For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ALICIA "CHUCKY" HANSEN, Appellant/Intervenor, **CAROLINE F. FAWKES, in her official capacity as Supervisor of Elections,** Appellant/Respondent, v. **ADELBERT M. BRYAN,** Appellee/Petitioner.	)	**S. Ct. Civ. No. 2017-0050** Re: Super. Ct. Civ. No. 144/2014 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Considered: February 13, 2018
Filed: April 20, 2018

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

APPEARANCES:

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Pro se.[1]

[1] Although Bryan entered his appearance in this matter, he did not timely file an appellate brief

OPINION OF THE COURT

HODGE, Chief Justice.

Appellants Alicia "Chucky" Hansen and Caroline F. Fawkes appeal from the Superior Court's April 21, 2017 opinion, which granted, in part, Appellee Adelbert M. Bryan's motion for costs and attorney's fees. For the reasons that follow, we affirm.

I. BACKGROUND

Because this matter has previously come before this Court, only the most relevant facts are summarized herein. On May 19, 2014, Bryan filed a petition with the Superior Court seeking the removal of Hansen—a candidate for the 30th Legislature—from the general election ballot because she did not meet the qualifications for office due to her 2007 conviction for willful failure to file an income tax return in violation of title 33, section 1524 of the Virgin Islands Code constituting a crime involving moral turpitude pursuant to section 6(b) of the Revised Organic Act, 48 U.S.C. § 1572(b). After the Superior Court denied the petition in a July 30, 2014 order, Bryan appealed that judgment to this Court. In an August 28, 2014 opinion, this Court determined that Hansen's conviction did constitute a crime involving moral turpitude, reversed the July 30, 2014 order, and directed the Superior Court to grant the petition on remand. *See Bryan v. Fawkes ("Bryan I")*, 61 V.I. 201 (V.I. 2014).

On September 11, 2014, Hansen timely filed a petition for rehearing with this Court pursuant to Rule 31 of the Virgin Islands Rules of Appellate Procedure, which this Court denied the next day on September 12, 2014. Two weeks later, on September 26, 2014, Bryan filed a motion for costs—including attorney's fees—for the *Bryan I* appeal with this Court, which

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with this Court.

Fawkes and Hansen separately opposed on October 6, 2014, and October 14, 2014, respectively. While the costs motion was pending, additional litigation occurred in the Superior Court, the United States District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and this Court with respect to whether Hansen should remain removed from the general election ballot in light of a September 3, 2014 pardon issued to her by the Governor of the Virgin Islands. Ultimately, this Court held, in an October 24, 2014 opinion, that Hansen's name could not be reinstated on the ballot because her nomination papers had been set aside and no mechanism existed to allow Hansen to file new nomination papers at such a late date. *See Bryan v. Fawkes ("Bryan II")*, 61 V.I. 416 (V.I. 2014). Shortly thereafter, this Court, in an October 29, 2014 order, referred Bryan's motion for costs to the Superior Court pursuant to Rule 30(b) of the Virgin Islands Rules of Appellate Procedure, which provides that "if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand."

On remand, Bryan filed an amended motion for costs with the Superior Court, which sought additional costs and attorney's fees stemming from the *Bryan II* proceeding, for a total request of $35,700.00 in attorney's fees and $587.63 in costs.[2] In an April 21, 2017 opinion, the Superior Court granted the motion in part, and held that Hansen and Fawkes were jointly and severally liable for $17,625.00 in attorney's fees and $363.70 in costs stemming from the *Bryan I* appeal. However, the Superior Court declined to award any attorney's fees or costs for the *Bryan II* appeal. Notably, the Superior Court emphasized that "[n]o application has ever been presented for an award of costs relative to the underlying action prosecuted in the Superior

[2] While Bryan has chosen to appear *pro se* in this appeal, he was represented by an attorney throughout the *Bryan I* and *Bryan II* proceedings.

Court," and that the cost and attorney's fee award was therefore entirely for appellate costs and fees. (J.A. 15 n. 1.)

Hansen and Fawkes timely filed notices of appeal with this Court, respectively, on May 19, 2017, and May 25, 2017. *See* V.I. R. APP. P. 5(a)(1), (3). Bryan has not appealed the Superior Court's decision to deny his costs and attorney's fees for the *Bryan II* appeal. Nor has he appealed from a second Superior Court opinion—also entered on April 21, 2017—which denied his motion to hold Fawkes in contempt. Therefore, the only issues before this Court as part of this appeal are Fawkes and Hansen's arguments that the Superior Court should not have awarded any attorney's fees or costs to Bryan.

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court exercises appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Since the Superior Court's April 21, 2017 opinion fully adjudicates the issue of attorney's fees and costs, and all other issues in the underlying matter have been resolved, this Court possesses jurisdiction over this appeal. *See Rojas v. Two/Morrow Ideas Enters., Inc.*, 53 V.I. 684, 691 (V.I. 2010) (orders entered fully adjudicating the issue of attorney's fees and costs and disposing of all other issues are final appealable orders).

"This Court reviews the Superior Court's ruling on a motion for attorney's fees and costs for abuse of discretion." *In re Guardianship of Smith*, 58 V.I. 446, 449 (V.I. 2013) (citing *Simpson v. Golden*, 56 V.I. 272, 277 (V.I. 2012)). "To the extent the review implicates an

interpretation of law, however, we review that interpretation *de novo*." *Id.*

B. Timeliness of Motion

In their appellate briefs, both Fawkes and Hansen argue that Bryan's September 26, 2014, motion for costs and attorney's fees in the *Bryan I* appeal was untimely. While they acknowledge that Rule 30(b) of the Virgin Islands Rules of Appellate Procedure provides that a bill of costs be filed "within 14 days after the entry of judgment," and that Bryan filed his motion exactly 14 days after this Court entered its September 12, 2014 order denying Hansen's petition for rehearing in *Bryan I*, Fawkes and Hansen maintain that the motion should have been filed within 14 days of this Court's original August 28, 2014 opinion.

We conclude that the timeliness argument is not properly before this Court. As noted earlier, Fawkes and Hansen correspondingly filed oppositions to Bryan's September 26, 2014 costs motion on October 6, 2014, and October 14, 2014. In each of those filings, Fawkes and Hansen argued that Bryan's motion was untimely on grounds that the time to file a motion for costs should be calculated from the date of the original opinion, rather than the date disposing of a petition for rehearing. Yet this Court—despite having the benefit of that argument—issued its October 29, 2014 order referring the matter to the Superior Court in accordance with Rule 30(b). Although the October 29, 2014 order did not expressly reject Fawkes and Hansen's timeliness argument, the very act of referring the matter of costs and attorney's fees to the Superior Court implicitly constituted a rejection of that argument. *See* V.I. R. APP. P. 30(b) ("The Supreme Court shall deny untimely bills of costs unless a motion showing extraordinary circumstances is filed with the bill."). Consequently, the timeliness of the September 26, 2014 costs motion in *Bryan I* is the law of the case, and shall not be disturbed, particularly after the Superior Court has already issued a decision based on this Court's October 29, 2014 order. *See Hodge v.*

Bluebeard's Castle, Inc., 62 V.I. 671, 688 (V.I. 2015).

In any case, Fawkes and Hansen's argument lacks merit. This Court has previously held that "the term 'judgment' [is] define[d] as '[a] court's *final determination* of the rights and obligations of the parties in a case.'" *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 615 (V.I. 2012) (emphasis in original) (quoting BLACK'S LAW DICTIONARY 918 (9th ed. 2009)). Although this Court's August 28, 2014 opinion disposed of the *Bryan I* appeal, that opinion could not have constituted a "final determination of the rights and obligations of the parties" while Hansen's timely filed petition for rehearing remained pending. After all, had this Court granted Hansen's petition, the rights and obligations of the parties would have changed, and Bryan would likely no longer be a prevailing party entitled to costs or attorney's fees.[3] This is consistent with this Court's treatment of motions for costs and attorney's fees pursuant to title 5, section 541 of the Virgin Islands Code, in that such motions are not ripe for consideration by the Superior Court if an appeal has been taken, since the prevailing party may very well change as a result of the appeal. *See V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 280-81 (V.I. 2008). To hold otherwise would encourage piecemeal litigation, with parties filing motions for costs while petitions for rehearing remain pending, which may then become

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[3] In her brief, Fawkes cites to two cases issued by the Florida District Court of Appeals in which it held that post-judgment motions filed in the trial court do not toll the time for filing a motion for attorney's fees in the trial court. *See Clampitt v. Britts*, 897 So.2d 557 (Fla. Dist. Ct. App. 2005); *Manimal Land Co. v. Randall E. Stofft Architects, P.A.*, 889 So.2d 974 (Fla. Dist. Ct. App. 2004). Because these cases involve trial—rather than appellate—attorney's fees and involve interpretation of a Florida Rule of Civil Procedure with different language than Virgin Islands Rule of Appellate Procedure 30, they do not form a sufficient basis for this Court to overturn or reconsider its prior precedents.

moot if rehearing is granted.[4] Therefore, we reject Fawkes' and Hansen's argument that the September 26, 2014 motion for costs and attorney's fees filed in *Bryan I* was untimely.

C. Relationship Between 5 V.I.C. § 541 and 18 V.I.C. § 412

In their respective appellate briefs, Fawkes and Hansen maintain that Bryan should not have received costs and attorney's fees under 5 V.I.C. § 541 because the underlying Superior Court action was brought pursuant to 18 V.I.C. § 412. Section 541 provides that certain costs, including attorney's fees, may be recovered in civil actions. But according to Fawkes and Hansen, section 412 precludes an award of costs and attorney's fees because the statute only provides for payment of costs "[i]n case a petition under this section is dismissed," and should govern to the exclusion of section 541 because it is the more specific statute.

As a threshold matter, we emphasize that Bryan did not seek attorney's fees and costs pursuant to section 541. Rather, he sought such attorney's fees pursuant to Rule 30 of the Virgin Islands Rules of Appellate Procedure, which provides, in pertinent part, that "if a judgment is reversed . . . reasonable costs shall be taxed against the appellee or the respondent unless otherwise ordered," and further provides that "reasonable costs . . . may include attorney's fees." V.I. R. APP. P. 30(a). Significantly, the Superior Court recognized that "[n]o application has ever been presented for an award of costs relative to the underlying action prosecuted in the Superior

[4] In her brief, Hansen cites to *Beachside Assocs., LLC v. Fishman*, 54 V.I. 418 (V.I. 2010) as an example of a situation where the prevailing party moved for costs at the same time the unsuccessful party sought rehearing. However, *Beachside Assocs.* was decided by this Court prior to the 2011 amendments to the Rules of Appellate Procedure, which amended Rule 30 to mandate that motions for costs that request attorney's fees be referred to the Superior Court instead of being considered by this Court in the first instance. More importantly, as the Superior Court correctly noted in its April 21, 2017 opinion, in *Beachside Assocs*. "the Supreme Court considered the denial of the motion for rehearing as a necessary prerequisite to its determination that Beachside was the prevailing party entitled to an award of costs." (J.A. 19.)

Court." (J.A. 15 n. 1.) Therefore, the only costs and attorney's fees awarded by the Superior Court in its April 21, 2017 opinion was for the *Bryan I* appeal, the entitlement to which is governed by Rule 30.[5] Because Rule 30 governs costs and attorney's fees on appeal, and Bryan exclusively sought appellate costs and fees, that is the authority we must consider in the first instance.

Nevertheless, this Court has repeatedly held that it "will not award on appeal what is strictly unavailable at the trial level," and thus "the availability of attorney's fees under Rule 30 turns on whether the [party] would have been entitled to an award of attorney's fees if those costs had been incurred in proceedings before the [trial court]." *Kalloo v. Estate of Small*, 62 V.I. 571, 578 (V.I. 2015) (citing *Williams v. United Corp.*, S. Ct. Civ. No. 2007-0118, 2009 V.I. Supreme LEXIS 1, at *6 (V.I. Jan. 7, 2009) (unpublished)). Therefore, even though Bryan did not seek costs or attorney's fees for the Superior Court proceedings, we must determine whether Bryan was entitled to costs and fees at the trial-level in order to decide if he was entitled to costs and fees on appeal.

"It is well-established that when two statutes touch on the same subject, we give effect to both unless doing so would be impossible." *Moses v. Fawkes*, 66 V.I. 454, 471 (V.I. 2017) (quoting *Haynes v. Ottley*, 61 V.I. 547, 561 (V.I. 2014) (internal quotation marks omitted)). "[W]hen two statutes cover the same situation, the more specific statute takes precedence over the more general one, unless it appears that the Legislature intended for the more general to control." *V.I. Public Servs. Comm'n v. V.I. Water & Power Auth.*, 49 V.I. 478, 485 (V.I. 2008).

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[5] In fact, Fawkes and Hansen's exclusive reliance on section 412 as the basis for the costs and attorney's fees award to the exclusion of Rule 30 is puzzling, given that section 412 does not contain a limitations period for moving for costs and attorney's fees and the 14-day limitation period that they claim Bryan violated is found exclusively in Rule 30.

In this case, section 412 and section 541 touch on the same subject, but do not cover the same situation. As the Superior Court correctly observed in its April 21, 2017 opinion, "[section 541] is silent as to an award of costs where, as here, a meritorious petition is filed." (J.A. 20.) While Fawkes and Hansen argue that such silence is tantamount to a legislative finding that costs may never be awarded, this Court has repeatedly held that when a specific statute is silent on a matter, we turn to any general statutes that would otherwise apply. *See, e.g.*, *Haynes*, 61 V.I. at 568 (holding that section 412 did not operate to the exclusion of the general jurisdiction statute codified as 4 V.I.C. § 76); *Bryan I*, 61 V.I. at 222 n.12 (when statute is silent as to who may file a petition, courts apply general rule that any individual may do so); *V.I. Narcotics Strike Force v. Pub. Emps. Relations Bd.*, 60 V.I. 204, 212 (V.I. 2013) (rejecting argument that absence of any explicit statutory language granting agency authority to initiate an enforcement action is tantamount to a denial of such authority); *Duggins v. People*, 56 V.I. 295, 305 (V.I. 2012) (when a criminal statute is silent as to mens rea, it is evidence that the Legislature intended for the general intent statute to control); *accord Gerace v. Bentley*, 65 V.I. 289, 300 (V.I. 2016) ("And while the Legislature did not include a limitations period on when a defendant may request security, this does not create an ambiguity as to when a demand for security may be filed; rather, the fact that the statute is silent is strong evidence that the Legislature intended for such a demand to be made at any time."). Therefore, since section 412 provides for a cost award if a petition is dismissed, but is silent with respect to situations where a petition is not dismissed, the statutes may easily be harmonized by having section 412 control instances where a petition is dismissed, and by having section 541 govern instances where petitions are not dismissed.

Importantly, this harmonization of section 412 and section 541 would not render the costs provision of section 412 a nullity. Section 412 provides that if a petition challenging a

candidate's nomination papers "is dismissed, the court shall make such order as to the payment of the cost of the proceeding . . . as it shall deem just." 18 V.I.C. § 412. This differs from section 541—which provides that costs "may be allowed in a civil action," 5 V.I.C. § 541(a), in "such sums as the court in its discretion may fix," 5 V.I.C. § 541(b)—in that the provision uses mandatory rather than discretionary language,[6] and the Superior Court is directed to use a different standard—that the costs be "just"—than found in section 541. Thus, because Bryan could have recovered attorney's fees and costs pursuant to section 541, the Superior Court committed no error when it awarded him fees and costs pursuant to Rule 30.

D. Purported "First Impression" Exception

Hansen and Fawkes also argue that the Superior Court erred when it awarded attorney's fees and costs to Bryan because the matter litigated in *Bryan I* was an issue of first impression in the Virgin Islands. To support this claim, Hansen and Fawkes cite to judicial decisions issued by courts in other jurisdictions in which such courts declined to award attorney's fees in cases raising novel issues. However, neither Rule 30 nor section 541 contains a "first impression" exception to the award of attorney's fees and costs. Significantly, the Virgin Islands is the only

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[6] In her brief, Hansen argues that "if the Legislature intended that the general costs statute of Section 541 apply to any and all 'prevailing parties,' the Legislature would not have taken the time and effort to specifically draft provisions on costs and fees in other statutes, such as in the Wrongful Discharge Act . . . and the V.I. Civil Rights Act." (Hansen Br. 13.) However, the attorney's fees provisions of each of these statutes provide that "[t]he court in such action <u>shall award</u> to the plaintiff reasonable attorney's fees and costs of the action, in addition to any judgment in favor of the plaintiff." 24 V.I.C. § 79; 10 V.I.C. § 64(10) (emphasis added). Therefore, these statutes—like the provision in section 412 providing that "the court shall make such order as to the payment of costs"—serve to modify the general rule codified in section 541 by making costs and attorney's fees mandatory rather than discretionary. This provides further demonstration that the Legislature intends for section 541 to operate as a general rule in all civil cases, to be deviated from only in cases where the Legislature enacts a statute imposing a different standard.

jurisdiction in the United States that has abrogated the "American Rule" against shifting fees to the losing party. *See Prosser v. Prosser*, 40 F. Supp. 2d 663, 671 (D.V.I. App. Div. 1998) ("In the courts of the Virgin Islands . . . the American Rule against shifting fees to the losing party does not apply."); *Kalloo*, 62 V.I. at & 579 n.5 ("And while numerous federal and state statutes provide exceptions to the American Rule, most commonly in civil rights statutes . . . it does not appear that any other jurisdiction has abrogated the rule against shifting fees to the losing party in civil cases to the extent the Virgin Islands has through 5 V.I.C. § 541."). Therefore, the case law Hansen and Fawkes have cited from other United States jurisdictions is inapposite to this case, given that all those jurisdictions operate under the American Rule and do not have a statute like section 541 which makes awards of attorney's fees and costs in civil cases the norm rather than the exception. *See Ottley v. Estate of Bell*, 61 V.I. 480, 494 n.10 (V.I. 2014) (Virgin Islands courts should consider case law from courts of other jurisdictions to interpret a Virgin Islands statute only when the statutes from those jurisdictions are substantially similar).

In any event, we decline to create an "issue of first impression" exception to either Rule 30 or, by extension, section 541. Because this Court was only established in 2007 and has held that decisions of the United States Court of Appeals for the Third Circuit and the United States District Court's Appellate Division are not binding on it, most appeals to this Court involve at least one issue of first impression. Therefore, prohibiting the recovery of costs and attorney's fees in appeals involving issues of first impression—at least for the next decade, if not longer—would be equivalent to imposing a categorical ban on recovery of appellate costs and attorney's fees. More importantly, cases involving issues of first impression are perhaps the cases where an attorney's fees award—when authorized—most needed, since such matters inherently involve significantly more work and preparation than ordinary appeals. *See, e.g.*, *Hummel v. Hall*, No.

6:11-CV-00012, 2012 WL 4458450 (W.D. Va. July 18, 2012) (unpublished); *Gardner v. Schwarzenegger*, No. A125000, 2010 WL 602534 (Cal. Ct. App. Feb. 22, 2010) (unpublished). This is particularly true when—as here—the underlying claim is not for money damages, but to challenge an illegal government action, and the categorical denial of attorney's fees and costs would discourage attorneys from taking such cases in the absence of an economic incentive. *See, e.g.*, *Alaska Conservation Foundation v. Pebble Ltd. Partnership*, 350 P.3d 273 (Alaska 2015). Therefore, we reject Fawkes' and Hansen's argument that attorney's fees and costs cannot be awarded in cases raising issues of first impression.

E. Hansen's Status as an Intervenor

Hansen also argues that the Superior Court erred when it made her jointly and severally liable with Fawkes for the costs and attorney's fees award because of her status as an intervenor in the underlying litigation. However, we again recognize that Rule 30 of the Virgin Islands Rules of Appellate Procedure is the controlling authority in this matter, since Bryan solely sought appellate attorney's fees and costs. While Hansen appeared as an intervenor in the Superior Court proceedings, she appeared as an appellee in the *Bryan I* appeal in this Court. Importantly, Rule 30 expressly provides that "if a judgment is reversed . . . reasonable costs shall be taxed against the appellee or the respondent unless otherwise ordered." V.I. R. APP. P. 30(a) (emphasis added). That Hansen originally entered the litigation as an intervenor in the Superior Court is irrelevant, in that she chose to participate as an appellee in the *Bryan I* appeal in this case.[7]

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[7] Notably, no provision of the Virgin Islands Rules of Appellate Procedure mandates an intervenor in the trial court proceedings to participate as an appellee on appeal. In fact, Hansen could have participated in the *Bryan I* and *Bryan II* appeals as an amicus curiae or intervenor

We recognize that we previously held that "the availability of attorney's fees under Rule 30 turns on whether the [party] would have been entitled to an award of attorney's fees if those costs had been incurred in proceedings before the [trial court]." *Kalloo*, 62 V.I. at 578. The *Kalloo* precedent, however, is inapposite to this case, in that Hansen assumed a greater role on appeal—that of an appellee—than she did in the trial court proceedings. But even if we were inclined to consider extending the rule announced in *Kalloo*, the result would not change, since Bryan could recover costs from Hansen under section 541. Although Hansen appeared as an intervenor rather than a defendant or respondent, we have already held that "[o]nce a court grants intervention . . . the intervenor is treated as if it [it] were an original party and has equal standing with the original parties." *Bryan I*, 61 V.I. at 221 (quoting *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1246 (11th Cir. 2006)). Because of this, courts have cautioned that "the possibility that the plaintiff will be able to obtain relief against the intervenor-defendant is part of the 'price' paid for intervention." *District of Columbia v. Merit Systems Protection Board*, 762 F.2d 129, 132 (D.C. Cir. 1985). Moreover, section 541 does not limit from whom a prevailing party may seek a recovery of attorney's fees and costs—the statute simply provides that the court "may fix by way of indemnity for [the prevailing party's] attorney's fees in maintaining the action or defenses thereto." 5 V.I.C. § 541(b). Even the most cursory review of the record in *Bryan I* reveals that Bryan could not have maintained his action without addressing claims raised by Hansen, several of which had not also been raised by Fawkes.[8] Consequently, the Superior

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rather than as an appellee, which would have insulated her from liability for appellate costs and attorney's fees under Rule 30. *See* V.I. R. App. P. 15(a), 23.

[8] In her appellate brief, Hansen argues that it would be unjust to have costs and attorney's fees taxed against her when this Court held in *Bryan I* that she could not assert the affirmative defense of standing, which had been waived by Fawkes. However, Hansen did in fact raise

Court committed no error when it assessed attorney's fees and costs against Hansen.

F. Reasonableness of Attorney's Fee Award

Finally, Hansen argues that the $17,625.00 attorney's fee award and $363.70 cost award were not reasonable because the Superior Court awarded the entire amount of costs and fees requested by Bryan for the *Bryan I* appeal, except for a 0.90-hour reduction for ministerial tasks. To support this claim, Hansen cites to a single case from the Superior Court that interpreted section 541 to provide "that only a fair and reasonable *portion* of costs and fees requested should be awarded to a prevailing party, if any are allowed at all, in the Court's discretion." (Hansen Br. 21) (emphasis in original) (citing *Isaac v. Crichlow*, Super. Ct. Civ. No. 065/2012, 2016 WL 5468371, at *1 (V.I. Super. Ct. Sept. 29, 2016) (unpublished)).

We disagree. First, the controlling authority—Rule 30—does not provide that a prevailing party may only receive a portion of costs and fees, but instead states that a prevailing party is entitled to "reasonable costs." Even if we were to turn to section 541 to determine the meaning of "reasonable costs" in Rule 30, that statute provides, in pertinent part:

> The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto; provided, however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed or the defense is frivolous.

5 V.I.C. § 541(b).

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several new claims in the *Bryan I* appeal that were not raised by Fawkes and which were considered by this Court on the merits, such as her claim that Bryan was only entitled to a remand for further proceedings rather than entry of judgment in his favor, *see Bryan I*, 61 V.I. at 239 n. 30, as well as all of the claims in her September 11, 2014 petition for rehearing, which was filed by her and not Fawkes.

This Court has held that the Superior Court should exercise its discretion by considering factors including, but not necessarily limited to, the prevailing market rates for attorneys in the Virgin Islands and the difficulty of the issues of involved. *Mahabir v. Heirs of George*, 63 V.I. 651, 668 (V.I. 2015). Importantly, nothing in the statute purports to mandate that the Superior Court is precluded from granting the full amount of attorney's fees and costs requested. And while this Court has recognized that reductions may be necessary and appropriate in most cases, it has also recognized that sometimes a prevailing party may be entitled to recover the full amount requested. *See Kalloo*, 62 V.I. at 584 n. 11 ("[A]ttorney's fees awards should represent a fair and reasonable portion of the attorney's fees incurred in the prosecution or defense of the action, and not necessarily the whole amount charged by the attorney.") (emphasis added).

Here, Hansen has not challenged the hourly rate charged by Bryan's counsel in the *Bryan I* appeal. Nor has she argued that any particular billing entry should have been disallowed. Rather, Hansen simply maintains that "[t]he Superior Court erred by not reducing the fee award to a small portion of what was requested by Bryan." (Hansen Br. 21.) Because neither Rule 30 nor section 541 mandates that an otherwise reasonable request for costs and fees be arbitrarily reduced in such a manner, we reject Hansen's argument that the Superior Court abused its discretion by awarding virtually all of the costs and fees Bryan requested for the *Bryan I* appeal.[9]

III. CONCLUSION

Because this Court referred the costs motion in *Bryan I* to the Superior Court rather than

[9] In fact, adopting Hansen's preferred construction of Rule 30 and section 541 would only serve to encourage attorneys to submit inflated bills of cost, since even a reasonable bill of costs would be required to be arbitrarily reduced by a court. *See Sonson v. People*, 59 V.I. 590, 598 (V.I. 2012) ("This Court will construe [a] statute sensibly and avoid interpretations which would yield absurd results.").

denying it as untimely, the law of the case doctrine precludes Hansen and Fawkes from challenging the timeliness of that motion as part of this appeal. Moreover, that 18 V.I.C. § 412 is silent with respect to awards of costs and fees when a petition is not dismissed is not indicative that the Legislature intended to preclude the application of 5 V.I.C. § 541 to such proceedings. The Superior Court also committed no error when it declined to recognize a "first impression" exception to the award of costs and fees, and properly ordered Hansen jointly liable to Bryan for costs and fees given her decision to intervene in the litigation. Additionally, Hansen has failed to point to any instance in which the Superior Court abused its discretion with respect to the amount of the costs and fees award. Accordingly, we affirm the Superior Court's April 21, 2017 opinion awarding $17,625.00 in attorney's fees and $363.70 in costs to Bryan.

Dated this 20th day of April, 2018.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court