Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ELSA HALL, Appellant/Defendant, v. **SAMUEL H. HALL, JR.,** Appellee/Plaintiff.	))))))))	**S. Ct. Civ. No. 2018-0036** Re: D.V.I. Civ. No. 2013-95

On Request for Certification of Virgin Islands Law
From the District Court of the Virgin Islands

Considered and Filed: April 18, 2018

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

APPEARANCES:

Andrew C. Simpson, Esq.
Emily A. Shoup, Esq.
Law Offices of Andrew Simpson
St. Croix, U.S.V.I.
Attorneys for Appellant Elsa Hall in her representative capacity and as trustee of the Ethlyn Louise Hall Family Trust,

Carl A. Beckstedt, Esq.
Beckstedt & Associates
St. Thomas, U.S.V.I.
Attorney for Appellant Elsa Hall in her personal capacity,

Robert L. King, Esq.
Law Offices of Robert L. King
St. Thomas, U.S.V.I.

Marie E. Thomas-Griffith, Esq.
Hall & Griffith, P.C.
St. Thomas, U.S.V.I.
Attorneys for Appellee.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a March 29, 2018 certification order received from the District Court of the Virgin Islands, which this Court received on April 4, 2018. In its certification order, the District Court requests that, pursuant to Supreme Court Rule 38, this Court resolve the following questions of Virgin Islands law: "(1) Whether, under Virgin Islands law, a viable claim exists for alienation of a parent's affection where one entices a parent to leave their child; and (2) if not, whether, under Virgin Islands law, a viable claim exists for a tort where one abducts or by similar intentional action compels a parent to be asunder from their child."

Having reviewed the certification order and the record, this Court declines to accept jurisdiction over these certified questions. In its March 29, 2018 certification order, the District Court outlines the procedural history of this case, which reflects that the underlying matter went to trial in January 2015, resulting in a jury verdict, that the District Court issued a March 30, 2016 order, in which it denied a motion for judgment as a matter of law by predicting that this Court would recognize a tort claim, that is available when one abducts or by similar intentional action compels a parent to be asunder from their child, that the District Court granted a new trial on different grounds, that the second trial occurred in March 2017, again resulting in a jury verdict, and that question has now been certified in the context of a second motion for judgment as a matter of law premised, in part, on the same grounds that the District Court decided in its March 30, 2016.

Rule 38 of the Virgin Islands Rules of Appellate Procedure provides that this Court may answer a question certified by a court of the United States "if there is involved in any proceeding

before the certifying court a question of law which may be determinative of the cause then pending in the certifying court." V.I. R. APP. P. 38(a) (emphasis added). In this case, it is not clear that the opinion issued by this Court, were it to accept the certified question, would be outcome-determinative in the District Court proceeding. First, we note that the underlying motion for judgment as a matter of law is premised on several grounds, only one of which involves whether this Court would recognize such a tort claim, and that none of those alternate grounds has yet been adjudicated by the District Court. For example, in that motion, defendant Elsa Hall argues that plaintiff Samuel Hall failed to introduce sufficient evidence that she intentionally forced him asunder from their mother; were the District Court to ultimately agree with that argument, the proceeding in this Court would be completely unnecessary, since Elsa Hall would receive judgment as a matter of law regardless of how this Court were to answer the District Court's certified questions. *See Sears, Roebuck & Co. v. Learmonth*, 95 So.3d 633, 640 (Miss. 2012) (declining to answer certified question from federal court after trial already occurred and when issue presented might not be outcome-determinative and may require speculation or conjecture); *Ball v. Wilshire Ins. Co.*, 184 P.3d 463, 466 (Okla. 2007) (declining to answer certified question from federal court when it is possible that answering the question would not be outcome-determinative and may result in issuance of a mere advisory opinion).

But even if we were inclined to infer that the District Court implicitly rejected the other claims in the motion for judgment as a matter of law when it certified these questions to us, we would still decline to answer the questions. This Court previously recognized that "the United States Supreme Court has strongly endorsed the use of certification by federal courts to resolve questions of local law in order to 'save time, energy, and resources' and 'help [] build a cooperative judicial federalism.'" *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 973 (V.I.

2011) (quoting *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974)). In this case, it is not clear how answering the certified questions would "save time, energy, and resources," given that the District Court has not only already predicted how this Court would resolve this issue of local law, but held two jury trials based on the tort claim that it predicted this Court would recognize. On the contrary, numerous federal court of appeals have held that certification by a federal district court is not appropriate after the district court has already resolved the issue by predicting how the pertinent court of last resort would rule. *See State Auto Prop. & Cas. Ins. Co. v. Hargis*, 785 F.3d 189, 194 (6th Cir. 2015) ("[S]uch certification is disfavored when it is sought only after the district court has entered an adverse judgment. . . . [T]he appropriate time for a party to seek certification of a state-law issue is before, not after, the district court has resolved the issue."); *Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir. 2008) ("There is a presumption against certifying a question to a state supreme court after the federal district court has issued a decision."); *Boyd Rosene & Assocs. v. Kansas Mun. Gas Agency*, 178 F.3d 1363, 1365 (10th Cir. 1999) ("Certification may well have been an appropriate option at some time earlier in this litigation. Now, however, neither this court nor the parties would reap any conservation of time, energy, or resources were this court to grant certification. Indeed, certifying this issue to the Oklahoma Supreme Court at this late hour would be inefficient and wasteful of the parties' and the federal courts' previously expended time, energy, and resources."); *Perkins v. Clark Equip. Co.*, 823 F.2d 207, 210 (8th Cir. 1987) ("The practice of requesting certification after an adverse judgment has been entered should be discouraged. Otherwise, the initial federal court decision will be nothing but a gamble with certification sought only after an adverse decision. Once a question is submitted for decision in the district court, the parties should be bound by the outcome unless other grounds for reversal are present. Only in limited circumstances should

certification be granted after a case has been decided."); *Cantwell v. University of Massachusetts*, 551 F.2d 879, 880 (1st Cir. 1977) ("We do not look favorably, either on trying to take two bites at the cherry by applying to the state court after failing to persuade the federal court, or on duplicating judicial effort.").[1]

We recognize, of course, that Rule 38 authorizes certification by a federal appellate court, and that in a prior case this Court accepted a certified question by the United States Court of Appeals for the Third Circuit even after the District Court entered judgment based on a prediction of Virgin Islands law. *See Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011). However, a certification by an appellate court is distinct from a certification by a trial court, in that—absent clear evidence to the contrary, *see, e.g.*, *Ball*, 184 P.3d at 466—we may permissibly infer that a federal appellate court will not certify a question to a state or territorial court of last resort unless the answer to that question will truly determine the outcome of the appeal, given the preference against federal appellate courts gratuitously addressing uncertain questions of state law if the appeal can be disposed of on other grounds.[2] *See, e.g.*, *Miller v. Premier Corp.*, 608 F.2d 973, 979 n.5 (4th Cir. 1979). In fact, in many cases a federal appellate court will state or imply that this is the case in its opinion. *Accord*, *Banks v. Int'l Rental & Leasing Corp.*, Nos. 08-1603, 08-2512, 2011 WL 7186340, at *1 (3d Cir. Apr. 19, 2011) (unpublished) (noting that court concluded certification to this Court was necessary "[a]fter

[1] That the certification in this case was requested by the Court *sua sponte* rather than on motion of one of the parties does not render these concerns about the effect of the timing of the certification on judicial economy any less valid. *See, e.g.*, *Sears, Roebuck & Co.*, 95 So.3d at 640.

[2] For this reason, our decision to decline to answer the certified questions from the District Court should not be construed as a holding that this Court would decline to answer the same questions if certified to it by the United States Court of Appeals for the Third Circuit.

reviewing the briefs and submissions of the parties" as well as "after hearing oral argument").

Under these particular circumstances, we are not prepared to utilize the Rule 38 certification procedure to resolve issues that may not necessarily be outcome-determinative, and that in any event could have been certified at a significantly earlier stage of the litigation, before the District Court issued a prediction of Virgin Islands law and the parties went through the expense of two jury trials based on that prediction. Therefore, we decline to answer the questions certified.[3]

Dated this 18th day of April, 2018.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

[3] Because we decline to answer the certified questions on procedural grounds without reaching the merits, neither the parties nor the District Court should infer that this Court agrees with or endorses the predictions of Virgin Islands law made by the District Court in its March 30, 2016 order.