Rules of Civil Procedure, were applicable to this case.

[4] Although not in the context of addressing Stephen's partial summary judgment motion, the Superior Court asserted in its April 16, 2019 opinion that Virgin Islands law disfavors divisible divorce judgments and instead promotes resolving divorce and asset division concurrently. We disagree. The only legal authority the Superior Court cited to support this broad proposition was a recent amendment to a portion of the divorce statute, 16 V.I.C. § 109(a)(7), which permits the court to equitably distribute all marital property. But that the Legislature has authorized the

¶ 23 A party is entitled to summary judgment on a claim upon a showing that there is no genuine issue as to any material fact and that the movant is therefore entitled to judgment as a matter of law. *United Corp v. Tutu Park Ltd.*, 55 V.I. 702, 707 (V.I. 2011). To obtain a divorce under Virgin Islands law, the petitioner must present sufficient evidence "that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved." 16 V.I.C. § 104. Not only did Stephen submit overwhelming and uncontradicted evidence with his partial summary judgment motion to establish that this was the case, but Valerie never contended in her opposition that Stephen had failed to establish his entitlement to a divorce. In fact, in her answer Valerie stated "Admits" in response to the allegation in Stephen's verified complaint that "[t]here has been an irreconcilable breakdown of the marriage to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved." (J.A. 26, 33.)

¶ 24 For these reasons, the Superior Court erred when it denied Stephen's motion for partial summary judgment. Accordingly, we reverse the July 24, 2018 order denying the motion for

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Superior Court to equitably distribute all marital property says nothing as to whether a court should delay granting a divorce so that it only occurs concurrently with such distribution.

We recognize that the Superior Court also identified several policy considerations which purportedly disfavor divisible divorce judgments. However, the listed considerations can all either be mitigated or eliminated by the court (*i.e.*, "the possibilities of delay in resolving the outstanding issues") or actually favor a divisible judgment (*i.e.*, "stop[ping] the accumulation of marital property"). (J.A. 13.) And while the Superior Court asserted that granting a divisible divorce may render an ex-spouse economically vulnerable, it is not clear how that could be the case given that the Superior Court possesses the statutory authority to order payments in gross or in installments for maintenance and support. *See* 16 V.I.C. § 109(a)(3). Moreover, the Superior Court ignored the possibility of the petitioning spouse being coerced or prejudiced by the respondent spouse when a divisible divorce is denied, such as by being precluded from remarrying. In any event, these policy considerations are not sufficient to warrant setting aside the plain text of Civil Rule 56, which expressly entitles a party to obtain a partial summary judgment.

partial summary judgment and order the Superior Court, on remand, to immediately issue a decree of divorce.

III. CONCLUSION

¶ 25 The Superior Court erred when it granted Valerie's motion to dismiss for lack of personal jurisdiction since, even if she did not waive her personal jurisdiction defense, she had sufficient contacts with the Virgin Islands under the Virgin Islands Long-Arm Statute. The Superior Court further erred when it dismissed Stephen's divorce petition on *forum non conveniens* grounds, since such dismissal was not in the interest of substantial justice. Finally, the Superior Court committed error when it denied Stephen's motion for partial summary judgment. Accordingly, we reverse the April 16, 2019 opinion and order granting Valerie's motion to dismiss and the July 24, 2018 order denying Stephen's motion for partial summary judgment, and order, on remand, that the Superior Court immediately enter a decree of divorce and exercise jurisdiction over all outstanding issues that remain between the parties.

Dated this 30th day of December, 2021.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk

Dated: December 30, 2021

SWAN, Associate Justice, concurring in judgment only.

¶26 Appellant, Stephen Evans-Freke ("Stephen"), appeals from a final judgment of the Superior Court of the Virgin Islands ("Superior Court") and seeks reversal of that judgment denying his motion for summary judgment for a divorce and dismissing this case for: (1) lack of "Divorce Jurisdiction,"[1] (2) lack of personal jurisdiction over respondent Valerie Evans-Freke ("Valerie"), and (3) because the Virgin Islands is an inconvenient forum. For the reasons elucidated below, I agree that this Court should reverse the judgment of dismissal, *Evans-Freke v. Evans-Freke*, 70 V.I. 397 (V.I. Super. Ct. 2019), and remand this matter to the Superior Court for further action consistent with this opinion, including entering a final judgment of divorce. However, because I come by this conclusion by a different analysis, I write separately.

¶27 First, the Appellant raises as an issue the trial court's subject matter jurisdiction. As subject matter jurisdiction can be challenged by any party at any time, this issue is not waived. Additionally, of particular concern is the trial court's determination that it was the better course of action to violate Stephen's due process rights because it concluded it lacked personal jurisdiction over Valerie. The rationale expressed and the reference to section 109 as jurisdictional all raise concerns that there was a lack of clarity in this context. As such, I cannot agree that it is unnecessary for this Court to provide guidance in this regard. Indeed, given the complete and total procedural morass that appears to stem directly from a lack of clear understanding of domicile jurisdiction and personal jurisdiction in the context of a family court proceeding, I believe this Court would be remiss in failing to address an issue fully briefed on appeal.

[1] While Divorce Jurisdiction falls under the general term subject matter jurisdiction, the Legislature of the Virgin Islands ("Legislature") has chosen to provide the trial courts of the Territory with a grant of authority over divorces separate from the courts' general jurisdiction. So, we utilize the term Divorce Jurisdiction to refer to the grant of judicial authority contained in subsection 106(a) of title 16 of the Virgin Islands Code.

¶28 Furthermore, there are several procedural arguments made in the record that resulted in a waste of judicial resources and unnecessary delay. These arguments and much of the chaos that is the procedural history of this matter demonstrate a lack of understanding by the lawyers and the trial court as to how the Rules of Civil Procedure operate and the parameters of waiving the rights to process, service of process, statutory minimum contacts, and constitutional minimum contacts. In the context of a Family Court proceeding, the waste of time and increased expense this lack of clarity caused is simply unacceptable. I believe the Court would be remiss in failing to exercise its supervisory jurisdiction to address these issues. Particularly the 784-day delay appears to be directly a result of the procedural wavier arguments made that were in large part legally unfounded.

¶29 While this Court has defined "transacting any business in the territory" in *Molloy v. Independence Blue Cross*, 56 V.I. 155, 177 (V.I. 2012), *Molly* is the factual archetype of cases in which personal jurisdiction is challenged—a common commercial transaction for the sale of goods or services. As such, the contacts in *Molly* and this matter are vastly different even though the contacts in both cases give rise to the court's finding personal jurisdiction under the minimum contacts doctrine. Molloy was a commercial business transaction involving a medical insurance policy; whereas, this case involved contact by Valerie because she received her total income and beneficial support from the husband's businesses in the Territory. Indeed, the history of this very matter is a testament to how little guidance *Molloy* provides. If the facts of *Molloy* provided easy guidance for the trial court, its decision would never have been what it was. In particular, the Family Court emphasized that its ruling was justified "**especially considering that the contacts did not involve a commercial interest.**" This is nothing more than an obfuscatory attempt to shift focus from the fact that the Family Court, despite reciting the definition in *Molloy*, was actually applying a definition that required the actions be commercial in nature. It is foreseeable

that this issue will arise in future divorce cases, and a textual analysis of the language is useful in understanding how non-commercial activities still fall within the definition of "transacting any business." Again, I believe the court would be remiss in failing to provide such clarification in light of the trial court's rationale.

¶30 Finally, while it is perhaps a reality that the trial court read the New York order as a expressly deferring the "best" forum non conviniens to the trial court, I do not believe such a reading of the language of the New York court's order was either the obvious understanding or a quality decision of judicial policy. Certainly, the New York court did dismiss that matter without prejudice. However, I do not read this to mean that the trial court was open to consider the exact same facts anew. Instead, I understand the New York court to recognize the reality of doing justice that a dispute must have a forum to be resolved and that there was a very real possibility that the Virgin Islands could simply not take jurisdiction. Therefore, it was sagacious to allow the matter to be re-filed. However, absent new and materially different facts, the Family Court should not repeat the exact same analysis already conducted by a co-equal court of a sister state. That is a waste of judicial resources. I would not tacitly validate the trial courts actions by considering the forum non conviniens factors on appeal. Simply, when a court has already determined that the Virgin Islands is the most convenient forum, it is an abuse of discretion for the Superior Court to consider the issue a second time without being presented with new and material facts that demonstrate the prior forum non conveniens determination was in error.

¶31 Despite my disagreement as to analysis, I largely agree with the majority's analysis for what it is, but I do not believe it provides adequate guidance. Therefore, I join in the judgment of the court only.

I. FACTS AND PROCEDURAL HISTORY

¶32 While a detailed discussion of the arguments fairly presented in the Family Division of the Superior Court ("Family Court")[2] follows, a brief summary of the timing of the filing of the relevant pleadings and motions provides perspective to the background of this matter. *See generally Ubiles v. People*, 66 V.I. 572, 583-89 (V.I. 2017) (defining "Fairly Presented").

¶33 On November 14, 2016, Stephen filed a verified petition[3] for divorce in the Family Court. Valerie filed her response on February 21, 2017. On March 30, 2017, Stephen filed a motion for partial summary judgment ("March 2017 Motion") for a divorce, which was accompanied by a statement of undisputed facts.[4] Valerie never responded to this motion. Instead, on May 2, 2017, she stipulated to a deadline "to file a response to Petitioner's Motion for Partial Summary Judgment."[5] The Family Court approved the stipulation on May 5, 2017. On April 18, 2017,

[2] The term "Family Court" is technically a misnomer, as the subsequent analysis of the constitution of the Superior Court and its divisions below demonstrates. However, because the term "Family Court" has become idiomatic in the Virgin Islands, we maintain the use of "Family Court" to describe the Family Division of the Superior Court. *See generally* 4 V.I.C. § 79(a) ("The Superior Court shall be comprised of criminal, civil, traffic, family, magistrate judge's, conciliation, and small claims divisions."); 4 V.I.C. § 71(a) (mandating that two of the six judges of the Superior Court "must be judges of the Family Court Division"); *e.g.*, *Charles v. Charles*, 21 V.I. 283 (V.I. Super. Ct. 1985) (referring to the Family Division as the "Family Court"); *Gov't of the V.I. v. John*, 32 V.I. 115 (V.I. Super. Ct. 1995) (same); *In re Temporary Care of R.F.*, 47 V.I. 178 (V.I. Super. Ct. 2005) (same); *Isaac v. Crichlow*, 63 V.I. 38 (V.I. Super. Ct. 2015) (same); *Basic Services, Inc. v. Gov't of the V.I.*, 2020 VI Super 104U (same); *see also* Merriam-Webster's Collegiate Dictionary 616 (11th ed. 2020) (defining "idiomatic" as "peculiar to a particular group, individual, or style").

[3] In the Virgin Islands, the terms "petitioner" and "respondent" are commonly used. *E.g.*, *Lacatena v. Lacatena*, 2021 VI Super 36, ¶1. However, with the merger of law and equity, there is no substantive distinction between a person seeking equitable relief in a cause of action and a person seeking to vindicate their rights in law. *See generally* V.I.R. CIV. P. 2.

[4] Ultimately, by filing a second motion for summary judgment, this initial motion was withdrawn. *See World Fresh Markets, LLC v. Henry*, 71 V.I. 1161, 1166 n.2 (V.I. 2019) ("It is well established that, ordinarily, an amended filing supersedes any prior filing." (citing *Pacific Bell. Tel. Co. v. Linkline Commc'n, Inc.*, 555 U.S. 438, 456 n.4 (2009); *Merz v. Civil Serv. Comm'n*, No. C-76677, 1977 WL 199794, at *2 (Ohio Ct. App. Sept. 7, 1977) (unpublished))).

[5] The full text of this stipulation was as follows:

Valerie filed her motion to dismiss, asserting that the Family Court lacked personal jurisdiction over her and that St. Thomas represented an inconvenient forum. (J.A at 3.) Stephen filed his opposition to this motion on May 8, 2017, and Valerie replied on May 22, 2017.

¶34 Additionally, Valerie sought a stay in the proceedings pending the Family Court's disposition of her motion to dismiss, which was filed on May 12, 2017. Stephen, on May 30, 2017, opposed this motion, and Valerie replied to that opposition on June 20, 2017. Then, on March 23, 2018, Stephen filed a second motion for partial summary judgment ("March 2018 Motion"). This motion was denied by the Family Court in its mediation order entered on July 25, 2018. Finally, on November 16, 2018, Stephen filed a third motion for partial summary judgment ("November 2018 Motion"). The Family Court, on April 16, 2019, entered an order granting Valerie's motion to dismiss for lack of personal jurisdiction and improper venue pursuant to the then-applicable Rules 12(b)(2)-(3) of the Virgin Islands Rules of Civil Procedure.[6] Stephen filed his notice of appeal on May 14, 2019.

> Henry L. Feuerzeig, Esq. of Dudley, Topper and Feuerzeig, LLP on behalf of the Petitioner, Stephen Evans-Freke, and Laura Castillo Nagi, Esq. on behalf of the Respondent Valerie Evans-Freke, and hereby jointly stipulate to the Respondent having an extension to May 10, 2017, to file a response to Petitioner's Motion for Partial Summary Judgment.

Notably, this stipulation (unlike many other of Valerie's filings) did not contain any language stating that it was subject to her objection to the Family Court's exercise of jurisdiction i*n personam* over her. However, such a reservation is unnecessary once a defendant has timely and properly presented the Rule 12 personal defenses, which Valerie had previously done by motion. *National S.S. Co. v. Tugman*, 106 U.S. (16 Otto) 118, 123 (1882); *Goldey v. Morning News*, 156 U.S. 518, 525 (1895). "It is not contemplated in law that [rules governing court practice and procedure] should be so strict and technical that counsel must maintain an attitude of antagonism and defiance in order to call the court's attention to defendant's rights in the matter." *Armour*, 165 P.2d at 627-28.

[6] Former Superior Court Rule 7 made applicable in the Superior Court (including the Family Court) the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of the Virgin Islands District Court, a federal court. V.I. SUPER. CT. R. 7 (2017) (repealed by Supreme Court Promulgation Order, S. Ct. Prom. No. 2017-0010 (Dec. 1 & 19, 2017)).

A. Notice of Appearance and Pleadings

¶35 In his divorce petition, Stephen alleged that the Family Court had Divorce Jurisdiction under 16 V.I.C. § 106(a) to grant the divorce and sought to avail himself of available remedies, i.e., distribution of individual property, distribution of marital property, and a determination of spousal maintenance (if any). Stephen alleged that he and Valerie had been married in 1990 in Connecticut and had two adult children of the marriage. He further alleged that he had lived in the Virgin Islands, on the island of St. Thomas, since the parties' separation in 2008, while Valerie was alleged to have lived in New York.

¶36 Stephen asked the Family Court to (1) grant him a divorce, (2) distribute his personal property, (3) equitably allocate the marital property, and (4) grant such other relief as the court deemed just and proper. An affidavit of Daniella Kaufman was attached in which she stated that Stephen had been known to her for eight years and had been "a resident and domiciliary of St. Thomas" for six weeks prior to filing the verified complaint. Stephen ultimately asserted that the legitimate objects of the marriage could no longer be achieved due to an irreconcilable breakdown of the marriage.

¶37 On February 9, 2017, Valerie's counsel submitted a "Limited Notice of Appearance" "so that no defenses available to [Valerie] are waived including but not limited to contesting jurisdiction." In her answer, filed on February 21, 2017, Valerie denied that the Superior Court could exercise Divorce Jurisdiction. She further disclaimed any knowledge of Stephen's residence in the Virgin Islands for the eight years during which she directed, inter alia, all of her correspondence, support requests, and requests for payment of bills for both her living expenses and the parties' house in New York to Stephen (or his agents) here in the Virgin Islands. She

likewise denied that she and Stephen had been separated since 2008. Lastly, she denied that she and Stephen had acquired marital property during their marriage.

¶38 However, Valerie admitted there had been an irreconcilable breakdown of the marriage to the extent that the legitimate objects of matrimony had been destroyed and there remained no reasonable likelihood that the marriage could be preserved. As to her "affirmative defenses," Valerie pled that the Family Court lacked personal jurisdiction over her (relying on sections 4902 and 4903 of title 5 of the Virgin Islands Code) and that the Virgin Islands is an inconvenient forum. In consideration of her denials and affirmative defenses, Valerie asked the Family Court to dismiss this divorce action.

B. Motion to Dismiss

¶39 In her motion to dismiss, Valerie first objected to the Family Court's exercise of Divorce Jurisdiction and, as a matter of constitutional law, its exercise of domicile jurisdiction to grant Stephen's request for a "divisible divorce" under the precedent set by the Supreme Court of the United States in *Estin v. Estin*, 334 U.S. 541 (1948), and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).[7] Additionally, Valerie relied on *Williams v. Williams*, 328 F. Supp. 1380 (D.V.I. 1971)

[7] The terms "divisible divorce" and "*ex parte* divorce" overlap to some degree. An *ex parte* divorce is a divorce granted by a court having personal jurisdiction over only the petitioning spouse. *E.g.*, *Estin*, 334 U.S. 541; BLACK'S LAW DICTIONARY 550 (9th ed. 2009). However, a court violates the due process rights of an absent defendant spouse if it executes a judgment determining the incidents of marital dissolution—i.e., division of marital property, spousal support (e.g., alimony, maintenance, etc.), child custody, or child support—when the court issuing that judgment lacked personal jurisdiction over the defendant spouse. *Vanderbilt*, 354 U.S. at 419. Therefore, the court can only issue an *ex parte* order granting a divorce to the petitioning spouse, making the divorce granted a "divisible divorce" affecting only the marital status of the two spouses and leaving the other incidents of marital dissolution to be adjudged by a court possessed with jurisdiction *in personam* over the defendant spouse. In contrast, a divisible divorce is simply a divorce granted by a court having personal jurisdiction over both the petitioning spouse and the responding spouse prior to the court's disposition of the incidents of marital dissolution—a practice commonly employed in the courts of the Virgin Islands. BLACK'S L. DICT., 550; *e.g.*, *Gayanich v. Gayanich*, 69 V.I. 583, 588 (V.I. 2018); *see May v. Anderson*, 345 U.S. 528 (1953) (applying the same analysis to matters relating to parents' obligations to care for their children).

and *Alton v. Alton*, 207 F.2d 667 (3d Cir. 1954), when arguing that the Virgin Islands lacked domicile jurisdiction to grant a divisible divorce.

¶40 Even though she argued a lack of domicile jurisdiction, Valerie also admitted that, if Stephen "was continuously physically present in the Territory for the requisite six weeks, [the Family] Court does indeed have subject matter jurisdiction" pursuant to subsection 106(a) of title 16 of the Virgin Islands Code. Valerie elaborated, explaining she was "without sufficient information to either admit or deny [the allegation of Stephen's domicile and continuous presence for six weeks in the Virgin Islands] at this point. However, she is in regular contact with [Stephen] and is aware that he regularly and frequently travels outside of the Territory."

¶41 Then—utilizing the holding in *Estin* to bolster her argument that a court must be possessed of *in personam* jurisdiction over a respondent spouse before it can act to address property, custody, or spousal maintenance—Valerie argued that she was neither a domiciliary of the Virgin Islands nor had she engaged in any of the conduct that the Legislature had determined satisfies jurisdictional contacts for the exercise of *in personam* jurisdiction over a non-domiciliary. Therefore, Valerie concluded, the Family Court could not rely on either sections 4902 or 4903 of title 5 of the Virgin Islands Code as a basis for exercising personal jurisdiction over her.

¶42 In opposition, Stephen first argued that Valerie's motion should be summarily dismissed because she failed to overcome Stephen's *prima facie* showing that the Family Court's exercise of personal jurisdiction over Valerie was appropriate. He asserted that this course of action was mandated because Valerie admitted she was without information to deny Stephen's affirmation that he had resided in St. Thomas for six weeks, continuously and uninterruptedly, prior to filing for divorce. With such a lack of knowledge of opposing facts, Valerie could not create an issue of fact for the Family Court to determine.

¶43 Regarding *forum non conveniens*, Valerie argued that "[t]heir marital property is in New York. Further, New York has personal jurisdiction over [Stephen] and as such, can address the issues involved in this divorce action." She further argued that the fact that the parties were domiciled in New York for the majority of their marriage, in addition to the fact that the majority (if not all) of the marital estate was located in New York, made the courts of that state a more convenient forum. Stephen countered this assertion when, in his opposition, he argued that the legal standard for justifying a change of forum, "the interests of justice," had not been met by Valerie, relying on 5 V.I.C. § 4905; *Lettsome v. Cazaubon*, Case No. ST-11-SM-239, 2011 WL 13055151, at *1 (V.I. Super. Ct. May 19, 2011); *Trotter v. 7R Holdings, LLC*, Case No. 2014-99, 2016 WL 1271025, at *1 (D.V.I. Mar. 30, 2016); and *C&C/Manhattan v. Sunex Int'l, Inc.*, 42 V.I. 3, 11-12 (V.I. Super. Ct. 1999).

¶44 In support of her motion to dismiss,[8] Valerie submitted her affidavit. In this document, Valerie admitted that she was Stephen's wife and that they had lived in New York since 1999 when they bought the Tuxedo Park home where Valerie then lived. Valerie also admitted that

[8] Valerie cited *Hatchette v. West Indian Co.*, 17 V.I. 549 (D.V.I. 1980), to support the consolidation of her "motion" to dismiss and her "memorandum" in support. *See also* V.I. R. CIV. P. 6-1(a)(1) (explicitly dictating that a motion must "be in writing" and requiring that the motion contain the grounds for relief with citation to authorities and state the relief sought); 6-1(d) (requiring that supporting factual documents such as affidavits be attached). In contrast, Stephen filed two documents with the court, a motion and a memorandum of law. However, the Local Rules of the District Court of the Virgin Islands were no longer applicable to this proceeding. V.I.R. CIV. P. 1-1(c). Instead, Virgin Islands Rules of Civil Procedure 1-1 and 7(b) applied to this motion to dismiss. Rule 1 demands that the rules "be construed, administered, and employed by the court and the parties to secure just, speedy, and inexpensive determination of every action . . . ." V.I.R. CIV. P. 1; *see World Fresh Markets, LLC v. Henry*, 71 V.I. 1161, 1180 n.14 (V.I. 2019). The filing of a "motion" as a document separate from a "memorandum in support" is a blatant violation of Rule 1 and contrary to the plain text of Rule 6-1. Rule 6-1(a) requires that a motion be in writing and contain appropriate citations to supporting legal authority. V.I.R. Civ. P. 7(b) ("A request for a court order must be made by motion complying with Rule 6-1 . . . ."); V.I.R. CIV. P. 6-1(a)(1)-(2). For parties to unnecessarily bifurcate a request for relief into more than one document is wholly inconsistent with the mandates of Rule 1, which the bar and the judiciary must diligently and conscientiously apply. *See World Fresh Markets*, 71 V.I. at 1180 n.14.

Stephen relocated to St. Thomas in 2008 with the intent to establish a business and admitted that Stephen did, in fact, do so.

¶45 Valerie countered that Stephen also continued to return to New York regularly and "maintain" his New York office, their marital home, and an apartment in Manhattan. In opposition, however, Valerie admitted that Stephen began renting a home in St. Thomas in 2008. Valerie affirmed that she and Stephen have a marital home, personal property, and marital debt located in New York that would require equitable distribution by a divorce court. Prior to Stephen's filing for divorce, Valerie had visited St. Thomas twice (each of one week duration), and she admitted she was served with process[9] in New York in January of 2017.

¶46 In Valerie's reply, she responded by providing another affidavit countering Stephen's factual assertions. Valerie admitted she was served with the summons and complaint in New York on January 11, 2017, and asserted this was the first time she was aware Stephen wanted a divorce. Valerie further admitted that Stephen provided her with a letter on January 11, 2017, stating he was willing to pay Valerie's attorney's fees and provide financial support "so long as we are both committed to reaching a mutually acceptable resolution." Valerie described this as a "veiled threat." Valerie further affirmed that Stephen had failed to pay her attorney's fees and had refused to pay the retainer for Valerie's counsel in this case. Stephen had ceased paying for the marital abode, allowing it to be foreclosed upon. Valerie further asserted that he had formed corporations in Valerie's name, though she provided no names of these corporations or public records of their formation.

[9] *See Skepple*, 69 V.I. at 709 n.2, 713 n.3 (defining service and service of process (citing Black's L. Dict., 1399)); *Toussaint v. Stewart*, 67 V.I. 931, 943 n.7 (defining process (citing Black's L. Dict., 1242)).

¶47 As to the time of the parties' separation, Valerie admitted Stephen began residing in the Virgin Islands in 2008 and from 2008-2011 did so for the minimum number of days, annually, in order to maintain tax exemptions for his Virgin Islands businesses and personal income. Valerie further asserted that "other than those required days," Stephen either traveled "for business" or was "with our family" at their home in Ireland, the marital abode, or in Europe, maintaining the family's usual social life and "elaborate travel and vacation schedule." Valerie provided a copy of a lease for a New York apartment, and although she stated under oath that it was Stephen's, she admitted that the lease was not in Stephen's name and that her only basis for asserting it was Stephen's apartment was that he had signed the lease as the personal guarantor. A copy of the lease confirms that it was in the name of a corporation and personally guaranteed by Stephen.

¶48 Valerie further affirmed that, after learning of Stephen fathering a child with his mistress in 2010, the parties formally separated.[10] Since that time, Stephen allowed their homes in California and Maine to be foreclosed upon and was currently failing to satisfy the financial obligation of the marital abode in New York. Likewise, Stephen ceased paying the employees who had been hired to maintain the marital abode. This behavior is in contrast to his regular behavior during their marriage when he would handle all the family's financial matters. Stephen filed tax returns and dealt with all finances, never providing any "substantive information, other than showing [Valerie] where to sign." In 2015, Stephen's accountants began preparing Valerie's tax returns. However, Valerie never reviewed her tax returns until 2017 and claims not to know the source of her $334,228 income for 2015. While the tax return indicates she was paid by three

[10] Formal separation, as opposed to "legal" separation, is not a term of art but a form of expression we use to describe an agreement to separate that has not been established by a court order, which would be "legal" separation, e.g., 16 V.I.C. § 104 ("A decree granting a legal separation . . . may be entered . . . .").

different business, Valerie disclaims any knowledge of "who this income was paid to, where it was deposited or why it is listed in [her] name." Valerie also admitted that Stephen pays her expenses directly and provides her with cash and a credit card to pay for her living expenses.

¶49 Finally, Valerie described the accretion of marital assets. Stephen having been fired from his job at the time of their marriage, the parties had no assets in 1990. Since that time, they acquired properties in California, Maine, New York, and Ireland, as well as the furnishings for the properties. Valerie admits the parties had significant assets "spread throughout the United States and Ireland." She likewise averred that Stephen "travels constantly for meetings both domestically and internationally, including frequent travel to New York." Additionally, she stated that "the valuation of [Stephen's Virgin Islands business] alone will require reviewing records from his various offices in Switzerland, St. Thomas, Florida, and Bermuda." Valerie asserted that the valuation of such a business is a long-term project that could easily be frustrated by Stephen's lack of cooperation. Valerie affirmed that Stephen provided her with over $815,000 annually in support.

¶50 In support of his arguments, Stephen provided three affidavits, his own and those of Robert Stephan Cohen and Henry L. Feuerzeig. Cohen and Feuerzeig, being Stephen's attorneys, did not provide any facts within their individual personal knowledge that related to Stephen's domicile. Stephen affirmed that he had "no assets of any import in New York" except the marital abode owned by him and Valerie. Stephen submitted that, since 2008, he had lived and worked in the Virgin Islands, and the parties had discussed a divorce prior to Stephen's moving. Stephen moved

to the Territory to co-found multiple juridical persons[11] and engage in his chosen course of business. Stephen did not use "comingled funds or co-owned assets" to create or invest in the legal entities he co-founded. During his time living in the Territory, Stephen averred that he paid all of Valerie's expenses and maintained the marital abode in New York. Stephen further averred that he owns no bank accounts or assets in New York, that he operates his current businesses exclusively in the Virgin Islands, and that at the time of the filing of this lawsuit, his single connection to New York was his ownership interest in the martial abode.

¶51 With regard to Valerie's connection to the Virgin Islands, Stephen affirmed that she receives health and dental insurance through his Virgin Islands business, that he pays the balance of a credit card (billed directly to the Virgin Islands) utilized by Valerie—to its full credit limit each month, $5,000—for her personal enjoyment and expenses, and that she jointly filed income taxes in the Virgin Islands in 2009 and 2010. Stephen further affirmed that she receives $5,000 a month from Stephen's Virgin Islands bank account for her personal expenses, that the mortgage and operating expenses for Valerie's New York home were all paid directly from the Virgin Islands, and finally, that Valerie regularly utilizes support staff at Stephen's Virgin Islands business to address personal matters in her life in New York. While Stephen maintained that Valerie had no assets, he did argue that the Virgin Islands courts would be more appropriate to determine any award of marital property located in the Virgin Islands, should the court ultimately determine that Valerie was entitled to any interest in his Virgin Islands possessions and properties.

[11] Stephen's business is actually two juridical persons formed under the laws of the British Virgin Islands and operated out of the U.S. Virgin Islands. For the sake of convenience—and as it is the location of Stephen's employment that is relevant to this matter (not the jurisdiction under whose laws his business entities were formed)—we refer to Stephen's business operations as his Virgins Islands business. *See generally* BLACK'S L. DICT., 1258 (defining "juridical person").

C. Motion to Stay Pending Disposition of Motion to Dismiss for Lack of Personal Jurisdiction

¶52 In her May 12, 2017 motion for a stay pending disposition of her motion to dismiss, Valerie justified her refusal to participate in this matter, stating, "In the Virgin Islands, as in the majority of jurisdictions, any further participation by the Defendant in actively litigating this matter, in other words, responding to the Plaintiff's Motion for Partial Summary Judgment, could be and likely will be argued by the Plaintiff to be a waiver of the Defendant's lack of jurisdiction defense and therefore an abandonment of the basis for her Motion to Dismiss." (J.A. at 180 (citing V.I. R. Civ. P. 6).) Accordingly, Valerie requested that all proceedings be stayed pending the Family Court's disposition of her motion to dismiss for lack of personal jurisdiction and inconvenient forum.

D. The New York Action and What Followed its Dismissal Without Prejudice

¶53 On February 17, 2017, Valerie filed an action for divorce in the trial courts of New York. That court specifically found that Stephen had been served with process "in the [USVI] where he currently resides and has resided for several years, and where he owns several businesses." Stephen sought to have the New York action dismissed because 1) the instant matter had been previously filed in the Virgin Islands, thus ousting the jurisdiction of any other court over the divorce, 2) the courts of New York lacked personal jurisdiction over him, and 3) New York was an inappropriate forum under *forum non conveniens* principles. Valerie opposed dismissal and sought *pendent lite* support and injunctive relief.

¶54 In analyzing the matter, the New York trial court noted that Stephen "asserts [that] he continues to meet [Valerie's] needs, and she does not allege otherwise." Indeed, the New York court noted that it was Valerie who pointed out that Stephen "concedes that he provides upward of $800,000 per year to" Valerie. In considering whether the court had personal jurisdiction over

Stephen, the court found that "New York was clearly the matrimonial domicile of the parties before their separation," explaining that "the term 'before their separation' means that the separation of the parties must have taken place in this State 'at least within the recent past' or that New York must have been the place of the 'last substantial matrimonial domicile before the separation.'" *Staron v. Staron*, 629 N.Y.S.2d 46, 46 (N.Y. App. Div. 1995) (quoting *Lieb v. Lieb*, 385 N.Y.S.2d 569 (N.Y. App. Div. 1976); *Klette v. Klette*, 561 N.Y.S.2d 580 (N.Y. App. Div. 1990); *Richardson v. Richardson*, 396 N.Y.S.2d 689 (N.Y. App. Div. 1977))). The court explained, as follows:

> [i]ndeed, it would certainly be an odd result to conclude that compelling the Defendant to defend a matrimonial action in New York would be a violation of his due process rights when the former marital home and his wife are both located in New York, and have been since at least 1999, and the Defendant has, and continues to pay, hundreds of thousands of dollars towards the maintenance of both, and to maintain contacts with the forum.

The court proceeded to find that the courts of New York were an inconvenient forum, explaining that Stephen "is clearly a resident of the USVI, and has been so for several years. Further, nothing in the record raises a question as to the bona fides of his residency in the USVI." Further,

> it does not appear disputed that [Stephen] has varied and significant assets that are spread across both the United States and the world. Further, that his most significant businesses are currently located in the USVI. Thus, the presence of relevant business records and non-party witnesses are most likely located in the USVI.
>
> By contrast, [Stephen's] assets in New York, although potentially valuable, appear [to be] limited to the marital home and the contents therein. Such assets would not, on their face, appear to present any particular difficulties in valuing. At a minimum, there is no evidence or allegation that relevant non-party witnesses and/or relevant business records of significance are located in New York.

The court found it would be more efficient and less disruptive for the parties to litigate the divorce in the Virgin Islands, "as . . . the complex and significant issues in this case that will likely arise

from the identification, valuation and equitable distribution of the parties' assets, which will require the participation of experts, not the Plaintiff."

¶55 On June 20, 2017, Valerie filed a notice informing the Superior Court of the conditional dismissal of her New York divorce action without prejudice. As conditions precedent to dismissal, Stephen was required to pay, in order to preserve the status quo, Valerie's counsel's fees in the amount of $50,000, bring current the mortgage payments on the marital abode, and keep current the mortgage payments and carrying costs for the marital abode. Stephen filed his notice of compliance in the Superior Court on July 12, 2017. He reported that he had paid $32,478.57 in mortgage payments and carrying costs and provided the wire transfer confirmations. Stephen also had deposited into his New York lawyer's escrow account $50,000 and provided copies of correspondence with Valerie's lawyer awaiting Valerie's consent that the $50,000 be disbursed from escrow directly to Valerie's attorneys.

¶56 Subsequent to the dismissal of Valerie's New York action, the Virgin Islands Family Court denied, on June 24, 2018, the March 2018 Motion without prejudice and referred the matter to mediation. On August 3, 2018, Valerie filed a motion seeking clarification of this order. "As the basis for such request . . ., the [mediation order] denies [Stephen's March 2018 Motion] and orders the parties to mediation. However, it does not address [Valerie's motion to dismiss]. As such, [Valerie] respectfully requests clarification of the court's order and a ruling on the motion to dismiss." In reply, Stephen asked the Family Court, on August 6, 2018, to issue an order directing Valerie to comply with the June 24, 2018 order for mediation.

¶57 Valerie having failed to schedule mediation, Stephen filed a motion for an order to show cause why Valerie should not be held in contempt of court. Citing Virgin Islands Rule of Civil Procedure 90(c), Stephen argued that the Family Court implicitly found it had personal jurisdiction

over Valerie because it ordered her to mediation. In response, Valerie reiterated all of her reasons for seeking clarification, e.g., the Family Court's failure to rule on her motion to dismiss. Stephen, again relying on Virgin Islands Rule of Civil Procedure 90(c), reiterated that the issuance of the mediation order left no doubt of the Family Court's finding of personal jurisdiction.

E. November 2018 Motion for Partial Summary Judgment

¶58 In his November 2018 Motion seeking partial summary judgment, Stephen reminded the Family Court that Valerie had admitted that the parties' marriage had irreconcilably broken down with no reasonable likelihood of reconciliation. He also reiterated his view that the Family Court's mediation order was a denial of Valerie's motion to dismiss, as the court could not have ordered Valerie to mediation without finding it had personal jurisdiction. Stephen, therefore, requested the court enter an order of divorce.

¶59 In her opposition, Valerie reiterated her arguments against "bifurcating" the divorce action, which meant that "in essence, [Stephen] seeks to bifurcate the dissolution of marriage issue from the property, alimony, child custody, and support issues."[12] Valerie then reiterated her public policy arguments, without citation to authority, that "bifurcation" would cause delays and expense and unfairly disadvantage Valerie "in the event that [Stephen] wishes to quickly remarry." Stephen, in reply, argued that "there is not a scintilla of evidence in Valerie's Opposition to establish anything other than that Valerie, with [the Family Court's] continued acquiescence, has been holding Stephen hostage while the parties have been living separate and apart for more than 10 years." Stephen then pointed out that Valerie's "concerns" about child custody and support were fallacious and "demonstrably false," as "the parties' children . . . are 26 and 26, respectively,

[12] As the parties had no minor children, it is puzzling that issues of child custody and child support were included. This appears to be a factually unfounded argument. V.I.R. CIV. P. 11(b)(3).

and there are no issues regarding custody and their support." Stephen then recounted the extensive support he had provided Valerie from 2008 to the time of the filing of the reply.

¶60 He then, in response to Valerie's assertion that "a divorce 'could cause a myriad of legal and procedural problems which only will cause delay and additional expenses to the Parties'," quoted the decision of the judge in the New York action in which Valerie was granted injunctive relief protecting both the marital abode, where she resided, and providing Valerie with $50,000 in attorney's fees at Stephen's expense. Stephen further asserted that all of the "concerns" raised by Valerie were entirely speculative and contrary to the injunctive relief she had been granted by the courts of New York, a judgment *in personam* against Stephen. In his affidavit in support, Stephen reaffirmed his March 30, 2017 affidavit except to the extent as follows. The mortgage on the marital abode was in excess of $9,000,000. Stephen was in negotiation to restructure the mortgage to reduce it to $4,600,000. However, if the home were sold, it was unlikely to garner anything in excess of that amount. Stephen then provided an itemized list of Valerie's expenses he had paid throughout 2018, totaling $631,891.21.

F. The Superior Court's April 16, 2019[13] Ruling and the Subsequent Appeal

¶61 The Family Court first noted that the New York action had been dismissed "on the grounds that New York is an inconvenient forum because [Stephen's] business assets, which are most significant, are currently situated in the Virgin Islands." The court noted, however, that the record from which it made its determination was "not developed" and it dismissed Valerie's action "without prejudice should she be successful in her motion to dismiss in the Virgin Islands or should

[13] We utilize the date of entry of the order as the date of the order, as it is from this date that the parties (and the public) have notice of the trial court's disposition. V.I.R. APP. P. 5(a)(9); *Miller v. Sorenson*, 67 V.I. 861, 873 (V.I. 2017); *World Fresh Markets*, 71 V.I. at 1177-78.

the Virgin Islands action be dismissed or any other reason." However, the Family Court, citing subsection 106(a) of title 16, found that "this Court has subject matter jurisdiction over the marriage and can dissolve the marital relationship." As the Family Court perceived it, "the questions before the Court are whether the Virgin Islands may exercise personal jurisdiction over [Valerie]; and even if personal jurisdiction is proper, whether the Virgin Islands is an inconvenient forum."

¶62 Noting that only the conduct enumerated in section 4903 of title 5 could serve as a basis for the exercise of specific *in personam* jurisdiction over Valerie, the Family Court then considered Valerie's connections to the Virgin Islands under that statute. While Valerie had regularly communicated with Stephen's office staff and received money and had filed taxes in this jurisdiction up to 2010, none of these actions were in relation to Valerie's business interests or employment. The Family Court concluded there was no Legislative authorization, i.e., no statute providing for the exercise of personal jurisdiction over Valerie under the facts before the court, explaining that,

> [i]n this case, Wife's communication with Husband and his office, or Wife's filing of joint tax returns in this jurisdiction, without more, [do] not rise to this level of "transacting business," especially considering that the contacts did not involve a commercial interest.

Thus, at least by the Family Court's logic and reasoning, section 4903 of title 5 provided no basis for the exercise of specific personal jurisdiction over Valerie.

¶63 The Family Court then considered Valerie's argument as to *forum non conveniens* under section 4905 of title 5. It first noted that the order dismissing Valerie's New York action was without prejudice, leaving the parties with an alternative forum to litigate their divorce. However, the Family Court did not further consider any other findings of the New York court. As to the

balancing of private interests, the Family Court properly noted that it should consider: (1) the relative ease of access to sources of proof; (2) the cost of obtaining attendance of witnesses; and (3) all other practical problems that make trial of a case easy, expeditious and inexpensive. The New York court had previously found—and Valerie did not, in New York, seek to challenge such findings on appeal—that it was undisputed that "Stephen has varied and significant assets" located around the world, but Stephen's "most significant businesses are currently located in the USVI." That court further noted that "there is no evidence or allegation that relevant non-party witnesses and/or relevant business records of significance are located in New York." These circumstances led the court to conclude that "the presence of relevant business records and non-party witnesses are most likely located in the USVI." In a stunningly baffling contradiction, however, the Family Court used these same facts to support its finding that the Virgin Islands is an inconvenient forum.

¶64 Similarly, despite acknowledging that Valerie had received an award of *pendente lite* attorney's fees (and the availability of such fees under subsections 108(1), (3) of title 16), the Family Court found that the cost of litigating in the Virgin Islands would unduly burden Valerie, while Stephen "can more easily travel to New York for divorce proceedings and is accustomed to traveling there for business." This finding entirely fails to address the New York court's finding that the majority, if not all, of the records of Stephen's business (and thus his income) and the majority, if not all, of the non-party fact and expert witnesses are located in the Virgin Islands.

¶65 Additionally, the Family Court entirely failed to acknowledge, much less address, the undisputed fact that Valerie does not work and continues to receive $5,000 monthly in cash (in addition to receiving $5,000 monthly in a credit card limit and having her entire household paid for by Stephen) when concluding that Valerie would be burdened more by litigating in the Virgin Islands than Stephen would be burdened by litigating in New York. The Family Court further

ignored the fact that the New York court had ordered injunctive relief for Valerie to ensure that Stephen continued to pay all her expenses relating to the martial abode and provide her $50,000 in attorney's fees.

¶66 Finally, the Family Court found it most significant to its disposition that the absence of personal jurisdiction over Valerie would dictate that all matters beyond the granting of a divorce (in this matter, property distribution and spousal maintenance) must be considered in New York. In support of this conclusion, the Family Court relied on the Legislature's expansion of the remedies available in a divorce action when it amended subsection 109(7) of title 16 to allow the distribution of real property in addition to the marital abode in a divorce proceeding, finding this demonstrated the Legislature's intent to curtail the granting of a divorce while the Family Court retains jurisdiction to consider all other incidents to the divorce.

¶67 The Family Court then considered factors relating to the public interest, including the following: (1) the administrative difficulties resulting from court congestion; (2) the local interests in having controversies decided at home; and (3) the avoidance of unnecessary problems in the application of foreign law. The Family Court found these factors to be neutral in the analysis. Finally, the Family Court found that "the issues here are not so connected to the forum to compel community interest."

¶68 Stephen filed a notice of appeal with this Court on May 15, 2019. In it, he listed nine potential issues challenging the Family Court's April 16, 2019 and July 25, 2018 orders. On July 15, 2019, within the deadline set by this Court's scheduling order, Stephen filed his appellant's brief fully presenting four issues on appeal, all of which come within the language of the issues raised in his notice of appeal.

II. STANDARD OF REVIEW

¶69 Subject matter jurisdiction is the legislative authorization of a court's power and must be founded in the constitution of the forum or the duly enacted statutes of the legislature. *Willis v. People*, 71 V.I. 789, 814 (V.I. 2019) (Swan, J., concurring), *cert. denied*, 140 S. Ct. 963 (2020).

¶70 I would first determine (1) whether the Family Court had Divorce Jurisdiction to act under subsection 106(a) of title 16 and (2) whether it was an abuse of discretion for the Family Court to have denied Stephen's motion for partial summary judgment and dismissed the entire action without granting Stephen a divisible divorce. *See Gayanich v. Gayanich*, 69 V.I. 583, 588 (V.I. 2018). Questions of law concerning the Family Court's subject matter jurisdiction are subject to plenary, *de novo*, review. *See Willis*, 71 V.I. at *9 n.2 (citing *Hansen v. O'Reilly*, 62 V.I. 494, 507 (V.I. 2015); *Pichardo v. Benjamin*, S. Ct. Civ. No. 2007-0061, 2008 WL 6054386, at *2 (V.I. Apr. 16, 2008) (per curiam) (unpublished)). Findings of fact will be upheld unless they are clearly erroneous. *Gayanich*, 69 V.I. at 588; *see, e.g., Noble v. Union River Logging R.R. Co.*, 147 U.S. 165, 173-74 (1893) (discussing quasi-jurisdictional facts). To the extent this Court reviews the denial of summary judgment on a basis other than an issue strictly of law, this Court exercises *de novo* review, applying the same standard as the trial court. *Streibich v. Underwood*, 2021 VI 3, 20 (quoting *Alexander v. Alexander*, 65 V.I. 372, 378 (V.I. 2016), and citing *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379 (V.I. 2019)).

¶71 Secondly, this Court must consider whether the Family Court erred as a matter of law when it found that there was no statutory basis for the Family Court's exercise of personal jurisdiction over Valerie and whether Valerie otherwise waived her defense of a lack of personal jurisdiction. These are both questions of law over which this Court exercises plenary, *de novo*, review. *Molloy*

v. Independence Blue Cross, 56 V.I. 155, 170 (V.I. 2012).[14] Likewise, matters of statutory interpretation are questions of law over which this Court's review is plenary. *Id.*

¶72 No hearing was held in the Family Court. Therefore, we apply the same standard as the trial court and accept as true Stephen's allegations and take all inferences of fact in his favor in determining whether, on its face, the record discloses a failure of the plaintiff to make a *prima facie* showing of personal jurisdiction over the defendant. *Id.* The Family Court, being a court of general, but limited, jurisdiction, is presumptively without either subject matter or personal jurisdiction, and facts supporting the exercise of both must be pled and appear in the record. *Crowell v. Benson*, 285 U.S. 22, 50 (1932); *Gringnon's Lessee v. Astor*, 43 U.S. (2 How.) 319, 340 (1844); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 206 (1830). Finally, this Court must consider whether the Family Court abused its discretion when it determined that St. Thomas, Virgin Islands was an inconvenient forum. *Gayanich*, 69 V.I. at 588 (citing *Arthur v. Arthur*, 452 A.2d 160, 161 (D.C. 1982); *Corning v. Corning*, 563 A.2d 379, 380 (Me. 1989)).

III. DISCUSSION

¶73 The right to a divorce is provided to the people of the Virgin Islands in section 101 of title 16 of the Virgin Islands Code, which states that "[a spouse] may maintain an action against the other for . . . the dissolution of the marriage. . . as provided in this chapter." 16 V.I.C. § 101; *Willis*, 71 V.I. at 1057 (Swan, J., concurring) (Appendix A (legislative history of 16 V.I.C. § 101)). The elements of the "cause of action" of a divorce in the Virgin Islands are: (1) "the legitimate objects of matrimony have been destroyed" and (2) there is "no reasonable likelihood the marriage

[14] *See Adams v. Saenger*, 303 U.S 59, 63-64 (1938) ("The question thus raised upon demurrer for decision by the court is the legal effect . . . of the service, and hence of the judgment founded upon it. Whether the question be regarded as one of fact or more precisely and accurately as a question of law to be determined as are other questions of law, although procedural exigencies require it to be presented by the pleading and proof, as are issues of fact . . . .").

can be preserved." 16 V.I.C. § 104; *Willis*, 71 V.I. at 1059-60 (Swan, J., concurring) (Appendix A (legislative history of 16 V.I.C. § 104)). However, the Family Court's Divorce Jurisdiction must be established before such relief can be granted.

¶74 Subsection (a) of section 106 of title 16, the grant of Divorce Jurisdiction to the Family Court, provides as follows:

> In an action for the dissolution of the marriage . . . the plaintiff therein must be an inhabitant of the Virgin Islands who is domiciled therein at the commencement of the action and who has resided therein continuously and uninterruptedly for at least six weeks prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose. Evidence of six weeks residence as aforesaid shall be presumptive proof of domicile.

16 V.I.C. § 106(a); *Willis*, 71 V.I. at 1061-63 (Swan, J., concurring) (Appendix A (legislative history of 16 V.I.C. § 106)). However, the questions remain as to how exactly this provision operates and what meaning of the words used was intended by the Legislature when adopting this provision. For example, the Legislature has not defined, inter alia, "inhabitant," "domiciled," and "resided." Similarly, the parties dispute whether Valerie's conduct constituted "transacting any business" within the meaning of subsection 4903(a) of title 5. Resolving these questions requires an exercise in statutory interpretation.

¶75 When providing operational meaning to a statute, a court must give effect to all the words of each statutory provision, as well as give effect to all the provisions of the statute. *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 375 (2016) (This Court must "avoid interpreting a statutory provision in a manner that would render it—or another provision—wholly superfluous and without an independent meaning or function of its own." (quoting *In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015) and *Defoe v. Phillip*, 56 V.I. 109, 129 (V.I. 2012) (some internal quotation marks and alterations

omitted)); *Willis*, 71 V.I. at 826-27 (Swan, J., concurring) (statutes *in pari materia* must be read in reference to each other (citing *Phillip v. People*, 58 V.I. 589, 590 (V.I. 203)). When doing so, we must ensure that the definitions utilized do not (1) undermine legislative intent, (2) render words or provisions nugatory, ineffective, or superfluous, or (3) lead to absurd results such as arbitrary application or an incoherent, i.e., internally inconsistent or illogical, statutory scheme. *Ubiles v. People*, 66 V.I. 572, 590 (V.I. 2017); *see also Haynes v. Ottley*, 61 V.I. 547, 565 (2014) ("[I]t is presumed that the Legislature, in enacting the provisions of [a] chapter . . . [and] subchapter [of a title within the Virgin Islands Code] — as well as [the] title . . . as a whole — would not enact superfluous statutes, or statutes that directly contradict each other." (citing *Gilbert v. People,* 52 V.I. 350, 356 (V.I. 2009)). The Court must look first to the text and context of the statute in order to discern legislative intent; context includes other statutory provisions addressed to the same topic, i.e., provisions that are in pari materia, and applicable judicial constructions of the statute in question as well as provisions in pari materia. *In re Marriage of Massee,* 970 P.2d 1203, 1209 (Or. 1999). Courts must consider the definitions of the words of the statute; where there are multiple definitions to a word, selecting the appropriate definition requires consideration of the rules of grammar, the context in which the word of phrase is used, etc. *Ubiles*, 66 V.I. at 590. To aid the courts in explicating the "plain meaning" of statutory text, the Legislature has established the "Dictionary Definition Rule." *E.g.*, *Greer*, 2021 VI 7 n.22.[15]

¶76 The Dictionary Definition Rule requires the courts of the Virgin Islands, when engaging in statutory construction and interpretation, to apply a specific hierarchy of definitions. First, courts must apply any statutory definitions provided by the Legislature that are specifically applicable to

[15] S*ee, e.g.*, *Ubiles*, 66 V.I. at 590 (referring to the "dictionary meaning"); *Miller,* 67 V.I. at 872 (referring to the "Dictionary Meaning").

the section, chapter, title, or specific provision under consideration. *Greer*, 2021 VI 7 n.22. Second, the courts must apply the general definitions provided in section 41 of title 1. *Id.* Third courts must apply any accumulated legal meaning as articulated in binding precedent. Fourth, courts must apply the relevant definition provided in a law dictionary or relevant persuasive authority. *Id*. Fifth, the courts must apply relevant technical definitions such as when professional jargon is used. *Id.*; COMPACT AMERICAN DICTIONARY: A CONCISE DICTIONARY OF AMERICAN ENGLISH 449 (1998) (defining "jargon" to include "the specialized or technical language of a trade or profession"). Finally, in the absence of more specific definitions, Virgin Islands courts must apply the common meaning of a word or phrase as provided in a dictionary, the "Dictionary Definition." *Greer*, 2021 VI 7 n.22.

¶77 In considering context, this Court must also consider the history of adoption, amendment, and repeal of a statute. *Commonwealth v. Munson*, 127 Mass. 459, 461 (Mass. 1879). As specifically applies to interpreting grants of subject matter jurisdiction, we note that

> when a court is granted jurisdiction, absent express repeal, that jurisdiction will not be interpreted to have been rescinded by a subsequent grant of similar jurisdiction to another tribunal or agency. If faced with the task of interpreting statutes providing time limits and other limitations that could be understood to limit a court's jurisdiction, its very power to act, statutory requirements should only be held to be jurisdictional if there is a clear indication the legislature intended the statutory provision to operate as a limitation on the court's adjudicatory capacity—the jurisdictional intent must be clear. Determining jurisdictional intent requires that the statutory language be considered for the meaning of the express text in light of the context in which it is located and relevant historical treatment. When there is no clear label, then courts consider the structure of the statute and whether long-standing judicial precedent "compels the conclusion" that the statute imposes a jurisdictional limit. If the express language unambiguously prescribes the jurisdictional limits, no further inquiry is necessary.

Willis, 71 V.I. at 832-33 (citing authorities).

¶78 Lastly, regarding consideration of context, legislatures are presumed to know the common law of the United States and to have incorporated it in all its relevant aspects into any statutory codification of the common law.[16] However, as the United States Supreme Court has explained, "when referring to the 'common law' in this country, the reference is to 'those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country [and] the laws of many of the states at the time of the adoption of' the Constitution or amendment thereto." *Greer*, 2021 VI 7 n.27 (quoting *Den v. Hoboken Lamp & Imp. Co.*, 59 U.S. (18 How.) 272, 277, 279-80 (1855) and citing *Union P. Ry. Co. v. Botsford*, 141 U.S. 250, 253 (1891)); *Eakin v. Raub*, 12 Serg. & Rawle 330, 346-47 (Pa. 1825); *see Davis v. People*, S. Ct. Crim. No. 2015-0061, 2015 WL 9255384, at *3 (V.I. Dec. 16, 2015) (unpublished) (legislatures are presumed to know long-standing procedures and practices); *see generally West Cambridge v. Lexington*, 18 Mass. 506, 517-19 (Mass. 1823) (discussing the U.S. common law as to recognition of marriage and divorce and noting that a state's laws have no force beyond its borders). If, after applying the foregoing principles, there is only one interpretation to be made, the legislative intent has been determined, and no further judicial construction is needed. *Willis*, 71 V.I. at 811 (Swan, J., concurring) (citing *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018); *F.B.I. v. Abramson*, 456 U.S. 615, 648 (1982) (O'Connor, J., dissenting); *In re Sherman*, 49 V.I. 452, 456 (V.I. 2008)).

[16] *Greer*, 2021 VI 7 nn.26-27 (explaining the difference between English common law and the common law of the United States (citing authorities)); *see Arredondo*, 31 U.S. (6 Pet.) at 743 ("By adopting words of a known legal import, the [Legislature] must be presumed to have used them in that sense, and to have so intended them; to depart from this rule would be to overturn established principles.").

A. The Family Court had Both Divorce Jurisdiction and Personal Jurisdiction, and the Dismissal of This Divorce Action and Denial of Partial Summary Judgment Were in Error.

¶79 I first consider the very nature of the Family Court. More specifically, I consider both the substantive requirements for establishing Divorce Jurisdiction, thus enabling the entry of a valid final judgment of divorce, and whether the enabling legislation demonstrates a legislative intent that the Family Court be a court of general jurisdiction, a court of limited jurisdiction, or a hybrid court possessed of characteristics of both courts. *See Gringnon's Lessee*, 43 U.S. (2 How.) at 340 (quoting *Watkins*, 28 U.S. (3 Pet.) at 204-07; and citing *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 729 (1832)). Furthermore, because the Legislature has incorporated the concept of domicile into its grant of Divorce Jurisdiction, 16 V.I.C. § 106(a), I include an analysis of domicile jurisdiction. I then address whether the Family Court abused its discretion when it denied Stephen's motion for summary judgment as to his claim for divorce.

¶80 As a starting point, I note the due process elements essential to make the judgment of divorce valid both within and without the borders of the issuing forum. First, a court may only act validly within its appointed range of power (whether by constitutional grant, statutory grant, or both); there must be subject matter jurisdiction. This requires that the legal and factual issues fall within the legislation and/or constitutional provision authorizing a court to act. *Estate of Skepple v. Bank of N.S.*, 69 V.I. 700, 718 (V.I. 2018). Indeed, subject matter jurisdiction may be challenged by any party at any time in a proceeding exactly because it is the very definition of a court's power to act.[17] Additionally, while the usual case requires only four elements be met in order for the judgment to be valid, matters of domestic relations involve a fifth constitutionally required

[17] *Arredondo*, 31 U.S. (6 Pet.) at 710; *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 126 (1804) ("A plaintiff may assign for error the want of [subject matter] jurisdiction in the court to which he has chosen to resort.").

element. As is relevant for a valid judgment of divorce, that element is the domicile of one of the spouses. *Williams v. North Carolina* (*Williams I*), 317 U.S. 287, 304- (1942).[18]

¶81 There must also be personal jurisdiction over all the parties, which has four components: (1) sufficient process, (2) service of that process, (3) statutory minimum contacts, and (4) constitutional minimum contacts. *See Skepple*, 69 V.I. at 722. We are concerned in this matter with the latter two components of personal jurisdiction. Statutory minimum contacts require both that the legislature has passed[19] a statute identifying what actions will be considered adequate to justify the exercise of a court's authority over a defendant, *e.g.*, 5 V.I.C. § 4903 ("Virgin Islands Long-arm Statute"), and that the defendant's conduct falls within one of those statutory provisions. Constitutional minimum contacts require that such statutory minimum contacts be scrutinized to ensure that the actions of the defendant would result in an absence of surprise to the defendant when brought into court, i.e., served with process, to defend the suit. This is usually expressed as a consideration of whether allowing the suit to proceed would violate notions of "fair play and substantial justice" to the defendant. *Shaefer v. Heitner*, 433 U.S. 186, 203 (1977) (quoting

[18] *See Willis*, 71 V.I. at 821 & n.17 (Swan, J., concurring) (if there is credible evidence in the record establishing jurisdictional facts, subject matter jurisdiction was proved (citing 4 V.I.C. §§ 2(a); 76(b); *Harvey v. Tyler*, 69 U.S. (2 Wall.) 328, 341 (1864); *Arrendondo*, 31 U.S. (6 Pet.) at 710; *Tindell v. People*, 56 V.I. 138, 147-48 (V.I. 2012); *Powell v. People*, 70 V.I. 745, 765 n.5 (V.I. 2019) (Swan, J., concurring); *M. Davis v. People*, 69 V.I. 619, 651 n.23 (V.I. 2018) (Swan, J., concurring); *A. Davis v. People*, 69 V.I. 600, 617 (V.I. 2018) (Swan, J., concurring)).

[19] *Jensen v. McInerney*, 299 F. Supp. 1309, 1312-13 (D.V.I. 1969) ("One of the most elementary of legal principles is that a basis for [the exercise of extra-territorial personal] jurisdiction must exist before a court has competence to act."); *Norman's on the Waterfront v. West Indies Corp.*, 10 V.I. 495, 500 (V.I. Super. Ct. 1974) ("Absent some affirmative act of the law making body, there is no authority for the exercise of jurisdiction over non-residents."); *Shaffer v. Heitner*, 433 U.S. 186, 220 (1977) (Brennan, J., concurring in part, dissenting in part) ("True, appellants do not deny having received actual notice of the action in question. However, notice is but one ingredient of a proper assertion of state-court jurisdiction. The other is a statute authorizing the exercise of the state's judicial power along constitutionally permissible grounds which henceforth means minimum contacts. . . . An inquiry into minimum contacts inevitably is highly dependent on creating a proper factual foundation detailing the contacts between the forum state and the controversy in question."); *see Skepple*, 69 V.I. at 726 (declaring same as to methods of service of process).

International Shoe Co. v. Washington, 326 U.S. 310, 317-19 (1945), and citing *Milliken v. Meyer*, 311 U.S. 437, 463 (1940)).[20]

1. Because (1) Stephen Provided Supporting Affidavits Supplying Competent Evidence Establishing Both Elements of the Family Court's Divorce Jurisdiction (Residency and Domicile) and (2) Valerie Entirely Failed to Submit Any Evidence to Contradict Stephen's Prima Facie Establishment of Divorce Jurisdiction, Stephen had Presumptively Established Divorce Jurisdiction, and Valerie Failed to Rebut that Presumption. Therefore, the Family Court had Authority to Hear Steven's Petition for Divorce—it had Divorce Jurisdiction.

¶82 I now consider whether the court had "jurisdiction" to enter a valid judgement of divorce terminating the marriage of Valerie and Stephen both in the Virgin Islands and everywhere else. *Skepple*, 69 V.I. at 718-21; *e.g.*, *Rose v. Himley*, 8 U.S. (4 Cranch) 241, 276 (1808) (considering the subject matter jurisdiction of the court before considering whether the judgment was valid).

a. The Family Court's Divorce Jurisdiction and Status as a Court

¶83 Having reviewed the law governing the status of courts (i.e., general jurisdiction, limited jurisdiction, hybrid) and the legislative history of the subject matter jurisdiction of the trial courts of the Virgin Islands, I now consider the Family Court's status when acting under its jurisdiction provided in subsection 106(a) of title 16 and the proof necessary to invoke such jurisdiction. *See generally Willis*, 71 V.I. at 826 n.23 (Swan, J., concurring) ("Congress gave the Legislature the authority to terminate the jurisdiction of the District Court. As such, any understanding of the jurisdiction of the District Court must be understood by reference to the changes in the jurisdiction

[20] The third element of a valid judgment is that the issue decided must have been the issue presented in the notice to the defendant (usually the complaint as validly served upon the defendant). *Skepple*, 69 V.I. at 720-21; *Reynolds v. Stockton*, 140 U.S. 254, 266 (1891) ("[T]he rule is universal that, where [a defendant] appears and responds only to the complaint was filed, and no amendment is made thereto, the judgment is conclusive only so far as it determines matters which by the pleadings are put in issue." (citing *Munday v. Vail*, 34 N.J.L. 418 (N.J. 1871))); *see generally Stockton*, 140 U.S. at 270 ("'[T]he matter in issue' has been defined . . . as 'that matter upon which the plaintiff proceeds by his action, and which the defendant controverts by his pleadings.'" (quoting *Smith v. Ontario*, 4 F. 386, 390 (N.D.N.Y. 1880), and citing *King v. Chase*, 15 N.H. 9 (N.H. 1844))). The fourth element to a valid judgment is that "the court issuing the judgment must have acted in accordance with due process of law." *Skepple*, 69 V.I. at 718-21 (citations omitted). Valerie challenges neither of these elements.

of the Superior Court[, and vice versa]." (citing *Gov't of the V.I. v. Rodriguez*, 423 F.2d 9, 11-12 (3d Cir. 1970))).

i. The Legislature's Creation of a Family Division of the Superior Court Rather than a Separate Court that Operated Exclusively Under the Legislature's Grant of Divorce Jurisdiction, Considered in Light of the Legislative History, Evidences a Clear Legislative Intent that the Family Court is a Court of General, but Limited, Subject Matter Jurisdiction.

¶84 The Superior Court (and its predecessor, the District Court), when granting divorces, has always operated, not under its general grant of subject matter jurisdiction contained in what is today subsection 76(a) of title 4, but under (what is now) subsection 106(a) of title 16. So, in 1977, when the Superior Court was granted (in subsection 76(a) of title 4) subject matter jurisdiction over divorces concurrent with the jurisdiction of the District Court, Divorce Jurisdiction as exercised by the District Court was already limited in subsection 106(a) of title 16. Furthermore, this same 1977 legislation created the Family Division of the Superior Court—as opposed to a separate family court.

¶85 The term "court of general jurisdiction" has had a generally understood meaning since the beginning of this country. BLACK'S LAW DICTIONARY 929 (9th ed. 2009) (defining "general jurisdiction" as "a court's authority to hear all claims against a defendant, at the place of the defendant's domicile or the place of service, without any showing that a connection exists between the claims and the forum state"). In utilizing this term, the Legislature adopted the operational content (burdens of proof, etc.) of the expression as well as its definition. *Eakin*, 12 Serg. & Rawle at 346; *see* 4 V.I.C. §§ 2(a) ("The judicial power of the Territory is vested in a court of general jurisdiction . . . to be designated the 'Superior Court of the Virgin Islands . . . . Each court is a court of record."); 76(b) ("[T]he Superior Court shall have original jurisdiction. . . ."). Courts of general jurisdiction may be granted a general subject matter jurisdiction that is limited to certain

categories of cases, such as being limited to a specific type of action such as divorces. *See Galpin v. Page*, 85 U.S. (18 Wall.) 350, 371 (1873).[21] The Legislature's choice to create a Family Division within the Superior Court, a court of record that had already been granted jurisdiction over divorces in subsection 76(a) of title 4, while limiting Divorce Jurisdiction to people meeting specific requirements, 16 V.I.C. § 106(a), demonstrates a very clear policy choice that the Family Court is a court of limited, but general, jurisdiction. *See Valerino v. Manning*, 68 V.I. 276, 302 (V.I. Super. Ct. 2018) (noting that statutory language creating a division "in the Superior Court" was an affirmative Legislative policy choice to create a new division within the same court (citing 4 V.I.C. § 120)).

¶86 Had the Legislature wanted the Family Court to be a court of limited jurisdiction, it could have established a separate court rather than creating a division within the Superior Court, a court of general jurisdiction. Importantly, it had done exactly that in the past with the creation of the Municipal Courts and Juvenile Courts in the 1921 Code. *Willis*, 71 V.I. at 907-08 (Appendix A (quoting 1921 Code, Title III, Chapter 44, §§ 1, 7)). Therefore, in 1991, when the Legislature chose to divest the District Court of subject matter jurisdiction over matters arising under Virgin Islands law, the Superior Court became the only trial court of record with general civil jurisdiction (including Divorce Jurisdiction), and all the common law presumptions and burdens became applicable. When operating as the Family Court under its grant of Divorce Jurisdiction contained

[21] *Andrews*, 188 U.S. at 30 ("'Marriage . . . has always been subject to the control of the legislature. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates its effect upon the property rights of both, present and prospective, and the acts which may constitute ground for its dissolution.'" (quoting *Maynard v. Hill*, 125 U.S. 190 (1888))); *see, e.g.*, *Perkins v. Perkins*, 113 N.E. 841, 844 (Mass. 1916) ("This commonwealth, by the act of its legislative department . . ., has asserted [subject matter] jurisdiction to adjudicate the marriage status of those domiciled here. . . .").

in subsection 106(a) of title 16, the trial court was operating as a court of general, but limited, jurisdiction.

¶87 Considering this conclusion, it is obvious that, in his petition for divorce, it was Stephen's burden to allege facts that established the requirements of subsection 106(a) of title 16, and in the absence of such allegations, the Family Court would (after affording an opportunity to amend the complaint to allege such facts) be required to dismiss the divorce petition for lack of Divorce Jurisdiction.

ii. Proof Necessary for the Valid Exercise of the Family Court's Divorce Jurisdiction

¶88 In addition to limiting its applicability to matters of divorce, subsection 106(a) provides that

> the plaintiff therein must be an inhabitant of the Virgin Islands who is domiciled therein at the commencement of the action and who has resided therein continuously and uninterruptedly for at least six weeks prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose. Evidence of six weeks residence as aforesaid shall be presumptive proof of domicile.

16 V.I.C. § 106(a). I first consider the language declaring that Divorce Jurisdiction is to be established "without regard to the place where the marriage was solemnized or the cause of action arose." In effect, this is a Legislative directive to disregard "the place where the marriage was solemnized or the cause of action arose" when considering whether the plaintiff has established a domicile in the Virgin Islands such that a valid judgment of divorce may be entered. COMPACT AM. DICT., 694 (defining "regard"), 926 (defining "without").

¶89 Irrefutably, the adoption of a provision disregarding the place of the solemnization of the marriage and the reason for the dissolution of the marriage is reflective of an affirmative policy

choice by the Legislature to (as is consistent with its internal liberal divorce policy)[22] expressly remove from the consideration of domicile for the purposes of granting a divorce the "marital domicile" and the multiple common law disabilities that formerly applied to women that limited their ability to obtain a divorce. *Elliot v. Peirsol's Lessee*, 26 U.S. (1 Pet.) 328, 338 (1828); *see Haddock v. Haddock*, 201 U.S. 562, 628-33 (1906) (Holmes, J., dissenting); *Williams I*, 317 U.S. at 304 (Frankfurter, J., concurring). By expressly declaring that the location of the marriage and the reason for the divorce are irrelevant to consideration of domicile jurisdiction, the Legislature rejected past law and made jurisdiction for divorces solely dependent upon the domicile of the petitioning spouse. *See, e.g., Greer*, 2021 VI 7, 43 n.21.

¶90 I next consider that portion of subsection 106(a) that declares that a plaintiff must have "resided [in the Virgin Islands] continuously and uninterruptedly for at least six weeks prior" to commencing their suit for divorce. "Virgin Islands," when used in the Code, indicates, "in a geographical sense, . . . the same territorial domain . . . designated . . . in section 2(a) of the [ROA]." 1 V.I.C. § 41; *see also* 48 U.S.C. § 1405; 1 V.I.C. § 2 (providing that the Code is applicable throughout the Virgin Islands). An "inhabitant" is "a resident" of the Virgin Islands. 1 V.I.C. § 41 (defining "inhabitant"). A "resident" is "a person who has a home in a particular place. In

[22] The Virgin Islands was the first jurisdiction in the United States to provide for a no-fault divorce, a legal consequence of its prior status as a Danish colony. *Garcia v. Garcia*, 59 V.I. 758, 780 (V.I. 2013) (citing Allen M. Parkman, *Reforming Divorce Reform*, 41 SANTA CLARA. L. REV. 379, 383 n.3 (2001)); Graham Kirkpatrick, *Incompatibility as a Ground for Divorce*, 47 MARQ. L. REV. 453 (1964). Also, the Legislature declared void any marriage that was consummated by domiciliaries in fraud of the Virgin Islands but never extended this same prohibition to divorces obtained outside the Territory. Preceding the effective date of the Act of Dec. 29, 1944, 1921 Code, Title III, Chapter 44, section 1 provided eight grounds for divorce, including "incompatibility of temperament." *Willis*, 71 V.I. at 908 (Appendix A (quoting 1921 Code, Title III, Chapter 44, § 7(8)). This same provision (albeit restructured) became subsection (a) of section 104 when it was incorporated into the 1957 Code, at which time subsection (b) was added. *Willis*, 71 V.I. at 1060 (Appendix A (quoting 16 V.I.C. § 104 (1957)). The present version of section 104 was adopted in 1973. *Willis*, 71 V.I. at 1060 (Appendix A (quoting 16 V.I.C. § 104)). This Legislative history is plainly illustrative of a liberal divorce policy. *See Hinds v. Brazealle*, 2 How. 837, 842 (Miss. 1838) ("The public policy of a state is indicated by the general course of legislation on the subject."); *Jackson v. Jackson*, 1 Johns. 424, 432 (N.Y. 1806).

[this] sense . . ., a resident is not necessarily either a citizen or a domiciliary." To be "resident" in a given forum means to be "dwelling in a place other than one's home on a long-term basis," for example, referring to a person as "the hospital's resident patient." BLACK'S L. DICT., 1424. Importantly, the use of the language "continuously and uninterruptedly" indicates that the six weeks must be consecutive. The petitioner must be physically present within the territorial limits[23] of the Virgin Islands and must have been so for a minimum duration of six consecutive weeks in order to establish the "residency" element of Divorce Jurisdiction. 16 V.I.C. § 106(a); *see* BLACK'S L. DICT., 1267; COMP. AM. DICT., 633 (defining "plaintiff").

¶91 I now address the meaning of that portion of subsection 106(a) that declares "[e]vidence of six weeks residence as aforesaid shall be presumptive proof of domicile." 16 V.I.C. § 106(a). With this language, the Legislature has created a rebuttable presumption that, upon submitting proof of six consecutive weeks of uninterrupted physical residence in the Virgin Islands, the plaintiff spouse has *prima facie* proved their domicile in the Virgin Islands, although such proof may be subject to rebuttal by the opposing spouse. *Granville-Smith v. Granville-Smith*, 349 U.S. 1, 1 n.16 (1955) (noting that the trial judge is not responsible for rebutting the statutory presumption or domicile provided for in the predecessor statute of subsection 106(a)); *Alton*, 207 F.2d at 670 (citing *Mobile, J. & K.C.R. Co. v. Turnipseed*, 219 U.S. 34 (1910)).[24]

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[23] *Himley*, 8 U.S. (4 Cranch) at 279 ("It is conceded that the legislation of every country is territorial; that beyond its own territory, it can only affect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law, or to enforce obedience to that law without the circle in which that law operates."); *United States v. Bevans*, 16 U.S. (3 Wheat.) 336, 386-87 (1818) ("What then is the extent of [the judicial] jurisdiction which a state possesses? We answer, without hesitation, the [judicial] jurisdiction of a state is coextensive with its territory, coextensive with its legislative power.").

[24] *See Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 625 (V.I. 2012) (finding that the declaration that issuance of a license is prima facie proof of payment of worker's compensation premiums is subject to rebuttal); *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 353-54 (1909) (It is "the undoubted right of the lawmaking authority to create a presumption . . . .").

¶92 Subsection 106(a) further mandates that the plaintiff be an "inhabitant of the Virgin Islands" who is "domiciled" in the Territory when filing their petition for divorce. Undeniably, the petitioner must be a domiciliary of the Virgin Islands, as indicated by the use of the language "an inhabitant . . . who is domiciled" in addition to stating the requirement of six consecutive weeks' residency. 16 V.I.C. § 106(a); BLACK'S L. DICT., 559 (defining "domiciliary" as "a person who resides in a particular place with the intention of making it a principal place of abode; one who is domiciled in a particular jurisdiction"). Additionally, the spouse seeking a divorce must be presently domiciled in the Virgin Islands when commencing a suit for divorce; this conclusion is buttressed by the limitation upon the petitioner's domicile imposed by the language "at the commencement of the action." Had any past domicile in the Virgin Islands been considered sufficient, the inclusion of this language was unnecessary.

¶93 In response to various rulings declaring subsection 106(a) (or its predecessor statutes) void, amendments were made in an effort to provide Divorce Jurisdiction to the local courts that was coextensive with the constitutional concept of domicile jurisdiction.[25] Initially in 1944, there was no presumption establishing any part of any requirements for Divorce Jurisdiction, but establishing Divorce Jurisdiction only required that a plaintiff be an inhabitant for six weeks prior. Shortly following when the Third Circuit Court of Appeals in *Burch* interpreted this provision to mean

[25] For example, effective beginning January 28, 1945, Divorce Jurisdiction only required proof that the plaintiff had been an inhabitant of the Territory for six weeks prior. *Burch v. Burch*, 195 F.2d 799 (3d Cir. 1952), was decided in April of 1952 and interpreted "inhabitant" to mean "domiciliary." Section 1 of the Act of May 29, 1953, was then enacted and expressly declared that notwithstanding the language of section 9 of the 1944 divorce law, six weeks' residence was prima facie evidence of domicile. Given the timing of the *Burch* decision, the enactment of section 1 in 1953, and the language of section 1 (declaring inhabitance for six weeks prior to be prima facie evidence of domicile), it is clear that section 1 was enacted as a Legislative response to the holding of *Burch*. Then, in 1954, *Alton* declared the statute unconstitutional. 207 F.2d at 677. Finally, in 1955, the *Granville-Smith* opinion declared this provision void, 349 U.S. at 705, and this provision was amended accordingly when incorporated in the 1957 Code to read that the plaintiff "who is domiciled therein at the commencement of the action and who has resided therein for at least six weeks prior thereto . . ." has established the Family Court's Divorce Jurisdiction.

"domiciliary" when the term "inhabitant" was used, 195 F.2d at 804, the Legislature then enacted a provision creating a factual presumption that, upon proof of six weeks' continuous prior residence, the plaintiff's domicile is presumptively established. Then, that presumption was declared void by the Supreme Court in *Granville-Smith*, 349 U.S. at 705, and a new provision was enacted incorporating parts from both prior provisions but also requiring a minimum of six weeks' prior residence. This entire history of the amendment of subsection 106(a) indicates that the Legislature wanted to maintain its liberal divorce policy and expand access to the divorce court to the full extent authorized by the Constitution while avoiding interfering with the power of other states to govern their own domiciliaries according to each state's respective policy choices.

¶94 Requiring both residency and domicile furthers these at times conflicting policy objectives. Therefore, a petitioner in a divorce action, prior to commencing the lawsuit, must plead and prove two requirements in order to establish Divorce Jurisdiction, 1) uninterrupted physical residence in the Virgin Islands for six consecutive weeks prior to filing the petition for divorce ("Residence") and 2) the complaining spouse's domicile in the Virgin Islands ("Domicile"). 16 V.I.C. § 106(a). And, upon the establishment of Residence, the petitioner has presumptively established Domicile, thus shifting to the defendant the burden of producing countervailing admissible evidence to negate that presumption. I now consider the concept of domicile in the context of federalism.

b. Domicile in the Context of Federalism

¶95 Because it established a governmental structure that required significant rethinking of the operation of the English common law of domicile, a logical starting point for the discussion is the Constitution.[26] The individual state governments each have exclusive authority to pass whatever laws governing divorce and marriage they wish,[27] provided they do not interfere with the rights of the people under the federal Constitution, do not inappropriately affect the citizens of the other states, and do not hinder the right to freedom of movement among the states or discriminate against those from another state or territory. *Strader v. Graham*, 61 U.S. (10 How.) 82, 93 (1850) ("Every state has an undoubted right to determine the status, or domestic and social condition, of the persons domiciled within its territory; except in so far as the powers of the states in this respect are

[26] *See Citizens' Savings & Loan Ass'n v. Topeka*, 87 U.S. (20 Wall.) 655, 663- (1874) ("The theory of our governments, [territorial,] state[,] and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers." (citations omitted)); *Munn v. Illinois*, 94 U.S. (4 Otto) 113, 123-24 (1876) (discussing the distribution of federal powers as a matter of federalism); *Maynard v. Valentine*, 3 P. 195, 198 (Wash. 1880) ("The mere distribution [of quasi-sovereign power] has significance in every inquiry as to what the [government] may constitutionally do."); *Hanley v. Donoghue*, 116 U.S. 1, 4 (1885) ("'For all national purposes embraced by the federal constitution the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In all other respects the states are necessarily foreign to and independent of each other . . . .'" (quoting *Buckner v. Finley*, 27 U.S. (2 Pet.) 586, 590, 592 (1829), and citing *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 38 (1801)); *see also, e.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803) (observing that "[t]he province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion," and concluding that "[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in th[e] court"); *Nixon v. United States*, 506 U.S. 224, 228 (1993) (justiciability of an issue depends in part on whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department").

[27] *See generally Williams I*, 317 U.S. at 304(Frankfurter, J., concurring) ("[E]ach state has the constitutional power to translate into law its own notions of policy concerning the family institution . . . ." (citations omitted)); *Maynard*, 125 U.S. at 209 ("[M]arriage [is] regulated and controlled by the sovereign power of the state, and [cannot], like mere contracts, be dissolved by mutual consent of the contracting parties, but might be abrogated by the sovereign will whenever the public good, or justice to both parties, or either of the parties would thereby be subserved; that being more than a contract, and depending especially upon the sovereign will, it is not embraced by the constitutional inhibition of legislative acts impairing the obligations of contracts. 'Marriage, in the sense in which it is dealt with by a decree of divorce, is not a contract, but one of the domestic relations. . . . It partakes more of the character of an institution regulated and controlled by public authority, upon principles of public policy, for the benefit of the community.'" (quoting *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 627-29 (1819) and citing other authorities).

restrained, or duties and obligations imposed upon them, by the Constitution of the United States.").[28] The existence of multiple sovereign jurisdictions prompts consideration of what exactly are actions that so attach a person to the political community of a state that the state is justified in adjusting that person's domestic status from married to unmarried—especially considering the federal right of freedom of movement between and among the co-equal, quasi-sovereign states.[29]

[28] *See also Putnam v. Putnam*, 25 Mass. 433, 448 (Mass. 1829) ("[C]omity will not require that the [citizens] of one [sovereign] shall be allowed to protect themselves in the violation of [that sovereign's] laws, by assuming obligations under another [sovereign] jurisdiction, purposely to avoid the effect of those laws [of their jurisdiction of domicile]." (citing *West Cambridge v. Lexington*, 18 Mass. 506 (Mass. 1823) and *Medway v. Needham*, 16 Mass. 157 (Mass. 1819))); *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 387 (1798) ("It appears to me a self-evident proposition, that the several state legislatures retain all the powers of legislation, delegated to them by the state constitutions; which are not expressly taken away by the Constitution of the United States. The establishing courts of justice, the appointment of judges, and the making of regulations for the administration of justice, within each state, according to its laws, on all subjects not entrusted to the Federal Government, appears to me to be the peculiar and exclusive province, and duty of the state legislatures: all the powers delegated by the people of the United States to the Federal Government are defined, and no constructive powers can be exercised by it, and all the powers that remain in the state governments are indefinite; except only [as restrained by their respective constitutions].").

[29] *Shaffer*, 433 U.S. at 208 n.30 ("We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standard of fairness." (citing *Int'l Shoe*, 326 U.S. at 316; Traynor, *Is this Conflict Really Necessary?*, 37 TEXAS L. REV. 657 (1959); Smit, *The Enduring Utility of In Rem Rules: A Lasting Legacy of Pennoyer v. Neff*, 43 BROOKLYN L. REV. 600 (1977))); *e.g.*, *Maynard*, 125 U.S. 190 (legislative divorce granted upon only the husband's domicile in the Washington Territory and cutting off the wife's non-vested expectancy interest in property in that territory); *Maynard v. Hill*, 5 P. 717, 717-(Wash. 1884) ("But it is said that the wife was never domiciled in the said territory of Oregon, and consequently said act can have no effect upon her or her rights; but with this claim we cannot agree, for if we admit that under the facts pleaded she was domiciled in the state of Ohio, still, as the husband was a resident of said territory, the legislature could regulate his status therein; and, having released him from the bonds of his marriage, he was, at least while in said territory, absolved form all its duties and deprived of all its rights; and from the time he was thus released he occupied the status of a single and not that of a married man, and the wife could not come here and assert any right as such wife thereafter." (citing authorities)); *see generally State v. Carswell*, 871 N.E.2d 547, 551 (Ohio 2007) ("A dictionary definition of the term 'status' is succinctly states as 'a person's legal condition, whether personal or proprietary; the sum total of a person's legal rights, duties, liabilities, and other legal relations." (quoting Black's L. Dict. 1447 (8th ed. 2004))); *Thompson v. State*, 28 Ala. 12, 19 (Ala. 1856) ("[It is] recognized that [subject matter] jurisdiction is by the court correctly[, constitutionally] restricted to the dissolution of the marriage, and [in cases of a bifurcated (i.e., an ex parte and/or divisible) divorce] cannot be extended to any incidental pecuniary question or question of alimony. The very principle upon which the jurisdiction is predicated, limits it to the subject of divorce. . . . [The question of domicile jurisdiction to grant a divorce is based] 'upon the same principles of justice, human welfare, and policy, which render a marriage valid by the laws of the place where it is solemnized valid everywhere.'" (quoting Kent's Commentaries, vol 2, p. 110 n., and citing other authorities).

¶96 "Marriage is . . . an engagement, by which two people, of sufficient discretion, take each other as spouses. From the nature of the contract, it exists during the lives of the two parties, unless dissolved for causes which defeat the object of marriage . . . ." *Milford v. Worcester*, 7 Mass. 48, 53 (Mass. 1810).[30] Indeed, marriage is a very common foundation upon which people choose to form a family.[31] Furthermore, " society has a vital interest in the domestic[, i.e., family,] relations of its members." *Sherrer v. Sherrer*, 334 U.S. 343, 356 (1948) (Frankfurter, J., joined by Murphy, J., dissenting). It is "elementary that marriage, . . . a civil contract, is so interwoven with the very fabric of society that it cannot be entered into except as authorized by law, and that it may not, when once entered into, be dissolved by the mere consent of the parties." *Andrews v. Andrews*,

[30] *See also Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) ("Marriage is the coming together for better or for worse, hopefully enduring . . . . It is an association that promotes a way of life, not causes; a harmony in living . . . , a bilateral loyalty, not commercial or social projects. Yet is an association for as noble a purpose as any involved in our prior decisions.").

[31] Certainly, marriage is not the only basis upon which people form a family. *Connell v. Francisco*, 898 P.2d 831, 834 (Wash. 1995) (en banc) ("A meretricious relationship is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist. Relevant factors establishing a meretricious relationship include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties." (citing *In re Marriage of Lindsey*, 678 P.2d 328 (Wash. 1984); *Latham v. Hennessey*, 554 P.2d 1057 (Wash. 1976); *In re Marriage of DeHollander*, 770 P.2d 638 (Wash. Ct. App. 1989); Harry M. Cross, *Community Property Law in Washington (Revised 1985)*, 61 WASH. L. REV. 13, 23 (1986))); *Hofstad v. Christie*, 240 P.3d 816, 820 (Wy. 2010) ('Family is a much broader term' than just parents and their children." (quoting Moore v. City of East Cleveland, 431 U.S. 494, 543 (1977))); *Beckman v. Mayhew*, 122 Cal. Rptr. 604, 605 n.1 (Cal. Ct. App. 1975) ("non-marital family relationship" means two people's "indefinitely continued assumption of family life without a marriage ceremony and without good faith belief they are married."); Palazzo, The Strange Pairing: Building Alliances Between Queer Activists and Conservative Groups to Recognize New Families, 25 Mich. J. Gender & L. 161, 225 (2018) ("[F]amilies are formed for lots of reasons, many of which have nothing to do with children." (citing *Halpern v. Att'y Gen of Canada*, [2003] O.J. No. 2268 (Can. Ont.); *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 961-64 (2003); Nancy D. Polkoff, Beyond (Straight and Gay) Marriage: Valuing All Families Under the Law 141 (2009); Dan Cere, Council on Family Law, The Future of Family Law: Law and the Marriage Crisis in North America 13 (2005); Dudley Kirk, Demographic Transition theory, 50 Population Stud. 361 (1996); Alison Mackinnon, Were Women Present at the Demographic Transition? Questions from a Feminist Historian To Historical Demographers, 7 Gend. & History 222, 224-25 (1995); Ellen Walker, Childfree Trend on the Rise, Four Reasons Why!, Psychology Today (Jan. 19, 2014)); *e.g.*, *Walters v. Parrott*, 58 V.I. 391, 401–03 (V.I. 2013) (holding that contribution to the household over a protracted period of cohabitation entitled an unmarried partner to a long-term relationship to an equitable interest in the home).

188 U.S. 14, 30 (1903); *see also Maynard v. Hill*, 125 U.S. 190, 210-11 (1888).[32] Because, a "divorce ends all rights not previously vested," *Maynard*, 125 U.S. at 216, only the society in which a person is a member, i.e., the society in which the person is domiciled, possesses an interest sufficiently strong to justify the severing of such an important and durable relationship.[33] *Sherrer*, 334 U.S. at 360 ("[a]s a matter of law, society is represented by the permanent home state of the parties" (citations omitted)).

i. Spousal Domicile and Divorces

¶97 Both "'[d]omicile and residency . . . are not subjects to be taken lightly." *Sarauw v. Fawkes* (*Sarauw II*), 66 V.I. 253, 271 (V.I. 2017) (quoting *In re Candidacy of Fletcher*, 337 S.W.3d 137, 144 (Mo. Ct. App. 2011)). "It is a general rule, that the laws of a state apply to all who are within

[32] "Marriage" is a civil contract between spouses. 16 V.I.C. § 31. As one state supreme court noted as early as 1820, "religion has no legitimate concern with [marriage]. . . . It is one of the corruptions of popery, that marriage itself is a 'sacrament'; and, therefore, that the contract cannot be consummated or completed without the presence and aid of a priest. 'Solemnization of marriage was not used in the church before an ordinance of Pope Innocent III; before which, the man came to the house where the woman in habited, and carried her with him to his house, and this was all the ceremony. In pursuance of this usurpation, the spiritual courts in England, till A.A. 1752, claimed the exclusive cognizance of marriages, and annulled or supported them according to their own ceremonies, decrees and interest. But, at the reformation, different opinions began to prevail; and, during the protectorate, priests were altogether forbidden to solemnize marriage. Our own immediate ancestors never permitted them to do it till A.D. 1692. Throughout New-England there is still conferred upon justices of the peace coordinate power to solemnize marriage." *Londonderry v. Chester*, 2 N.H. 268, 278 (1820) (citations and some internal quotations marks omitted). For reference purposes, it is noted that the source law of section 31 provided that "Marriage is hereby declared to be a civil contract which may be entered into . . . in accordance with law." 1921 Code, Title II, ch. 1, § 1.

[33] *E.g.*, *Erving v. Erving*, 12 V.I. 271, 274 (D.V.I. 1975) ("Neither party being a bona fide resident of the Virgin Islands, the Court finds that it has no jurisdiction in this action."); *see Randall v. Kreiger*, 90 U.S. (23 Wall.) 137, 147 (1874) ("Marriage is an institution founded upon mutual consent. That consent is a contract, but it is one sui generis. Its peculiarities are very marked. It supersedes all other contracts between the parties, and with certain exceptions it is inconsistent with the power to make any new ones. . . . It can be neither canceled nor altered at the will of the parties upon any new consideration. The public will and policy controls their will. . . . Perhaps the only element of a contract, in the ordinary acceptation of other term, that exists is that the consent of the parties is necessary to create the relation." (citing authorities)); *cf. Ditson v. Ditson*, 4 R.I.87, 93 (1856) ("[M]arriage [is] not an executory contract between the parties to it, but an universally recognized relation between them deeply affecting their status, or legal and social condition, and for that reason, properly dissoluble according to the law of the country in which they are domiciled, without reference to the law of the place of the original contract of marriage, out of which the relation has emerged. [A breach of the duties of this relation . . . considered as a cause of divorce, have no locality; and, therefore, to be regarded as a cause of divorce, wherever occurring or committed, equally as if it had occurred or been committed within the territory of the state having jurisdiction over the parties, in the sense of both parties to the relation." (citations and internal quotation marks omitted)).

its limits[,whether merely a temporary resident passing through or a long-term domiciliary who's lived the same place their whole life]." *Hanover v. Turner*, 14 Mass. 227, 230 (Mass. 1817) (citing authorities). Further, it is without question that "those who have a temporary residence are considered as subjected to the laws of the state, while their residence continues." *Id.* (citations omitted); *Luke v. Calhoun Cty.*, 52 Ala. 115, 121 (Ala. 1875) (citing 2 Kent. 25). However, the termination of the marriage also terminates the duties, 16 V.I.C. §§ 342(a)(1), 111, imposed by law upon the status of spouses, and it is the Territory's interest in the health and welfare of its own citizens that justifies its power to act to adjust a person's status (e.g., from married to single), and that person must be so connected to society as to justify that society's government in acting to adjust the person's domestic status.[34]

¶98 Each state has the inherent power, as a quasi-sovereign, to adjust the status of the members of its society, according to its own policy, from married to single. Importantly, the entry of a final judgment of divorce "terminate[s] such marriage as to both parties . . .," even if it is subject to revision. 4 V.I.C. §§ 111 (effect of final judgment of divorce), 110 (providing for modification of a final judgment of divorce). However, the test for determining a person's domicile as applied internationally under English common law is altered to the extent that all citizens of the United States have the constitutional right to readily move throughout the country and change their domicile at will without any formal naturalization process—a process that would be applicable when changing one's domicile to another sovereign state.[35]

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[34] *See West Cambridge*, 18 Mass. at 517 ("If a citizen of this state removes into another state, [solely] in order to obtain a divorce from his wife, on a ground that would not justify a divorce here [and return here], a decree of divorce so obtained is of no validity in this state. (citing authorities).

[35] *See generally Talbot v. Jensen*, 3 U.S. (3 Dall.) 133, 152 (1795) (Patterson, J.) (The defendant "was a citizen of Virginia, and also of the United States. . . . allegiance to a particular state, is one thing; allegiance to the United States is another. . . . The sovereignties are different; the allegiance is different; the right too, may be different. Our situation

¶99 In contrast to being a resident/inhabitant, "[t]he fact of domicile is often one of the highest importance to a person; it determines his civil and political rights and privileges, duties and obligations; it fixes his allegiance; [in international matters,] it determines his belligerent and neutral character in time of war; [and generally,] it regulates his personal and social relations, whilst he lives, and furnishes the rule for the disposal of his property when he dies." *Abington v. North Bridgewater*, 40 Mass. 170, 176 (Mass. 1839) (citations omitted).[36] "'Domicile is ... a concept widely used in both federal and state courts . . . and its meaning is generally uncontroverted,' in that 'domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there.'" *Fawkes v. Sarauw* (*Sarauw I*), 66 V.I. 237, 249 (V.I. 2017) (quoting *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989)).[37] "A person has a settled connection with [their] domicile for legal purposes, either

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being new, unavoidably creates new and intricate questions. We have sovereignties moving within a sovereignty. Of course, there is complexity and difficulty in the system, which requires a penetrating eye fully to explore, and steady and masterly hands to keep in unison and order.").

[36] *See also Williams v. North Carolina*, 325 U.S. 226, 239 (1945) (Murphy, J.) ("By being domiciled and living in North Carolina, petitioners secured all the benefits and advantages of its government and participated in its social and economic life. As long as petitioners and their respective spouses lived there and retained that domicile, North Carolina had the exclusive right to regulate the dissolution of their marriage relationship. However harsh and unjust North Carolina's divorce laws may be thought to be, petitioners were bound to obey them while retaining . . . domiciliary ties in that state.").

[37] Generally,

> [b]y domicile we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.
>
> It is difficult to give a definition of domicile that will cover at once domicile by operation of law and domicile by choice. The idea of domicile certainly includes the idea of place and the idea of settled connection with the place. Domicile of choice is so closely connected with the idea of home that it seems desirable to include that idea in any definition, and yet the idea is not applicable to many kids of domicile by operation of law. It has therefore seemed best to state this element in the alternative. If a home is in the place, that is sufficient. If there is no home, or if the party is not sui juris, then the place is assigned by law without his will.

because that place is home or because the law has so designated that place." BLACK'S L. DICT., 558.[38] Ultimately,

> [d]omicile, as a substantive concept, steadily reflects neither a policy of permanence nor one of transiency. It rather reflects both inconstantly. The very name gives forth the idea of home with all its ancient associations of permanence. But 'home' in the modern world is often a trailer or a tourist camp. Automobiles, nation-wide business and multiple family dwelling units have deprived the institution, though not the idea, of its former general fixation to soil and locality. But, beyond this, 'home' in the domiciliary sense can be changed in the twinkling of an eye, the time it takes a [person] to make up [their] mind to remain where [they are] when [they are] away from home. [They] need do no more than decide, by a flash of thought, to stay 'either permanently or for an indefinite and unlimited length of time.' No other connection of permanence is required. All of [their] belongings, [their] business, [their] family, [their] established interests and intimate relations may remain where they have always been. Yet if [they are] but physically present elsewhere, without even bag or baggage, and undergo the mental flash, in a moment [they[39] have] created a new domicile though hardly a new home.

Williams v. North Carolina (*Williams II*), 325 U.S. 226, 257-58 (1945) (Rutledge, J., dissenting).

> A person's domicile is the place with which that person is most closely associated—his or her 'home' with all the connotations of that word. A person can be domiciled in a nation, a state of the United States, a city, or a house within a city. He or she can have a domicile within a broader geographical designation without having a domicile in a narrower geographical designation. For example, a person may be domiciled in a state without being domiciled within any particular city within the state. For interstate choice-of-law purposes, it is the state in which a person is domiciled that is significant.

BLACK'S L. DICT., 558-59 (quoting *Whicker v. Hume*, 7 H.L.C. 124, 160 (1858) (opinion of Lord Cranworth); 1 Joseph H. Beale, A Treatise on Conflict of Laws § 9.1, at 89-90 (1935); Russell J. Weintraub, Commentary on the Conflict of Laws § 2.2, at 14 (4th ed. 2001)); *see also* BLACK'S L. DICT., 559 ("domicile of choice" is "a domicile established by physical presence within a state or territory, coupled with the intention to make it home.").

[38] *Id.* ("domicile," is "the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere[,]" "also termed permanent abode").

[39] *See generally They*, MERRIAM-WEBSTER.COM, http://www.meriam-webster.com/dictionary/they (last visited Oct. 25, 2021) (updating the usage of they to "[be] used with a singular antecedent to refer to an unknown or unspecified person" or "to refer to a single person whose gender identity is nonbinary").

¶100 "Domicile thus combines the essentially contradictory elements of permanence and instantaneous change. No legal conception, save possibly 'jurisdiction,' of which it is an elusive substratum, affords such possibilities for uncertain application. The only thing certain about it, beyond its uncertainty, is that one must travel to change [their] domicile. But [they] may travel without changing it, even remain for a lifetime in [their] new place of abode without doing so. Apart from the necessity for travel, hardly evidentiary of stabilized relationship in a transient age, the criterion comes down to a purely subjective mental state, related to remaining for a length of time never yet defined with clarity." *Id.* at 258. "Among the circumstances usually relied upon to establish the *animus manendi* are: declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence and a place of business." *Mitchell v. United States*, 88 U.S. (21 Wall.) 350, 353 (1874) (citations omitted).

ii. Facts Establishing (or Failing to Establish) Domicile

¶101 "To constitute [a] new domicile two things are indispensable: First, residence in [a] new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are . . . necessary. Either [one] without the other is insufficient. Mere absence from a fixed home, however long continued, cannot [create] the change. There must be the animus[, intent,] to change the prior domicile for another. Until the new [domicile] is acquired, the old one remains. These principles are axiomatic in the law upon the subject." *Mitchell*, 88 U.S. (21 Wall.) at 353 (citations omitted).[40] Likewise, a "domicile once acquired is presumed to continue until it

[40] Furthermore, "[i]n order to retain [one's] former domicile, [a person] who comes to the [Territory] must always have a fixed and definite intent to return and take up [their] home there . . . . A mere sentimental attachment will not hold the old domicile. And residence in the [Territory] with a nearly equal readiness to go back where one came from or to any other community offering advantages . . . is not enough." *District of Columbia v. Murphy*, 314 U.S. 441, 456 (1941) (citing *Texas v. Florida*, 306 U.S. 398, 411 (1939); *Ennis v. Smith*, U.S. 55 U.S. (14 How.) 400, 423 (1852); *Anderson v. Watt*, 138 U.S. 694, 706 (1891); Beale, *Social Justice and Business Costs*, 49 HARV. L. REV. 593, 596 (1936), and other authorities).

is shown to have been changed." *Mitchell*, 88 U.S. (21 Wall.) at 353 (citations omitted). "A person need not intend to remain in a place unto death to acquire domicile there sufficient to best vest a court with divorce jurisdiction. It is only necessary for him to intend to make a home in a place until some reason not incident to the divorce itself makes it desirable or necessary to leave." *Williams*, 328 F. Supp. at 1384 (citation omitted). Proof of domicile "must often depend upon the circumstances of each case, the combinations of which are infinite." *Abington*, 40 Mass. at 177.

¶102 To assert that "it is difficult, if not impossible, to lay down any general rule, on account of the very diversified cases which may be supposed, yet it will be generally found in practice, that there is some one or a few decisive circumstances, which will determine the question. In coming to the inquiry, in each case, [a court] must be kept steadily in view the rule . . . [t]hat every person must have a domicile somewhere . . . ." *Id.* (citations omitted). The foregoing discussion "go[es] far, in furnishing a test, by which the question [of spousal domicile] may be tried in each particular. It depends not upon proving particular facts, but whether all the facts and circumstances taken together, tending to show that a man has his home or domicile in one place, overbalance all the like proofs, tending to establish it in another; such an inquiry, therefore, involves a comparison of proofs, and in making that comparison, there are some facts, which the law deems decisive, unless controlled or counteracted by others still more stringent." *Id.* at 178.[41]

[41] A court "need not find the exact time when the 'attitude and relationship of person to place' which constitute domicile, were formed, so long as it finds they were formed before the [the filing of the action for divorce]. What was at first a firm intent to return may have withered gradually in consequence of dissolving associations elsewhere and growing interests in the [Virgin Islands]. It is common experience that this process usually is unmarked by any dramatic or even sharply defined episode. The [court] need not find just when the intent was finally dissipated; it is enough that it finds that this has happened before [any deadline set by the Legislature]." *Murphy*, 314 U.S. at 455-56 (citations omitted).

¶103 "Of course the manner of living here, taken in connection with one's station in life is [also] relevant." *Murphy*, 314 U.S. at 457-58. Thus, in order to determine a spouse's domicile, we must "look first at the situation existing on the material date[, such as the date of the filing of the divorce action]. The pivotal question to be answered is whether as of that date the man has a single home or a principal home. If so, that is his domicile and the exploration of the past becomes unnecessary. If not, then, and then only, is it necessary to move backward through the man's life in order to find his last domicile of choice, if any, and, if none, his domicile of origin. . . . [I]f a man has more than one home at the material moment it may be necessary in determining which is the principal one to consider the circumstances under which each was originally acquired." Harrison Tweed and Christopher S. Sargent, *Death and Taxes are Certain—But What of Domicile*, 53 HARV. L. REV. 68, 88 (1939).[42]

c. Stephen Presented Sufficient Facts Supporting the Family Court's Exercise of Divorce Jurisdiction

¶104 "For purposes of determining whether subject matter jurisdiction has been sufficiently pled, if the plaintiff provides allegations that, if true, establish a violation of law and justify the court acting in accordance with its jurisdictional competences, i.e., personal jurisdiction, domicile

[42] *See also Murphy*, 314 U.S. at 456-58. ("Whether or not one votes where he claims domicile is highly relevant but by no means controlling. . . . On the other hand failure to vote elsewhere is, of course, not conclusive that domicile is here. Also of great significance is the nature of the position which brings one to or keeps [a person] in the [Territory]: whether continuous or emergency, special or war-time in character; whether requiring fixed residence in the [Territory] or only intermittent stays; whether entailing monetary sacrifices or betterment; and whether political or non-political. Did [they] hire a furnished room or establish himself by the purchase of a house? Or did he rent a house or apartment? Has he brought his family and dependents here? Has he brought his goods? What relations has he to churches, clubs, lodges, and investments that identify him with the District? All facts which go to show the relations retained to one's former place of abode are relevant in determining domicile. What bridges have been kept and what have been burned?"); *see generally Murphy*, 314 U.S. at 456 ("One's testimony with regard to their intention is of course to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts."); *e.g.*, *Powell*, 70 V.I. at 778 (Swan, J., concurring) (citing *United States v. Gaines*, 457 F.3d 238, 244 (2d Cir. 2006)); *Abington*, 40 Mass. at 178 ("[t]he place of a man's dwelling house is first regarded, in contradistinction to any place of business, trade or occupation." (citations omitted)).

jurisdiction (in matters of family law), or subject matter jurisdiction, the pleading is sufficient. Similarly, if there is credible evidence in the record establishing these facts, subject matter jurisdiction existed in the trial court." *Willis*, 71 V.I. at 820-21 (footnotes omitted) (citing 4 V.I.C. §§ 2(a); 76(b); *Arredondo*, 31 U.S. (6 Pet.) at 710; *Powell v. People*, 70 V.I. 745, ¶46 n.5 (V.I. 2019) (Swan, J., concurring); *Tindell v. People*, 56 V.I. 138, 147-48 (V.I. 2012); *M. Davis v. People*, 69 V.I. 619, at *17 n.23 (V.I. 2018) (Swan, J., concurring)). However, "[i]f the jurisdiction of the court in [an action for divorce] is not alleged in the 'pleadings, [any judgment issued through those proceedings] is not a nullity, but though erroneous, [in the absence of such a challenge being made on direct appeal, it] is obligatory . . . ." *Gringnon's Lessee*, 43 U.S. (2 How.) at 340 (citations omitted).

¶105 Stephen presented sufficient proof of his six consecutive and uninterrupted weeks of residence in the Virgin Islands prior to the time of commencing this divorce action, and Valerie failed to present any evidence contradicting this proof. Valerie, therefore, failed in her burden to rebut the presumption of spousal domicile established under subsection 106(a) of title 16,[43] and the Family Court was in error when it ruled that it lacked Divorce Jurisdiction.

i. Because Stephen Offered Multiple Affidavits Establishing that he had Resided in the Virgin Islands for Six Continuous and Uninterrupted Weeks Prior to Filing his Petition for Divorce in the Family Court, he has Provided Sufficient Evidence to Establish his Presumptive Domicile in the Virgin Islands.

[43] *Cf. Cheever v. Wilson*, 76 U.S. (9 Wall.) 108, 122 (1869) ("It would be a sufficient answer to the questions raised as to the validity of this decree, that no such issue is made in the pleadings. The answer . . . is silent upon the subject. Wilson, in his answer, says he "does not admit the validity or regularity of said decree,' or that 'it is operative to affect his rights,' but, on the contrary, 'reserves to himself the right to impeach it if occasion should offer and require him to do so.' This language is too vague and indefinite to have any effect. If he desired to assail the decree he should have stated clearly the ground of objection upon which he proposed to rely. The averments should have been such that issue could be taken upon them. He and his co-defendant are precluded by the settled rules of equity jurisprudence from entering upon such an inquiry. Their silence is an admission, and they are bound by the implications. As, however, the question has been fully argued upon both sides, and may arise hereafter in further litigation between the parties, we deem it proper to express our views upon the subject." (citation omitted)).

¶106 When the Superior Court (including the Family Court) is presented with two conflicting affidavits, it is error *per se* to fail to hold an evidentiary hearing. *People v. Armstrong*, 64 V.I. 528, 536 (V.I. 2016) (quoting *3RC & Co. v. Boynes Trucking Sys., Inc.*, 63 V.I. 544, 558 (V.I. 2015)). However, if the opposing affidavit presents no conflict of material fact, no hearing is required. *See, e.g.*, *Skepple*, 69 V.I. at 725-27 (considering the merits of the argument on appeal rather than reversing for failure to hold an evidentiary hearing where the plaintiff's affidavit failed to meet the requirements of service of process). Incontestably, Stephen adequately pled and factually prima facie established that he had been uninterruptedly present for six consecutive weeks prior to initiating this divorce action. As documented by Stephen's submissions,[44] he moved to the Virgin Islands in 2008 with the intention of permanently living in the Territory and being one of its citizens. Stephen further provided Kaufman's affidavit stating that Stephen had been a resident of the Virgin Islands for six consecutive and uninterrupted weeks prior to commencing this action. While Valerie—taking her affidavit as true on its face—stated that Stephen "regularly traveled outside the Territory," she also admitted that she had absolutely no information to contradict the affidavits of Stephen and Kaufman.

¶107 Moreover, Valerie admitted that Stephen's travel schedule during that time was reflective of their marital life, as she stated in one of her affidavits that the family had an "elaborate travel and vacation schedule" that regularly took Stephen away from the marital abode for employment purposes. In the present context, this fact has very little bearing on proving or disproving Stephen's domicile; it is simply a neutral constant that existed before and after he relocated to this Territory.

[44] Stephen establishes this fact through two judicial attestations, his complaint and the affidavits in support attached thereto. *Sarauw II*, 66 V.I at 264-65; *Walters v. Walters*, 60 V.I. 768, n.7 (V.I. 2014) (citing *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 133 (V.I. 2009); *Sobratti v. Tropical Shipping & Constr. Co.*, 267 F. Supp. 2d 455, 463 (D.V.I. 2003)); *M. Wallace*, 71 V.I. at n.15 (testimony of a single witness, even an accomplice, sufficient (quoting *Truman*, 688 F.3d 129, 139-40 (2d Cir. 2012)); *Connor v. People*, 59 V.I. 286, 307 (V.I. 2013) (same).

Finally, Valerie admitted that, from 2010 to present, she and Stephen were formally separated because, in 2010, she discovered Stephen had fathered a child with a mistress. Essentially, nothing Valerie alleges, even if 100% accurate, conflicts with the fact that Stephen was physically present in the Territory for six consecutive weeks prior to commencing this action for divorce. Given the number of years of Stephen's residence in the Virgin Islands, he could have been physically present for the requisite duration and still traveled for work and maintained his social schedule internationally, or elsewhere.

¶108 Valerie also admitted it was Stephen's intention in 2008 to relocate to the Virgin Islands in order to establish a business that would be subject to what is commonly referred to as the federal "tax shelter" provisions of the federal internal revenue code, and Valerie further admitted that, from 2008-2011, Stephen, in fact, did reside in the Territory the requisite number of days to be eligible for those tax benefits. This proof, by the very terms of subsection 106(a), was sufficient to establish the "Residency" element of the Family Court's Divorce Jurisdiction and raise the presumption that Stephen is a bona fide domiciliary of the Virgin Islands. 16 V.I.C. § 106(a).

¶109 Moreover, Valerie's filings are inherently contradictory. Valerie first asserted that she was entirely ignorant of Stephen's desire for a divorce until she was served with process on January 11, 2017. However, Valerie also admitted (1) that the parties have been formally separated since, at the latest, her discovery that Stephen had fathered a child with his mistress in 2010, and (2) since that time, Stephen has maintained his Virgin Islands abode. Taking Valerie's "opposing" evidence at face value, the only conclusion to be drawn is that Stephen has worked as a shareholder and

officer of many businesses in his life, and his lifestyle has been, and continues to be, reflective of the same life style of many wealthy people thus employed.[45]

¶110 While Valerie engages in much hyperbole and theatrics about Stephen's conduct prior to the parties' separation, these facts are not to be considered when determining the existence of the Divorce Jurisdiction of the Family Court under subsection 106(a) of title 16. 16 V.I.C. § 106(a) ("[R]esidence shall be sufficient to give [Divorce J]urisdiction [to the Family Court] without regard to the place where the marriage was solemnized or the cause of action arose."). Considering Valerie's admission that she was without evidence to contradict Stephen's statements under oath and her admission to the formal separation of the parties as well as Stephen's living arrangements and employment in St. Thomas, the Family Court should have concluded that the first element ("Residence") had been established.

ii. Because Stephen Presented Adequate Proof to Raise the Presumption of a Virgin Islands Domicile and Valerie Failed to Rebut that Presumption, Stephen Established his Virgin Islands Domicile.

¶111 If a spouse's "'[d]omicile . . . is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there,'" there can be but one conclusion—Stephen established his domicile in the Virgin Islands well prior to filing this divorce

[45] *See generally* Tweed & Sargent, *Death and Taxes*, 53 HARV. L. REV. at 85 ("It is obvious that there are many cases in which a [person], particularly if [they are] wealthy, so lives [their] life that [they have] more than one home. The city home in winter and the country home in summer furnish the best example. Each is a home because it is a dwelling place where the[y] keeps [their] personal belongings, lives with [their] family, engages in activities which [they] regard as important and intends to continue indefinitely so to do."); *cf. Fosdick v. Fosdick*, 23 A. 140, 140-411 (R.I. 1885) ("We can think of no ground on which [a separation agreement] can be held to be a bar [to seeking a divorce], unless [such separation agreement] can be held to rest on an implied condition that the martial relation shall continue notwithstanding the separation. But is any such implication warranted? We think not, where the agreement is only an agreement for separation, with provision for the [spouse in need]. Such an agreement is not inconsistent with divorce, for divorce is only a more absolute separation." (citing authorities)).

action in the Family Court. *Sarauw I*, 66 V.I. at 249 (citation omitted). Likewise, if domicile is presumptively established upon proof of six weeks' consecutive uninterrupted physical presence in the Territory, there is but one conclusion—Stephen had presented sufficient proof to activate the presumption of domicile contained in subsection 106(a). And, no allegations or affidavits offered by Valerie rebutted Stephen's presumptive domicile in the Territory.[46]

¶112 By Valerie's admission, since 2010, Stephen has been living and working in the Virgin Islands fully separated from Valerie. Valerie further admitted that Stephen's purpose for relocating to St. Thomas was to establish and operate a business in the Virgin Islands. Stephen, while traveling for work and vacation, has, for years, maintained his home on St. Thomas. Certainly, he utilized an apartment in New York, but that apartment was leased by a corporation, not Stephen. Further, Valerie did not contradict Stephen's affirmation that the apartment was also utilized by other officers and employees of the company that had leased it. None of the facts raised by Valerie in opposition to the exercise of the Family Court's Divorce Jurisdiction actually contradicts the finding that Stephen was a domiciliary of the Virgin Islands at the time he commenced this divorce action. *Cf. Erving v. Erving*, 12 V.I. 271, 273 (D.V.I. 1975); *Ornberg v. Ornberg*, 314 F.2d 206, 207-08 (3d Cir. 1963); *Berger v. Berger*, 210 F.2d 403, 404-06 (3d Cir. 1954).

¶113 An allegation that a putative domiciliary of the Virgin Islands—who had resided on St. Thomas from 2008 until he filed this action for divorce in 2016—had regularly traveled outside

[46] *See, e.g.*, *Ornberg v. Ornberg*, 314 F.2d 206, 208 (3d Cir. 1963) ("The affidavit does not aver permanent departure. It merely says that the plaintiff left the Virgin Islands for the United States. It is inadequate in that it does not state departure from the Virgin Islands with no intention of returning, if, indeed, the affiant could possibly have personal knowledge that such was the fact."); *cf. Cheever*, 76 U.S. (9 Wall.) at 123.

the Territory is inadequate to create an issue of fact.[47] The Family Court should have found that Stephen was domiciled in the Virgin Islands and that Stephen had properly invoked the Divorce Jurisdiction of the Family Court.

d. Denial of Divisible Divorce

¶114 I next consider whether the Family Court should have granted partial summary judgment as to Stephen's claim for divorce from Valerie when the plaintiff spouse is domiciled within this Territory. In order to obtain a divorce, the aggrieved spouse must prove two elements by a preponderance of the evidence, namely that (1) "there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed" and (2) "there remains no reasonable likelihood that the marriage can be preserved." 16 V.I.C. § 104; 5 V.I.C. § 740(5). It is a violation of a domiciliary's due process rights to deny a divorce when that person has proven the elements of a divorce. *Williams*, 328 F. Supp. at 1383; *e.g.*, *Gayanich*, 69 V.I. at 588.

¶115 In determining whether summary judgment should be granted, "we must analyze the decision of the trial court in the context of the substantive law that governed" the cause of action. *Sealey-Christian v. Sunny Isle Shopping Center, Inc.*, 52 V.I. 410, 419-20 (V.I. 2009). In determining whether summary judgment was appropriate, the court must undertake three basic tasks: (1) accept the "'non-moving party's allegations as true, even if in conflict with those of the moving party,'" (2) allow "'any inference drawn from the underlying facts contained in the evidentiary sources' to be viewed in the light most favorable to the non-moving party," and (3) ask whether "'from the evidence available at the time of the motion's disposition, a jury could

[47] Had Valerie wished, she could have requested jurisdictional discovery as to Stephen's travel. As she did not do so, she waived her right to request such relief.

reasonably have inferred either directly or circumstantially that [all elements of the cause of action were proved].'" *Id.* at 420 (quoting *Bushman v. Haim*, 789 F.2d 651, 656-57 (3d Cir. 1986), and citing *Turbe v. Gov't of the V.I.*, 938 F.2d 427, 428 (3d Cir. 1991)).

¶116 Valerie admitted in her answer, filed in 2017, that the objects of their marriage had been destroyed with no likelihood of reconciliation. Considering (1) Valerie's admission of the existence of both elements of cause of action of divorce in her answer; (2) the statutory language of sections 104, 106, and 109 of title 16; (3) the operative judicial construction of these statues by the courts of this Territory for multiple decades; and (4) this Court's tacit endorsement, in *Gayanich*, of this procedure in the Family Court, 69 V.I. at 588, it is an unavoidable conclusion that the Family Court abused its discretion in failing to grant Stephen's partial summary judgment motion for a divorce from Valerie. Likewise, the Family Court committed an error of law in its construction of subsection 109(7) of title 16, a provision addressed solely to available remedies in a divorce action—not Divorce Jurisdiction itself.

¶117 When refusing to grant Stephen's claim for a divorce, the Family Court reasoned that 16 V.I.C. §109(a)(7), which it focused on as "the [sole] Virgin Islands divorce statute[,] promotes resolution of matrimonial issues in one forum." *Evans-Freke*, 70 V.I. at 406-07 & n.26 (citing 16 V.I.C. §109(7)). The Family Court explained,

> prior to the amendment to § 109, the family court did not have the jurisdiction to distribute marital real property beyond the marital homestead. In amending the statue, the Legislature clearly expanded the jurisdiction of the court in divorce matters to distribute marital property. This streamlined the process to require only one court's participation for great judicial and economic efficiency.

Id. n.26 (citing 16 V.I.C. § 109(7); *Thompson v. Thompson*, 64 V.I. 71, 75 (Super. Ct. 2016)). The denial of Stephen's request for a divorce is undeniably a misapplication of the Legislature's intent

in expanding the remedies available in a divorce in the Family Court to allow for disposition of all interests of the spouses in all marital property, including real property.

¶118 The Legislature had previously determined that real property was too significant an asset and its ownership too important as a matter of public policy to allow the Family Court—a legislative court of general, but limited, jurisdiction—to adjudicate its disposition. Therefore, the Legislature withheld the disposition of real property from the Family Court.[48] This legislative policy choice had forced divorcing spouses to initiate two separate actions, one in the Family Court for divorce and all the incidents of a divorce (except real property that was not the marital abode) and the second in the general jurisdiction division of the Superior Court to adjudicate the rights of the spouses to real property that was not the marital abode. Whatever may previously have been the Legislature's view of the ability of the Family Court to adjudicate such matters, the legislative enlargement of the remedies available in a divorce in the 2014 amendment to § 109 by Act No. 7702, which added subsection (a)(7) to that statute, demonstrated a legislative conclusion that the Family Court—even though a court of limited, but general, jurisdiction—was equal to a court of general jurisdiction in its capacity to dispose of real property (whether marital or individual spousal property). *Thompson*, 64 V.I. at 75.

¶119 How this expansion of remedies can be construed to evidence a policy that Virgin Islands courts should reject a domiciliary's request for a divorce, in violation of that domiciliary's due process rights, is impossible to comprehend. To interpret such legislative action expanding the remedies available as a policy change warranting the rejection of a Virgin Islands domiciliary's

[48] Particularly, the provisions of section 109 constitution a statutory provision of available remedies. So, while the lack of a certain remedy precludes a court from granting that specific relief, that does not change the fact that the court has subjectmatter jurisdiction pursuant to section 106. Any case holding that any provision of title 16 other than section 106 is jurisdictional should be expressly rejected. *E.g.*, *Thompson v. Thompson*, Fam. No. ST-13-DI-107, 2016 V.I. LEXIS 14, at *6 (V.I. Super. Ct. Feb. 19, 2016).

request for a divorce is to deny the remedies available in the Family Court by nothing more than judicial fiat. Virgin Islands' courts are prohibited from achieving such results through the guise of statutory construction. *See, e.g., Thomas v. People*, 69 V.I. 913, 924-25 (V.I. 2018) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there," and acknowledging that applying the language of a statute to, in effect, mean something other than what it says "is an exercise [courts] cannot undertake under the guise of construing the statute." (quoting *People v. Baxter*, 49 V.I. 384, 389 (V.I. 2008) and *Sonson v. People*, 59 V.I. 590, 601-02 (V.I. 2012))).

¶120 Furthermore, nothing in the amendment warrants a rejection of the procedure approved of in *Estin*, where it was held not to violate due process rights to grant a divorce to a domiciled spouse without the court ever having jurisdiction *in personam* over the foreign spouse. The underlying rationale of the *Estin* decision is that a state must have the exclusive authority to adjudicate the status of its domiciliaries, and closing the doors of the divorce court to a domiciliary denies due process to the domiciled spouse. *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971); *Williams*, 328 F. Supp. at 1383. The functioning of society would be hindered if states could not adjust their citizens' marital status and, instead, those citizens were perpetually tied to an absent spouse. *See generally* Roger J. Traynor, *Is This Conflict Really Necessary?*, 37 Tex. L. Rev. 657, 661 (1959) ("[A] defendant's purposeless interest in barricading the plaintiff's avenue to freedom is overwhelmingly outweighed by the plaintiff's purposeful interest in securing freedom. Finally, the dubious interest of defendant's state in perpetuating a broken marriage in limbo is overwhelmingly outweighed by the forum state's major interest in the orderly resolution of a plaintiff domiciliary's marital status."); *Burch v. Burch*, 195 F.2d 799, 806-07, 811 (3d Cir. 1952) ("[I]ncompatibility of

temperament necessarily involves both parties so that in a very real sense the incompatible temperament of each party has deprived the other of a normal marital relationship.").

¶121 Indeed, the Family Court's reasoning that it is problematic to grant a divisible divorce because to do so "stops the accumulation of marital property," *Evans-Freke*, 70 V.I. at 407, is incongruous with *Estin*, which emphasized that the domiciled spouse has the due process right to start life anew and not be entangled in a failed marital relationship that no longer exists in fact. *Hendry v. Hendry*, 14 V.I. 610, 617-18 (V.I. Super. Ct. 1977) (There is now a "recognition that if a marriage is in fact . . . terminated, that is, factually been terminated, there should be no legal barriers to effect such termination."); *Colby v. Colby*, 283 F. Supp. 150, 367 (D.V.I. 1968) ("The Court can only foresee a disservice to the public interest and to the parties in not 'terminating a marriage which has long since ended in fact and now exists only in name.'" (quoting *Shearer v. Shearer*, 356 F.2d 391, 402 (3d Cir. 1965) (Freedman, J., dissenting))). If spouses are estranged and no longer living as a marital union, the legitimate objects of matrimony have been destroyed. Valerie admitted this pivotal fact in her answer. That means that property is no longer being accumulated by efforts of the marital union. Rather the spouses are investing their individual efforts in their individual lives in their respective domiciles. How dissolving a marriage and terminating any property rights of either spouse in property accumulated after the legitimate objects of the marriage have been destroyed "raises the possibilities of delay in resolving the outstanding issues" one cannot even begin to fathom. Indeed, logic weighs so heavily on the opposite side that such a conclusion is mystifying.

¶122 Granting a divorce at the earliest legally available date, thus severing the spouses' mutual entitlements to newly accumulated property and obligations of support, is far more likely to facilitate prompt resolution of divorce actions, as well as provide an obvious demarcation of when

the mutual obligations and entitlements resulting from the status of spouses have terminated. Nothing in the amendment of subsection 109(a)(7) of title 16 indicates a legislative intent that the Family Court refuse jurisdiction over actions for divorce. Here, the Family Court was possessed of Divorce Jurisdiction such that it was obligated to enter a judgment of divorce. Indeed, the granting of a divorce at the earliest possible point in the litigation is the common practice in the Virgin Islands. *E.g.*, *Gayanich*, 69 V.I. at 588 (finding reversible error when the Family Court failed to grant a divorce prior to transferring the remaining aspects of the controversy to a different forum); *Bradford v. Cramer*, 54 V.I. 669, 670 (V.I. 2011) (noting that the Family Court had entered a judgment of divorce promptly and left the remaining aspects of the controversy for later resolution).

¶123 The Family Court waited 784 days, two years and almost two months, to determine the issues presented and did so only after a court in another state had already ruled on some of the same issues, such as the most convenient forum. During the pendency of these proceedings, the Family Court literally took exactly one step to resolve the parties' disputes—it ordered mediation, even though it failed to acknowledge, much less dispose of, a pending challenge to the court's subject matter jurisdiction and personal jurisdiction over a defendant. Considering the foregoing, the Family Court's further reasoning that "the parties have already been embroiled in a divorce proceeding for over two years" as evidencing the evils and horribles of granting a divisible divorce is decidedly misplaced. Indeed, the delays in this matter can largely be attributed to the Family Court's inaction. *Toussaint*, 67 V.I. at 948 ("To the extent the trial court's own failure to address the motion in a timely fashion created any problems, those concerns were not a justification for denying the motion to amend, as they were a result of the trial court's own inaction, which should not result in penalizing a party."); *see, e.g.*, *Miller v. Sorenson*, 67 V.I. 861, 876-77 (V.I. 2017).

The order of dismissal should be vacated and the matter remanded with directions to enter a decree of divorce *nunc pro tunc* to February 21, 2017, the day of Valerie's filing of her answer.

2. Valerie Did Not Waive Her Contention That She Is Not Subject to Personal Jurisdiction in the Virgin Islands.

124 Initially, I would hold that Valerie did not waive her defense asserting lack of personal jurisdiction over her in the Virgin Islands under then-applicable provisions of Rule 12 of the Federal Rules of Civil Procedure, and the same result applies under current Rule 12 of the Virgin Islands Rules of Civil Procedure.[49] Valerie filed what her counsel styled as a "limited" notice of appearance on February 10, 2017, and her answer on February 21, 2017. Her motion to dismiss was filed on April 18, 2017, and Valerie later filed a stipulation for extension of time with the court on May 2, 2017. None of these developments waived her properly stated personal jurisdiction defense. Because these proceedings occurred before the date on which the Virgin Islands Rules of Civil Procedure became effective, I note the congruent effect of both Rules.

a. Notice of "Special Appearance"

¶125 There is no separate "notice of appearance" filing required under any Federal Rule of Procedure; specifically, Federal Civil Rule 12 does not address the filing of a "notice of

[49] We address the issue of wavier in this matter for two reasons. First, because lack of personal jurisdiction is a personal defense, a waiver of an argument also constitutes a waiver of rights and subjects the defendant to the *in personam* jurisdiction of the court, and once a person is subject to the court's personal jurisdiction, they are subject to that personal jurisdiction for all purposes related to the lawsuit. *Saenger*, 303 U.S. at 67-68; *see* V.I.R. CIV. P. 5(b)(1). Thus, a finding of wavier allows this Court to avoid the constitutional question posed by Valerie as to the application of the Virgin Islands Long-arm Statute. *See Azille v. People*, 59 V.I. 215, 227 (V.I. 2012) (applying the doctrine of constitutional avoidance); *Fahie v. Gov't of the V.I.*, 2020 VI 6 n.2 (citing *Bryan v. Fawkes*, 61 V.I. 416, 465 n.27 (V.I. 2017); *In re L.O.F.*, 62 V.I. 655, 669 n.10 (V.I. 2015)); *see e.g.*, *Skepple*, 69 V.I. at 731 (considering whether a defendant had waived personal jurisdiction only after having already determined that the court had failed to obtain personal jurisdiction through service of process); *Molloy*, 56 V.I. at 173 (considering first applicability of the long-arm statute and second constitutional minimum contacts). Second, the wavier arguments contained in the record are likely to be repeated in the future and involve the interpretation and application of rules promulgated by this Court. It is this Court's primary responsibility to ensure such rules are interpreted to effectuate their purpose. Furthermore, not addressing such arguments will only result in wasted time and judicial resources in the future. Thus, we exercise our supervisory jurisdiction to consider them here. *World Fresh Markets*, 71 V.I. at 1176 (citing 4 V.I.C. § 32(b)).

appearance," whether special[50] or general.[51] While a local rule of the federal court called for a notice of appearance to provide information about counsel representing a party, similar to present V.I. Civil Rule 3-1, this Court has never held that local federal district court rules governed proceedings in the Superior Court. The result is the same regardless of whether a notice of appearance was required. To hold that such an administrative action as filing a notice of appearance—an action that could never lead to substantive relief from the trial court—constitutes a general appearance would only frustrate the litigation process in the duly adopted rules of procedure. *See Wabash W. Ry. v. Brow*, 164 U.S. 271, 278 (1896) ("Moreover, the petition does not invoke [any] aid of the court touching relief only grantable in the exercise of jurisdiction of the person."); *Armour & Co. v. Barker*, 165 P.2d 624, 627 (Okla. 1943) (observing that a litigant's "recognition of the authority of the court to supervise proceedings . . . which did not involve non-jurisdictional questions did not constitute a general appearance" (citing *Ex parte Cullinan*, 139 So. 255, (Ala. 1931); 81 A.LR. 160; 81 A.L.R. 169)).

¶126 The waiver of potential defenses—including defenses to the court's exercise of personal jurisdiction and the existence of subject matter jurisdiction of the court—was controlled during the early stages of the present divorce proceedings in early 2017 by Federal Rule of Civil Procedure 12, which operates in the same fashion as present Virgin Islands Civil Rule 12, and contained motion and defense waiver provisions in subsections (b), (g) and (h). *See Balboni*, 70 V.I. at 1071 (quoting *Lembach*, 64 V.I. at 419); *cf. Sekou v. Moorhead*, 72 V.I. 1048, 1058 n.6 (V.I. 2020); *Mills-Williams v. Mapp*, 67 V.I. 574, 586 (V.I. 2017).

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[50] *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871, 874 (3d Cir. 1944) ("Rule 12 abolished the . . . age-old distinction between general and special appearances.").

[51] Similarly, no provision in the Virgin Islands Rules of Civil Procedure mandates a notice of appearance, although Rule 3-1 requires filing of equivalent information.

b. Filing of an Answer with Affirmative Defenses

¶127 Federal Rule of Civil Procedure 12(b) accords with the policy of the Virgin Islands and that of most states, in refusing to permit a series of pre-answer motions, one after the other raising defenses to the action, and each delaying a defendant's time to answer (which under current Rule 12 is deferred until 14 days after notice of the court's action on such a motion, as provided in Rule 12(a)(4)(A)). This requirement to bring all contemplated motions to dismiss at one time is stated in Rule 12(b), and enforced by express motion-consolidation and waiver provisions in Rules 12(g) and (h). While the defense that the court lacks subject matter jurisdiction can never be waived—and can be raised at any stage of the proceedings, under Rule 12(h)(3)—the defense of lack of personal jurisdiction over a defendant is waived "*if not raised in a pre-answer motion or the defendant's answer*." FED. R. CIV. P. 12(b) (final paragraph) and (h).

¶128 However, it is also exceedingly obvious that defenses that are raised in a defendant's answer prior to filing of any motion to dismiss are not waived. Federal trial and appellate courts addressing the situation where a defendant first files an answer setting forth a defense, and then files a motion to dismiss to obtain relief on that defense, have consistently ruled that there is no waiver of these defenses, since waiver is specifically addressed in Rule 12(h), which provides that a defense will be waived if the defendant fails to either raise it in a Rule 12 motion or "include it in a responsive pleading."[52] Here, Valerie did not file any pre-answer Rule 12 motions, but she

[52] *See, e.g.*, *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296-97 (7th Cir. 1993) ("Federal Rule of Civil Procedure 12(h)(1) provides that '[a] defense of lack of jurisdiction over the person . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.' The defendants did raise the defense in their answer, and therefore the waiver provided for by Rule 12(h) did not occur."); *Flory v. United States*, 79 F.3d 24, 25 (5th Cir. 1996) (pleading a defense in the answer, then later filing a motion to dismiss based on that defense, satisfied Rule 12); *Abrams v. FedEx Ground Package Sys.*, 2021 U.S. Dist. LEXIS 152536, at *8 (S.D. Ill. 2021) ("Rule 12(h)(1) provides that [a] defense of lack of jurisdiction over the person . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof . . . .' It follows that if a defendant raises the personal-jurisdiction

did include the defense of lack of personal jurisdiction in her answer. Her answer expressly stated her jurisdictional defense:

> AFFIRMATIVE DEFENSES
> 1. This Court lacks personal jurisdiction over Respondent pursuant to Sections 4902 and 4903 of Title 5 of the Virgin Islands Code and is asserting such in the answer as allowed by . . . Rule 12.

A footnote to this paragraph of Valerie's answer further states: "Undersigned counsel has filed a limited notice of appearance, and the Respondent is challenging personal jurisdiction of this Court pursuant to [Rule] 12 and case law allowing assertion of lack of personal jurisdiction over Respondent in the answer." The note cites two V.I. District Court cases in which the local federal court has recognized the validity of this procedure of raising the personal jurisdiction defense initially in the defendant's answer. *See Whitecap Investment Corp. v. Putnam Lumber & Export Co.*, 2013 WL 1155351, at *2-4 (D.V.I. 2013); *Clarke v. Marriott Int'l, Inc.*, 2013 WL 4758199, at *3-4 (D.V.I. 2013).

¶129 In Virgin Islands Civil Rule 12 there is an express cross-reference in subpart (b) providing that the obligation to include defenses in a pre-answer motion applies "except . . . as provided in

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defense in its answer, then "the waiver provided for by Rule 12(h) did not occur."); *Winn-Dixie Stores, Inc. v. Eastern Mushroom Mktg. Coop.*, 2020 U.S. Dist. LEXIS 2552, at *6 (E.D. Pa. 2020) ("Under Rule 12(h), waiver is triggered by a party's 'failing to . . . include [a defense listed in rule 12(b)(2)-(5)] in a responsive pleading. When a party raises the relevant defense in their answer, however an opposing party cannot invoke waiver under 12(h)."); *Salinero v. Johnson & Johnson, Inc.*, 2019 U.S. Dist. LEXIS 96155, at *6 (S.D. Fla. 2019) ("A challenge to personal jurisdiction is abandoned when a defendant fails to raise the issue in either a responsive pleading or Rule 12 motion."); *Holden & Brands Inc. v. Shoes, LLC*, 2009 U.S. Dist. LEXIS 135987, at *1 (C.D. Cal. 2009) ("Defendants' first and primary argument is that this Court lacks personal jurisdiction over the moving defendants. . . . The moving defendants did raise the defense of lack of personal jurisdiction in their Answer, and therefore the waiver provided for by Rule 12(h) did not occur."); *Distance Learning Sys. Ind., Inc. v. A & D Nursing Inst.*, 2005 U.S. Dist. LEXIS 5838, at *11 (S.D. Ind. 2005) ("[T]he defendants asserted the defense of lack of personal jurisdiction in the answer filed in March 2004, and they filed the motion to dismiss only two months later. By including the defense in their answer, defendants avoided waiver under Rule 12(h)(1) of the Federal Rules of Civil Procedure."). State decisions agree. *See, e.g., Hall v. Kuzenka*, 843 A.2d 474, 478 (R.I. 2004) ("We reject plaintiffs' argument that, because defendant failed to raise lack of personal jurisdiction before answering the complaint, he has waived that defense. Rule 12(h) governs waiver of defenses [and since]defendant raised lack of personal jurisdiction in his answer, he has satisfied the requirements of Rule 12(h). The defendant's subsequent motion to dismiss does not undo his fulfillment of those requirements.").

subparts (g) and (h) of this rule." Thus, even more expressly than the federal counterpart, Virgin Islands Civil Rule 12(b) makes it unequivocal that whether a Rule 12 defense has been waived is controlled by the specific subpart of Rule 12 that addresses waiver of defenses, Rule 12(h). Case law construing Federal Civil Rule 12 has consistently reached the same result, as set forth in the note above. Since Valerie made no Rule 12 pre-answer motion to dismiss, included the personal jurisdiction defense in her answer, and promptly[53] thereafter filed a detailed ten-page motion to dismiss asking the court to rule on this defense specifically, she did not waive that defense. While there is case law in other jurisdictions noting that including a defense in the answer does not "permanently" preserve a defense—it must be raised for consideration by the court before the defendant conducts extensive proceedings in the litigation. This case is not one where the defendant filed an answer including such a defense but then participated in years of litigation, taking advantage of discovery or other court procedures, before triggering consideration of the jurisdiction defense—sometimes viewed as a defendant's waiver of a previously stated defense by litigation conduct.[54] Here, by contrast, Valerie filed her motion to dismiss based on this defense pled in her answer only a few weeks after her answer was filed, and before initiating or

[53] I cannot emphasize enough that a prompt filing of a motion to dismiss is required to avoid wavier of available personal defenses. V.I.R. CIV. P. 1 (requiring the rules be interpreted and applied to promote prompt resolution of cases). The disposition of this matter would be very different had Valerie been less prompt in filing her motion to dismiss.

[54] *See, e.g.*, *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296-97 (7th Cir. 1993) (defense preserved in a party's answer could later be waived through extensive litigation conduct); *Abrams v. FedEx Ground Package Sys., Inc.*, 2021 U.S. Dist. LEXIS 152536, at *8-9 (S.D. Ill. 2021) (defenses raised and not waived under Rule 12(h) could be later waived by "submission by conduct" such as "litigation of the merits for over two-and-a-half years without actively contesting personal jurisdiction"); *Salinero v. Johnson & Johnson, Inc.*, 2019 U.S. Dist. LEXIS 96155, at *6 (S.D. Fla. 2019) (while stating the defense of a lack of jurisdiction in the answer avoided waiver, "personal jurisdiction may also be waived, even if a defendant has nominally preserved the defense by reciting it in an answer, if that defendant substantially participates in the litigation without actively pursuing its Rule 12(b)(2) defense"); *Rates Technology Inc. v. Nortel Networks Corp.*, 399 F.3d 1302, 1309 (Fed. Cir. 2005) (noting that "a party may consent to personal jurisdiction by extensively participating in the litigation without timely seeking dismissal"); *Tinley v. Poly-Triplex Technologies, Inc.*, 2009 U.S. Dist. LEXIS 23514, at *6 (D. Colo. Mar. 26, 2009) ("[A] party may waive a defense of lack of personal jurisdiction by its conduct in the litigation, even if the defense is properly preserved in the answer.").

participating in any other substantial proceedings in the case. There was no waiver of this defense by operation of Rule 12 and, likewise, no waiver of the defense by conducting extensive litigation activities prior to seeking a ruling on this defense.

c. Subsequent Extension of Time

¶130 Having already asserted her defense of lack of personal jurisdiction in her answer and a ten-page Rule 12 motion to dismiss on this specific issue, Valerie could not have waived that defense by subsequently stipulating to an extension of time for certain briefing submissions. *See Bacon v. Federal Reserve Bank*, 289 F. 513, 516 (E.D. Wash. 1923) ("It was beyond the power of the court to make and enforce a rule with such conditions as would transform an objection to the jurisdiction into a waiver of the objection itself. The stipulation must be taken as a whole. The intent and purpose of the context as a whole must control, and, so taken, the intent not to appear generally is apparent."). On May 2, 2017, the parties stipulated that Valerie should have an extension of time "to file a response" to Stephen's motion for partial summary judgment. Stephen argued that this was a voluntary appearance; however, "as the question is one of intent as evidenced by conduct, each case must of course be determined upon a consideration of the particular record. . . ." *Cullinan*, 139 So. at 267. Valerie opposed the March 2017 Motion by filing a motion for ruling and a stay, in which she reiterated her pending Rule 12 challenge to the Family Court's personal jurisdiction. To argue that a stipulation for extension of time to file such a motion constitutes a waiver of the defenses previously raised is baseless, and any such interpretation would

be in contravention of the policy underlying adoption of our Rules of Civil Procedure. *See* FED. R. CIV. P. 1(a) and V.I. R. CIV. P. 1.[55]

¶131 Since Valerie did not waive the personal jurisdiction defense, I proceed to address whether she is subject to *in personam* jurisdiction in the courts of the Virgin Islands.

3. Because Valerie's Conduct Following Stephen's Establishment of his Virgin Islands Citizenship in 2008 Constituted the "Transacting of Any Business" for Nearly a Decade and Arose Directly out of the Valerie's Interactions with Both her Husband and the Virgin Islands, Valerie was Properly Subject to Personal Jurisdiction under 5 V.I.C. § 4903(a)(1).

¶132 Because I do not believe the application of *Molloy* to the facts presented in this case is as straight forward as the majority appears to believe, I would provide an extended discussion of the Long Arm Statute and constitutional principles of personal jurisdiction.

¶133 The valid exercise of personal jurisdiction over a foreign defendant requires valid process, proper service of that process, factual applicability of the long arm statute, and constitutional minimum contacts. *Skepple*, 69 V.I. at 722.[56] There is no dispute that Valerie is not a resident of the Virgin Islands and has not been personally served while present within the territorial limits of the Virgin Islands. *See generally Perrin v. Perrin*, 408 F.2d 107, 110 (3d Cir. 1969) ("[Personal] jurisdiction is an imposition of sovereign power over the person. It is usually exerted by symbolic and rarely by actual force, e.g., the summons as a symbol of force; the attachment and the civil arrest, as exerting actual force."). Likewise, there is no dispute that Valerie is not a Virgin Islands

[55] *See Zabriskie v. Second Nat'l Bank*, 198 N.Y.S. 482, 430 (N.Y. App. Div. 1923) (holding that requesting an extension of "the time of defendant to answer or otherwise plead for 20 days after the determination of the motion" was not a general appearance and explaining that to "so hold would be to totally disregard the conditions under which the [extension] was obtained."); *Cullinan*, 139 So. at 266 ("To hold otherwise would . . ., 'transform an objection to the jurisdiction into a waiver of the objection itself.'" (citing *Bacon*, 289 F. at 516); *see also* V.I.R. Civ. P. 12(b) ("A motion asserting any of these defenses . . . must be made before pleading if a responsive pleading is allowed.").

[56] It is axiomatic that a plaintiff waives all objections to personal jurisdiction—including objections to process and service of process—and venue by choosing the forum; as such, all plaintiffs have submitted themselves to their chosen court's jurisdiction for all purposes. *Saenger*, 303 U.S. at 67-68; *see* V.I.R. Civ. P. 5.

domiciliary. 5 V.I.C. § 4902; *Evans-Freke*, 70 V.I. at 401. The due process restrictions on the exercise of personal jurisdiction over a foreign defendant "are a consequence of territorial limitations on the power of the respective states"; in other words, these limitations are a result of the quasi-sovereign status of the states. *Jensen v. McInnery*, 299 F. Supp. 1309, 1313 (D.V.I. 1969); *Godfrey v. International Moving Consultants, Inc.*, 18 V.I. 60, 69 (D.V.I. 1978) (noting that limits on personal jurisdiction "insure that state and territorial tribunals do not infringe on each other's sovereignty." (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980))). Therefore, "in seeking to assert jurisdiction over a person located outside its borders, [the Virgin Islands] may only do so on the basis of minimum contacts among the parties, the contested transaction, and the forum state." *Shaffer v. Heitner*, 433 U.S. 186, 220 (1977) (Brennan, J., concurring in part, dissenting in part); *World-Wide Volkswagen Corp.*, 444 U.S.at 291; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) ("[T]he constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State."); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779-80 (2017); *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024-25 (2021); *Jensen*, 299 F. Supp. at 1313.

¶134 It is the plaintiff's burden to plead and provide prima facie proof of a transactional nexus centered in the Virgin Islands, as relates to the specific litigation underway. *Skepple*, 69 V.I. at 731; *see Molloy*, 56 V.I. at 175. Stephen alleged the basis for long-arm jurisdiction and submitted affidavits in support. Therefore, Valerie had the burden of coming forward with competent evidence, such as affidavits, that demonstrated an absence of applicability of the long-arm statute. *Skepple*, 69 V.I. at 731 (when a defendant wishes to rebut a plaintiff's prima facie case of personal jurisdiction, that party "must submit an affidavit or other competent evidence" proving the exercise of jurisdiction is improper—unless the plaintiff entirely failed in the initial proof, in which case

the defendant may rely on the plaintiff's failure without providing evidence" (citing *Molloy*, 56 V.I. at 172; *Settlemier v. Sullivan*, 97 U.S. 444, 447 (1878); *Thomas v. Bonanno*, Civ. No. 2013-06, 2013 WL 3958772, at *3 (D.V.I. July 30, 2013) (unpublished))); *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 48 V.I. 941, 944 (D.V.I. 2007) (citing *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996))).

a. Application of the Virgin Islands Long-arm Statute

¶135 A court of this Territory is permitted to exercise jurisdiction *in personam* over a foreign defendant if the person has been, either directly or by agent, *Godfrey*, 18 V.I. at 67, engaged in certain enumerated activities occurring within or affecting people within this Territory and the claims to be brought arise directly from those contacts. *E.g.*, 5 V.I.C. § 4903(a)(1)-(8), (b). In applying the long-arm statute, it is to be remembered that,

> [t]he limits on the exercise of jurisdiction are not 'mechanical or quantitative' but are to be found only in the requirement that the provision made for this purpose must be fair and reasonable in the circumstances, and must give to the defendant adequate notice of the claim against him, and an adequate and realistic opportunity to appear and be heard in his defense.

Jensen, 299 F. Supp. at 1314-15 (quoting *Nelson v. Miller*, 143 N.E.2d 673, 676 (Ill. 1957), and citing *Int'l Shoe*, 326 U.S. at 319.

¶136 Preliminarily, it is noted that section 4903 of title 5 is the provision of the Uniform Interstate and International Procedure Act adopted by the Legislature, and that uniform act was derived from the Illinois Statutes Annotated and the case law interpreting that provision. *Jensen*, 299 F. Supp. at 1313. In adopting the uniform act, the Legislature directed that the courts must ensure that those provisions contained in Chapters 501, 503, 505, 507, 509, and 511 of title 5 "be so interpreted and construed as to effectuate its general purposes to make uniform laws of those

states and territories which enact it." 5 V.I.C. § 4942. As such, decisions from both the courts of Illinois and other jurisdictions that have adopted the uniform act are highly persuasive authority as to its meaning. *E.g.*, *Jensen*, 299 F. Supp. at 1313 (relying on cases from Illinois and jurisdictions that have adopted the uniform act).[57] Additionally, section 4903 of title 5 must be interpreted so that its reach is "coextensive with the limits of due process," as intended by the Legislature. *Godfrey*, 18 V.I. at 68.[58]

¶137 As is material to this matter, subsection 4903(a)(1) provides as follows:

> A court may exercise personal jurisdiction over a person who acts directly or by agent as to a claim for relief arising from the person's . . . transacting any business in this territory.

5 V.I.C. § 4903(a)(1). There are numerous doing-business statutes in the Virgin Islands. *Skepple*, 69 V.I. 700, 742 n.34 (citing 13 V.I.C. § 2003(b); 26 V.I.C. § 244); BLACK'S L. DICT., 556 (defining a "doing-business statute"). For example, any villa owner that holds their villa out for visitors to pay for its use as a temporary vacation residence is doing business in the Territory. 13 V.I.C. § 2003(b). However, the phrase "transacting any business" is not defined in the Virgin

[57] In the Virgin Islands, when the Legislature has adopted a uniform act that commands the courts to interpret the statute in uniformity with other jurisdictions, such interpretations must be applied. *E.g.*, 5 V.I.C. § 3941; 11A V.I.C. § 1-103(a)(3); *see Cornelius v. Bank of N.S.*, 67 V.I. 806, 821 (V.I. 2017) (interpreting UCC to be uniform with other adopting jurisdictions). Furthermore, under the "Borrowed Statute Rule" of statutory construction, it is presumed that the Legislature was "'aware of and intend[ed] to adopt the interpretations of the borrowed statue'" and, thus, those pre-adoption interpretations are considered plain evidence of the Legislature's intent in adopting the borrowed statutory language. *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 419-20 (V.I. 2016) (quoting *Boynes v. Transportation Servs. of St. John*, 60 V.I. 453, 466 n.11 (V.I. 2014); *People v. Ventura*, Case No. SX-2021-CR-76, 2014 WL 3767484 (V.I. Super. Ct. July 25, 2014) (unpublished), and citing *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 380 (V.I. 2013); *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 47 V.I. 430, 441-42 & n.11 (V.I. Super. Ct. 2006)). The revisor's notes point out that "This subtitle, consisting of chapters 501, 503, 505, 507, 509 and 511 of this title (sections 4901-4905, 4911-4914, 4921, 4922, 4926-4928, 4831-4934 and 4941-4943 of this title), was added by Act March 15, 1965, [Act to Enact the Uniform Interstate and International Procedure Act,] No. 1339, § 1, Sess. L. 1965, Pt. I, p. 58." We have no discretion to ignore this command.

[58] This interpretation is reflective of the policy embodied in the uniform act. *See Nelson*, 143 N.E. at 679 (holding that the Illinois provisions upon which the uniform act was based "reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due-process clause.").

Islands Code, and none of the doing-business statutes enacted in this Territory explicitly states that the performance of a contract for separation from the spousal union by an estranged foreign spouse domiciled in the Virgin Islands constitutes "transacting any business."

¶138 To transact any business is to carry out or conduct one's affairs (or a specific matter); use of the term any was explicitly intended to avoid limitations being placed on the term business—more succinctly, the Legislature intended that the conducting of a person's affairs of life is "transacting any business." COMPACT AM. DICT., 853 (defining "transact"), 118 (defining business); BLACK'S L. DICT., 226 ("by extension, transactions or matters of a noncommercial nature.").[59] This is the interpretation that has been applied in the courts of the Virgin Islands since *Hendrickson v. Reg O Co.* held that "transacting any business" was a legal term of art that "means less than doing business but more than performing some inconsequential act;" a defendant must engage in some purposeful activity either within or to be performed by a person in the Virgin Islands. 17 V.I. 457, 1980 U.S. Dist. LEXIS 8933, at *8 (D.V.I. May 28, 1980) (citing *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee*, 355 U.S. 220; *Reiner & Co., Inc. v. Schwartz*, 394 N.Y.S.2d 844 (N.Y. 1977))).

[59] *Van Wagenberg v. Van Wagenberg*, 215 A.2d 812, 819 (Md. 1966) ("The word business has no specific or legal meaning, and . . . it is a very comprehensive term embracing everything about which a person may be engaged." (citing *Black's Law Dictionary*)); *Ross v. Ross*, 358 N.E.2d 437, 439 (Mass. 1976) ("The statute's reference to 'transacting any business' does not require that the defendant have engaged in commercial activity. That language . . . applies to any purposeful acts by an individual, whether personal, private, or commercial." (citing *Van Wagenberg*, 215 A.2d 812; *Leeper v. Leeper*, 319 A.2d 616 (N.H. 1974))); *see Van Wagenberg*, 215 A.2d at 820 ("The term 'transaction of any business' is generic and vague."); *cf.* BLACK'S L. DICT., 556 (defining "Doing business" as "[t]he act of engaging in business activities; specif., the carrying out of a series of similar acts for the purpose of realizing a pecuniary benefit, or otherwise accomplishing a goal, or doing a single act with the intention of starting a series of such acts; esp., a nonresident's participation in sufficient business actives in a foreign state to allow the state's courts to exercise personal jurisdiction over the non-resident."); *Van Wagenberg*, 215 A.2d at 817 ("In place of the former rigid tests of 'residence' and 'doing business', the Supreme Court, in *International Shoe*, substituted [a] flexible requirement [for the exercise of jurisdiction *in personam* over] a nonresident defendant." (quoting *Longines-Wittnauer Watch Co. v. Barnes & Reinecke*, 209 N.E.2d 68 (N.Y. 1965), and citing *Int'l Shoe*, 326 U.S. at 316).

¶139 "[T]ransacting business can be only a single act which amounts to the transaction of business within the state (or territory)." *Godfrey*, 18 V.I. at 66-67 (citing *Williams Crane & Rigging v. B&L Systems*, 466 F. Supp. 956, 957 (E.D. Va. 1979)). Furthermore, "[w]hen the primary contact between the non-resident and the territory is a contract, due process requires only that the contract have a substantial connection with the Virgin Islands." *Wilkins v. Mason Shoe Mfg. Co.*, 17 V.I. 138, 142 (V.I. Super. Ct. 1980) (citing *McGee*, 355 U.S. 220). For example, a contract negotiated with a Virgin Islands domiciliary to be performed by that domiciliary in the Virgin Islands, e.g., sending payment of obligated funds, would be "a contract which had substantial connection with the" Virgin Islands that "is sufficient for purposes of due process." *See McGee* 355 U.S. at 223; *Godfrey*, 18 V.I. at 68; *Wilkins*, 17 V.I. at 142.[60]

¶140 When the drafters of the uniform act wrote this provision, they were aware that certain states had enacted long arm statutes under which jurisdiction could be premised upon, inter alia, "contracts 'to be performed in whole or in part by either party in'" the state. *Van Wagenberg v. Van Wagenberg*, 215 A.2d 812, 817 (Md. 1966) (citations omitted). Yet the drafters "decided instead to follow the broad, inclusive language of the Illinois provision, adopting as the criterion the 'transacting of any business within the state.'" *Id.* The Legislature expressed this same intent when it adopted the uniform act.[61]

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[60] To the extent past cases held that the contract must be "entered into in the Virgin Islands," these cases are expressly rejected. *E.g.*, *Norman's*, 10 V.I. at 510; *Hendrickson*, 17 V.I. 457.

[61] When a legislature rejects narrower, less inclusive language for broad inclusive language, absent any clear legislative declaration to the contrary, it is absurd to conclude that the broader language did not include the narrower language and more. *See, e.g.*, *Greer*, 2021 VI 7, ¶50. This is also reflective of the construction placed upon this provision in jurisdictions that have adopted the uniform act. *E.g.*, *Leeper*, 114 N.H. at 297 (holding that the use of the word "any" demonstrated a legislative intent that the statute be interpreted in the broadest legal sense to include personal, private, and commercial transitions); *Ross*, 371 Mass. at 441 ("The [long-arm] statute's reference to 'transacting any business' does not require that the defendant have engaged in commercial activity."); *Stevens v. Stevens*, 476 So.2d 883, 886 (La. Ct. App. 1985) (holding that "transacting any business" did not require the defendant to have engaged in commercial activity).

¶141 The parties do not dispute that (1) Valerie filed tax returns in the Virgin Islands in 2009 and 2010; (2) the parties mutually entered into an agreement whereby they would live separate and from one another, i.e., a parol contract setting the terms of their separation,[62] in 2008 that was premised upon Stephen relocating to and establishing his domicile and new business ventures in the Virgin Islands; (3) Valerie regularly and continuously utilized services provided by Stephen's business in the Virgin Islands, to manage her personal life and financial affairs in New York; and (4) Valerie (from 2008 up to, at least, the filing of Stephen's reply to Valerie's opposition to partial summary judgment) received her exclusive income, exceeding $500,000 annually, from her spouse who was domiciled in the Virgin Islands. Valerie, for more than eight years, purposely directed her efforts to the Virgin Islands in order to obtain more than half a million dollars in income annually as well as support services to assist her with the completion of the basic tasks of living as an adult, such as paying her bills.

¶142 Moreover, from the very first day Stephen arrived in the Virgin Islands, she was aware it was his intention to obtain Virgin Islands citizenship for federal tax purposes.[63] Valerie was fully aware that, at that time, her spouse was moving to the Virgin Islands for the sole purpose of generating income and later that she was negotiating a separation agreement with a spouse who

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[62] *See Van Wagenberg*, 215 A.2d at 819 (noting that a separation agreement "is a legal act of the most serious nature. Unlike a marriage ceremony, which creates a status, or a divorce, which terminates a status, the agreement sounds in contract"); *see Terrace v. Williams*, 52 V.I. 225, 242 (V.I. 2009) (acknowledging that contracts are oral or written).

[63] A married couple may have separate domiciles. *Perrin v. Perrin*, 408 F.2d 107, 110 (3d Cir. 1969) ("It is needful on pragmatic grounds to regard the marriage itself as moving from place to place with either spouse . . . ." (citing *Williams v. North Carolina*, 317 U.S. 287, 304 () (Frankfurter, concurring))). For purposes of family relations and divorce, citizenship and domicile mean the same thing. *Osenton*, 232 U.S. at 623 ("If the plaintiff was domiciled in Virginia when the suit was begun, she was a citizen of that state within the meaning of the Constitution, art. 3, § 2, and the Judicial Code of March 3, 1911, c. 231." (citing *Gassies v. Ballon*, 31 U.S. (6 Pet.) 761 (1832); *Boyd v. Nebraska*, 143 U.S. 135, 161 (1892); *Happersett*, 88 U.S. (21 Wall.) 162)); *Brown v. Keene*, 33 U.S. (8 Pet.) 112, 115-16 (1834) ("A citizen of the United Sates may become a citizen of that state in which he has a fixed and permanent domicile . . . ."); *cf. Osenton*, 232 U.S. at 624-25.

was domiciled in the Virgin Islands. *E.g.*, *Van Wagenberg*, 215 A.2d at 824 (noting as significant the fact that the spouse and child lived in the state when the foreign spouse entered the separation agreement). "Practically speaking, one of the main objectives of a separation agreement is to settle a legal dispute.[64] The agreement is the product of negotiation and . . . constitutes the transaction of business." *Warren v. Warren*, 287 S.E.2d 524, 526 (Ga. 1982) (citing *Van Wagenberg*, 215 A.2d 812; *Kochenthal v. Kochenthal*, 282 N.Y.S.2d 36, 40 (N.Y. 1967)).

¶143 The next question to be answered is whether a divorce is a "claim for relief arising from the [foreign defendant's]" conduct identified in § 4903(a)(1)-(8). Given that (1) Stephen had moved to the Virgin Islands in 2008 to establish a Virgin Islands citizenship in order to qualify to certain federal tax exemptions, (2) Valerie and Stephen formally separated, at least as long ago as 2010, at which time he and Valerie commenced the present financial arrangement to provide Valerie with an income while Stephen was domiciled in the Territory, and (3) Stephen sought a determination of the ownership of any Virgin Islands assets, the exact assets that are utilized by Stephen to meet his obligation that he support his spouse, it would be keeping one's eyes wide shut to say that Stephen's lawsuit seeking a divorce was not a "claim for relief arising from" Valerie's transacting any business in the Territory.[65]

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[64] The obvious goal of a separation agreement is to provide the terms upon which the parties will begin to divide their formerly joined lives before seeking a divorce or reconciling, whichever may be the result of the separation.

[65] To the extent that we adopted in *Molloy* the standard that, in order to arise out of a transaction, that the transaction is the but-for cause of the claim, 56 V.I. at 175, that factor is inapplicable to matters of domestic relations. A domiciliary is entitled to a divorce under Virgin Islands law if that party establishes prima facie the two elements of a divorce, but under *Molloy*, a domiciliary spouse could never seek a divorce in the Virgin Islands if their spouse never lived in the Virgin Islands because the but-for causation could never be established (it could never be said that but for the foreign spouse's decision to marry the domiciliary spouse or to exercise their spousal rights to maintenance, the litigation would never have occurred). Yet, the law never demands the impossible and the general policy of the Virgin Islands is that a domiciliary should not be trapped in what is a marriage in name only. *See, e.g.*, *Mulrain v. Mulrain*, 15 V.I. 149, 150 (D.V.I. 1979) (finding that the requirements of service by publication unconstitutionally deprived the indigent domiciliary spouse of her due process right to a divorce); *Ayer v. Ayer*, 9 V.I. 371, 376 (D.V.I. 1973) (""It is my finding that the state of incompatibility of the temperaments of the parties was brought about by the inability and

¶144 Indeed, Valerie has vehemently argued that she has a spousal claim to property in the Virgin Islands acquired by Stephen since he moved here. Likewise, Valerie has never waived a claim for spousal maintenance and has affirmatively voiced concerns about receiving such an award in any final order of the Family Court terminating spousal obligations. It is impossible to understand how Stephen is not seeking relief arising from Valerie's conduct directly related to this litigation. As such, it was error as a matter of law for the Family Court to find that Valerie did not have the requisite statutory minimum contacts with the Territory, as those contacts relate to this divorce action. *See Granville-Smith*, 349 U.S. at 9 n.15 (explaining that matters of "local application" "obviously implie[d a] limitation to subjects having relevant ties within the [T]erritory" and concluding that "a suit against a defendant [duly] served . . . arising out of a . . . transaction connecting both the Virgin Islands and the mainland would clearly contain a relevant tie amply affording to the courts of the Virgin Islands a basis for the exercise of personal jurisdiction"); BLACK'S L. DICT., 1635 (defining "transaction" as "any activity involve two or more persons").

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perhaps refusal of both parties to [mutually] adjust [themselves] to the other party and to understand and make allowances in order that they might live together harmoniously . . . and as [parents] of the child. I do not find fault with either party. The inability to adjust was brought about by a complete difference in their attitudes and lack of common interests. It is therefore in order that a divorce be granted to both parties on a no fault basis."). Valerie's right to maintenance, etc., is derived from her status as Stephen's wife in New York. His obligation to support her arouse in New York. The cause of action for divorce arouse in New York before Stephen moved here. Yet, the Legislature has expressly declared that the place of marriage and location where the cause of the divorce arose are irrelevant. 16 V.I.C. § 106(a). As subsection 4903(b) of title 5 is the more general statute, the more specific provisions of subsection 106(a) control, *Miller*, 67 V.I. at 871, and in light of this, the test judicially adopted in *Molloy* when interpreting subsection 4903(b) cannot be applied in the domestic relations context because it would render portions of subsection 106(a) superfluous. Additionally, such an interpretation is contrary to legislative intent, when applied in the context of divorce, because the but-for causation is more restrictive than is constitutionally required, but section 4903 is meant to be co-extensive with the constitution. *Godfrey*, 18 V.I. at 68 ("this section should be interpreted that its reach is coextensive with the limits of due process."). What is more, *Molloy* failed to address the command of uniformity of interpretation prior to adopting a test that has never been adopted by the other jurisdictions that have enacted the uniform act. The plaintiff need only establish that the foreign spouse's contacts with the Virgin Islands are closely related to the suit for divorce.

b. Constitutionality of the Application of the Virgin Islands Long-arm Statute to Valerie

¶145 Constitutionally, even if a defendant's conduct falls within a provision of the Virgin Islands Long-arm Statute, the Court must determine whether the defendant had the requisite minimum contacts with the Virgin Islands and whether the asserted claim arose out of those contacts with the forum such that the exercise over the foreign defendant does not violate due process. *Molloy v. Independence Blue Cross*, 56 V.I. 155, 181 (V.I. 2012) (citing *In re Najawicz*, 52 V.I. 311, 336 (V.I. 2009); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408,13-14, 416 (1984)).

¶146 Overall, the courts are to examine a defendant's contacts with the Virgin Islands and evaluate whether the defendant can reasonably be adjudged to have received fair warning that they may be summoned into the courts of the Virgin Islands to answer for their actions related to their Virgin Islands contacts. *Molloy*, 56 V.I. at 183-84 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Initially, we need to consider whether the defendant's conduct and contacts were purposefully directed at the Virgin Islands. *Molloy*, 56 V.I. at 183 (quoting *D'Jamoos v. Pilatus Aircraft, Ltd.*, 566 F.3d 94, 102 (3d Cir. 2009)). We then consider whether the litigation arises out of or relates to "at least one" of the defendant's purposeful conduct and conduct with the Virgin Islands. *Molloy*, 56 V.I. at 183 (quoting *D'Jamoos*, 566 F.3d at 103)).

¶147 Here, there are two competing versions of the underlying facts. First, Valerie asserts that the marriage was harmonious in 2008 when Stephen moved to the Virgin Islands to establish his business in 2008, and that the parties did not intend to commence dissolving the marital union at that juncture. This assertion is supported by the fact that Stephen and Valerie filed joint tax returns in the Virgin Islands for the first two years during which Stephen was domiciled in the Virgin Islands, 2009 and 2010. Then, in 2010, the parties formally separated and began living their lives

according to the terms upon which they agreed to be separated. Stephen then performed his obligations as agreed, exclusively from the Virgin Islands, and Valerie not only accepted the financial support but purposely availed herself of any and all support of her personal life that she could obtain from Stephen and those employed by him in the Virgin Islands.

¶148 Indeed, it would appear Valerie relied entirely upon Steven's services, assets, and assistance (provided from the Virgin Islands) regarding maintenance of bills, house work, paper work, legal obligations, etc. For all of these standard life activities, Valerie obtained services from Stephen or his staff in the Virgin Islands, contacting them on multitudinous occasions when she desired assistance. Under Valerie's version of the facts, both she and Stephen determined that it was best for their marriage if they separated their domiciles with Valerie remaining in New York and Stephen establishing a new domicile in the Virgin Islands in order to take advantage of significant business opportunities to support his family. *E.g.*, *Perrin*, 408 F.2d at 110 (recognizing that it is common for married persons to split their domicile with the result being the marital domicile exists in two jurisdictions). This was purposeful activity directed at the Virgin Islands for the sole purpose of generating income to support Valerie, the spouse whose domicile remained in New York, and Valerie knowingly accepted this Virgin Islands income. A joint decision to assume separate spousal domiciles to financially benefit the couple does not become unilateral action because the spouse that moved is the one seeking a divorce. The admitted facts indicate that Valerie actively utilized Stephen's resources and services in the Virgin Islands for her benefit in New York after agreeing that it was in their joint financial best interests to split their spousal domiciles. *Cf. Metcalfe v. Renaissance Marine*, Inc., 566 F.3d, 324 (3d Cir. 2009) ("'a single act" that amounts to "transacting any business" is sufficient and noting that the parties "exchanged phone calls, faxes, and emails" while one side was in the Virgin Islands (citations omitted)); *HCB*,

LLC v. Oversee.net, 52 V.I. 894, 908-09 (D.V.I. 2009); *Urgent v. Technical Assistance Bureau, Inc.*, 255 F. Supp. 2d 532, 537 (D.V.I. 2003) ("'The requisite contacts, however, may be supplied by the terms of the agreement, the place and character of prior negotiations, contemplated future consequences, or the course of dealings between the parties.' '[P]arties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities.'" (quoting *Burger King Corp.*, 471 U.S. at 473; *Mellon Bank (East) PSFS, Nat. Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir.1992))); *Epstein v. Fancelli Paneling, Inc.*, 55 V.I. 150, 162 (V.I. Super. Ct. 2011).

¶149 Additionally, Valerie has asserted a right to a share of Stephen's Virgin Islands assets, assets that were developed by Stephen's actions as a domiciliary of the Virgin Islands and assets knowingly and purposefully utilized by Valerie for an entire decade. It is impossible to ignore that Valerie's claims to the property in the Virgin Islands directly arise out of Valerie's contacts with the Virgin Islands. Finally, it is impossible to believe Valerie was surprised that she could be subjected to a divorce action in which Virgin Islands property was subject to distribution and any right of spousal maintenance arose from her spouse's income exclusively derived from the Territory.

¶150 Under Stephen's version of events, the parties' marriage had been on a steady and precipitous decline for years, and he ultimately determined that he wanted a divorce. However, due to Valerie's expressed desire to repair the marriage, he agreed, in 2008, to live apart in the Virgin Islands without seeking a divorce. The parties then continued to live their joint lives but with one domiciled in New York and the other partner to the marriage domiciled in the Virgin Islands. After approximately a decade, the marriage relation had not improved, and Stephen filed

for divorce seeking distribution of his individual spousal property, distribution of any martial property, and a determination of spousal need. This was not a case of unilateral action. This was a case of two spouses agreeing to live separately in a situation where they had different domiciles and where property would be accrued in one jurisdiction but not the other and where spousal duties of support would be performed by the Virgin Islands domiciliary spouse. Again, under this version of events, this divorce action directly arises out of Valerie's actions purposefully directed at the Virgin Islands. Likewise, it is very difficult to believe that Valerie is somehow surprised that her spouse, whom they both knowingly decided would become a Virgin Islands domiciliary in an effort to generate new Virgin Islands business and accrue Virgin Islands assets to support the marriage, would seek a determination of property rights and his duty to support Valerie in the courts of the Virgin Islands. Under either version of the facts, Valerie could not have been surprised to be served with process in a suit for divorce in the Family Court. *See, e.g.*, *Barer v. Goldberg*, 582 P.2d 868, 872-73 (Wash. Ct. App. 1978).[66]

[66] As the *Barer* court explained, "Three basic factors which must coincide if jurisdiction is to be entertained . . . (3) the assumption of jurisdiction [*in personam*] by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation. . . . The third [factor] requires some comment. Although the wife has at all material times been a resident of California, we note that she has frequently visited this state, thus it does not appear excessively inconvenient to require her to respond in this forum. We note further that she had knowledge of the transaction from the start and as a [partner to the marriage] stood to benefit if the venture had been successful. Moreover, Alan Goldberg, as the manager of the community, was her agent. A further basic equity reveals itself to us in the trial court's finding of fact No. 2.10, wherein the Washington trial court found that under California law, the debts and property are to be divided equally between the parties. The . . . [marital] property and the debts were divided approximately equally, but that this one was omitted. We see nothing unfair about a request for equal division now and asserting jurisdiction to accomplish that which, in the light of hindsight, should have been accomplished in the California proceedings. We note further, that insofar as receiving the benefits and the protection of the laws of the State of Washington, . . . [the wife] has had such benefit in her ownership of Washington real property, title to which was confirmed in her by the divorce decree. Under all the circumstances revealed by the record, we consider it reasonable and just to assert jurisdiction. Our notion of fair play and substantial justice is not offended." *Barer*, 582 P.2d at 872-73 (citing *Dizard & Getty v. Damson*, 387 P.2d 964 (Wash. 1964))).

¶151 The Superior Court, in support of its ruling, relied on *Kulko v. Superior Court of California*, 436 U.S. 84, 88-89 (1978). On its face, *Kulko* is distinguishable from the present facts, as it was an action to modify the terms of child custody and child support contained in a foreign divorce decree. *Id.* at 87-88. The petitioning parent had moved to California and the parties' daughter then followed in December 1973. *Id.* The parties' son then requested that he be allowed to move to California with his mother in January 1976. *Id.* The petitioning parent then sent an airline ticket to the son, who flew to California without the permission or knowledge of the father. *Id.* Two months later, the petition for modification of the terms of custody and support was filed in California. *Id.* Having no other contacts with California, it was determined that this set of circumstances did not amount the father's purposeful availment of any benefits of California law, making the exercise of jurisdiction *in personam* offensive to the notions of fair play and substantial justice. *Id.* at 94-95.

¶152 It is obvious that *Kulko* provides no support for Valerie's arguments.[67] Valerie's contacts with the Virgin Islands were substantial and sustained for nearly a decade. For two of those years, her contacts were so substantial that she filed joint tax returns with Stephen in the Virgin Islands. Stephen's arrival in the Virgin Islands was not achieved by deceit but, instead, was agreed to by both parties to the marriage—and both parties derived substantial personal benefits from Stephen's

[67] Aside from being factually distinguishable, *Kulko* appears to have been a legal anachronism when it was issued. Like all United States jurisdictions, the Virgin Islands has adopted the "best interests of the child" standard for how parents' duties of support and care of their children are allocated. *Dupigny v. Tyson*, 66 V.I. 434, 442-43 (V.I. 2017). Yet, *Kulko* entirely ignores this legal standard and ignores the fact that both children did not want to live with their father. *See St. Mary v. Damon*, 309 P.3d 1027, 1036 (Nev. 2013) ("The parties' co-parenting agreement aligns with Nevada's policy of encouraging parents to enter into parenting agreements that resolve matters pertaining to their child's best interest."). Instead, *Kulko* appears to be a *sub silentio* resurrection of long-dead common law doctrines of male supremacy and dictatorial control of wife and children. *See generally Elliot v. Peirsol's Lessee*, 26 U.S. (1 Pet.) 328, 338 (1828); *Cheever v. Wilson*, 76 U.S. (9 Wall.) 108 (1869). We, therefore, question its continued viability in light of the dramatic changes in the law of domestic relations and the efforts to prevent the judiciary from being a tool of domestic abuse.

domicile in the Virgin Islands. Considering all of the foregoing, the Family Court's exercise of jurisdiction *in personam* over Valerie is therefore constitutional.

B. Because Valerie Failed to Present Any New Evidence, the Family Court's Dismissal of this Matter Because the Virgin Islands is an Inconvenient Forum was an Abuse of Discretion.

¶153 Valerie sought to have this action dismissed and transferred to the courts of New York for determination, arguing that the Virgin Islands constituted an inconvenient forum[68] for the adjudication of the parties' divorce action. Valerie simultaneously filed a divorce action in New York, and Stephen sought dismissal of that matter because the Virgin Islands was the better forum for the determination of the divorce action. The New York court, a coordinate court of a sister state or equal dignity to the Family Court, considered the same facts as presented in this case and determined that the Virgin Islands was the more convenient forum for the litigation. By whatever standard a court may subsequently reexamine such a ruling, the Family Court failed in its duty. By any evidentiary standard of proof, Valerie has not met her burden. The Family Court entirely failed to give due consideration to the prior findings of the New York court and abused its discretion in making a finding to the contrary.

IV. CONCLUSION

¶154 Stephen having sufficiently pled and proved both Divorce Jurisdiction and personal jurisdiction, it became Valerie's burden to rebut the presumption that the same existed. Valerie, having failed entirely to rebut these presumptions and having transacted business within this Territory sufficient to establish personal jurisdiction over her, the Superior Court erred in denying

[68] F*orum non conveniens* is just a specific form of venue objection. *See generally* Roger S. Foster, *Place of Trial—Interstate Application of Intrastate Methods of Adjustment,* 44 HARV. L. REV. 41, 47 (1930). Indeed "*forum non conveniens*" very literally translates from Latin as "an inconvenient forum" or "forum not agreeing." *See* BLACK'S L. DICT., 726.

Stephen's request for a divisible divorce and when it dismissed the remainder of the case for lack of personal jurisdiction over Valerie. Therefore, I agree with the judgment of this court.

Dated this 30th day of December, 2021.

BY THE COURT:

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

By: **/s/ Reisha Corneiro**
Deputy Clerk II

Date: **December 30, 2021**