

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF)
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JOHN B. WEEKES, SR.

DECEASED

CASE NO. ST-12-PB-0000149

ACTION FOR: INTESTATE
ADMINISTRATION

**NOTICE OF ENTRY OF
MEMORANDUM OPINION AND
ORDER**

TO: RICHARD BOURNE-VANNECK, ESQ.
DEBRA WEEKS ALLEN, PRO SE
JUDGES & MAGISTRATES, SUPERIOR COURT
ORDER BOOK
IT DIVISION

Please take notice that on September 25, 2015 a(n) MEMORANDUM OPINION AND
ORDER dated September 24, 2015 was entered by the Clerk of the Court in the above-entitled
matter.

Dated: September 25, 2015

Estrella George
ACTING CLERK OF THE COURT

By 

BRENDA MONSANTO
COURT CLERK SUPERVISOR

² The motion was filed to protect the estate's property from being lost, injured or depreciated.

demonstrated that she was qualified to serve as a special administratrix and vacated Petitioner's appointment.³ On June 24, 2013, the Magistrate held a hearing concerning the Amended Petition for Administration of the Estate. Respondent's counsel again provided evidence establishing that Petitioner was not a resident of the Virgin Islands. The Magistrate ruled that Petitioner was disqualified to serve as an administratrix pursuant to Title 15 V.I.C. § 235 and dismissed⁴ the Amended Petition with prejudice on June 29, 2013. Petitioner filed a motion for reconsideration on August 9, 2013, which the Court denied on January 27, 2014. Petitioner then filed her appeal on February 3, 2014, moving to vacate the January 27, 2014, Order.

STANDARD

The Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrates' exercising their original jurisdiction as provided for at Title 4 V.I.C. § 123."⁵ The Superior Court reviews a Magistrate's factual determinations for "clear error"⁶ and legal findings are "afforded plenary review."⁷

ANALYSIS

Title 15 V.I.C. § 235(a) establishes that "the following persons are not qualified to act as executors or administrators: nonresidents of the Virgin Islands, minors, judicial officers of the district

³ A written order of the opinion was issued on May 31, 2013.

⁴ Although the actual order states that the Amended Petition was "denied with prejudice," (See June 29, 2013, Order at 3), the January 27, 2014, Order clarifies that the Amended Petition was "dismissed" on June 29, 2013. See January 27, 2014, Order at 4. Accordingly, this Court has jurisdiction to hear this appeal because the order being challenged is a final judgment.

⁵ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

⁶ Super. Ct. R. 322.3(b). Findings of fact are "clearly erroneous where they are completely devoid of minimum evidentiary support or bear[] no rational relationship to the supportive evidentiary data." (internal quotation marks omitted) *Cascen v. People of the Virgin Islands*, 60 V.I. 392, 417, 2014 V.I. Supreme LEXIS 3, 43, 2014 WL 68882 (2014) (quoting *In re Estate of Small*, 57 V.I. 416, 430 (2012); see *Yusuf v. Hamed*, 59 V.I. 841, 857, 2013 WL 5429498, at *7 (2013)).

⁷ "Plenary review means applying the same legal standard as the trial court to the same record." *Henry v. Denney*, 55 V.I. 986, 991 (V.I. 2011).

court, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude.”⁸

In support of her contention that she is a resident of the Virgin Islands, Petitioner attached several documents to her motion for reconsideration, including a copy of her Virgin Islands driver’s license (issued February 27, 2013); a copy of her Virgin Islands voter’s registration card (issued February 27, 2013); a copy of a warranty deed for property owned in St. Thomas (dated January 26, 1988, and recorded February 4, 1988); a copy of recent property tax receipts (dated 2012); and evidence of a bank account (that was active between July 3, 2013, and August 3, 2013).

The Magistrate determined that Petitioner’s motion for reconsideration had procedural defects because none of the proffered evidence qualified as “newly discovered evidence” under Federal Rule of Civil Procedure 60(b).⁹ In addition, the Magistrate found that the evidence also failed to establish that Petitioner was a resident of the Virgin Islands. The warranty deed and tax bills did not show that there was an improvement on the St. Thomas property in which Petitioner could reside.¹⁰ Although Petitioner’s bank statement indicated that Petitioner had an account in a local bank, the statement also listed Petitioner’s mailing address as a Florida address.¹¹ Moreover, Petitioner’s driver’s license and voter card were issued after the Amended Petition was filed.

⁸ Given that Decedent died without a will, the exceptions to 15 V.I.C. § 235(a) established in 15 V.I.C. § 235(b) and (c) are inapplicable.

⁹ “Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.”

¹⁰ See January 27, 2014, Order by the Magistrate, at 5; see also Exhibit D to Exhibit 11 to Respondent’s appeal brief.

¹¹ See January 27, 2014, Order by the Magistrate, at 5; see also Exhibit E to Exhibit 11 attached to Respondent’s appeal brief.

Furthermore, the Articles of Incorporation for Petitioner's business, Sweet De-Lights Bakery, Inc., established that Petitioner's residence was located at 3472 NE 1st Street, Homestead, FL.¹² In addition, the annual reports for Sweet De-Lights Bakery, Inc., indicate that the corporation's principle place of business was in Florida.¹³ Most importantly, Petitioner was the president and registered agent of the corporation and her address was listed as the Homestead, FL address.¹⁴

This Court finds that the Magistrate did not commit reversible error by disqualifying Petitioner as the special administratrix of decedent's estate and dismissing the Amended Petition. There was ample evidence before the Magistrate establishing that Petitioner was a resident of Florida at the time she filed the Petition and Amended Petition and thereafter. Even Petitioner's bank statement that she submitted to establish that she was a resident of the Virgin Islands actually indicates she was a resident of Florida. Given that Petitioner failed to establish that she was a resident of the Virgin Islands, she did not qualify to be a special administratrix of Decedent's estate under Title 15 V.I.C. § 235(a). Accordingly, the Magistrate's decision dismissing the Amended Petition for Administration of Estate will be affirmed.

In addition, by moving to vacate the January 27, 2014, Order,¹⁵ Petitioner also challenged the Magistrate's denial of her application for compensation for the work she performed as special administratrix. However, Petitioner did not present any argument in her brief indicating that the Magistrate committed clear error by denying her application for compensation.

Although the Supreme Court of the Virgin Islands has "traditionally given *pro se* litigants greater leeway where they have not followed the technical rules of pleading and procedure, self-representation is not a license [excusing compliance] with relevant rules of procedural and substantive law."¹⁶ Pursuant

¹² See January 27, 2014, Order by the Magistrate, at 4; see also June 29, 2013, Order by the Magistrate, at 2; Exhibits 1, 2, and 3 of Exhibit 7 attached to Respondent's appeal brief.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Petitioner moved to vacate the January 27, 2014, order in both her petition for review and her appellate brief.

¹⁶ (internal quotation marks omitted) *Simpson v. Golden*, 56 V.I. 272, 280 (2012).

to Superior Court Rule 322.1(i)(E)(v), the appellate brief of the petitioner “shall contain the contentions of the petitioner with respect to the issues presented or challenged and the reasons supporting such challenge, with citations to the authorities, statutes, and parts of the record relied on.” As a result, Petitioner’s argument concerning the Magistrate’s denial of her application for compensation is deemed to be waived.¹⁷

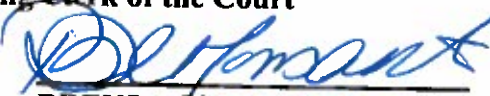
Accordingly, the Magistrate’s January 27, 2013, Order is affirmed in its entirety. An Order consistent with this Opinion shall follow.

DATED: September 24, 2015


DEBRA S. WATLINGTON
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By:


BRENDA MONSANTO
Court Clerk Supervisor, 9/24/15

¹⁷ See, e.g., *Simpson*, 56 V.I. 272 at 280-281. (“The rules that require a litigant to brief and support his arguments, both here and before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument before it is presented to this Court. That requirement permits the Superior Court to develop the record so that, in the event of an appeal, this Court can then make informed rulings. That requirement also limits the number of issues appealed by providing the Superior Court the opportunity to address and correct any purported mistakes by bringing them to its attention first. More importantly, however, the rule requiring briefing and support of all arguments to this Court gives opposing parties the due process they deserve on appeal, in that they are not ambushed by unbriefed, unargued, and unsupported claims without any opportunity to respond. Therefore, *Simpson* waived the only question ... raised in this appeal by failing to argue it.”).

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

**IN THE MATTER OF THE ESTATE OF
JOHN B. WEEKES SR, a/k/a PETER WEEKES
a/k/a JOHN B. WEEKES,**

Deceased,

DEBRA ALLEN,

**Petitioner
On Review,**

vs.

MARSHA WEEKES WILLIAMS,

**Respondent
On Review.**

CASE NO. ST-12-PB-149

ORDER

The Court having issued a Memorandum Opinion on this date, it is

ORDERED that the Magistrate's January 27, 2014, Order is **AFFIRMED**; and it is

ORDERED that Petitioner's appeal is **DISMISSED with prejudice**; and it is

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be direct to the parties, counsel of record, and to the Superior Court's IT Division.

DATED: September 24, 2015


DEBRA S. WATLINGTON
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By:


BRENDA MONSANTO
Court Clerk Supervisor, 9/24/15