Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

VALERIE L. STILES,
Appellant/Intervenor,

v.

JOHN P. YOB, ERICA L. YOB, ETHAN EILON, and LINDSEY EILON,
Appellees/Plaintiffs,

CAROLINE FAWKES, IN HER OFFICIAL CAPACITY AS SUPERVISOR OF ELECTIONS, VIRGIN ISLANDS BOARD OF ELECTIONS AND THE BOARD OF ELECTIONS, DISTRICT OF ST. THOMAS-ST. JOHN, and GOVERNMENT OF THE VIRGIN ISLANDS.
Nominal Appellees/Defendants.

S. Ct. Civ. No. 2016-0027
Re: Super. Ct. Civ. No. 114/2016 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Kathleen Y. Mackay

Considered and Filed: June 8, 2016

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

APPEARANCES:

Edward L. Barry, Esq.
St. Croix, U.S.V.I.
Attorney for Appellant,

J. Russell B. Pate, Esq.
The Pate Law Firm
St. Thomas, U.S.V.I.
Attorney for Appellees John P. Yob, Erica L. Yob, Ethan Eilon, and Lindsey Eilon,

Caroline Fawkes
St. Croix, U.S.V.I.
Pro se.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a notice of appeal filed by Valerie L. Stiles, who received permission to intervene in *Yob v. Fawkes*, Super. Ct. Civ. No. 114/2016 (STT). In her notice of appeal, Stiles states that she is appealing from the Superior Court's April 25, 2016 order denying her motion for leave to file a superseding amended answer and counterclaim, as well as a May 11, 2016 order denying her motion for reconsideration of that order. For the reasons that follow, we dismiss this appeal for lack of jurisdiction.

I. BACKGROUND

On March 9, 2016, John P. Yob, Erica L. Yob, Lindsey Eilon, and Ethan Eilon sued the Supervisor of Elections—Caroline Fawkes—as well as the Virgin Islands Joint Board of Elections and the Board of Elections for the St. Thomas-St. John District. In their verified complaint, the Yobs and Eilons challenged Fawkes's decision to remove them from the list of electors for the Election District of St. Thomas and St. John for purportedly not complying with the residency requirements set forth in 18 V.I.C. § 262. Specifically, they argued that Fawkes had misinterpreted the statute to impose a 90 day waiting period prior to qualifying for registration as an elector, and that, in the alternative, a 90 day waiting period was unconstitutional. On the same day, they filed a motion for a temporary restraining order enjoining Fawkes and the Boards of Elections from declaring them ineligible to vote, since revoking their voter registrations could interfere with their candidacies to serve as at-large delegates to the Republican National Convention, who would be selected at the Virgin Islands Republican Caucus to be held on March 10, 2016.

The Superior Court granted the temporary restraining order on March 10, 2016. On March 17, 2016, Stiles filed a motion to intervene in the matter, which the Superior Court granted on

March 29, 2016. On the same day, the Superior Court converted the temporary restraining order into a preliminary injunction. Stiles filed an "Expedited Motion for Leave to File Superseding Amended Answer in Intervention and Counterclaim" on April 11, 2016, which the Superior Court summarily denied in an April 25, 2016 order without explaining its reasoning. Subsequently, Stiles filed a motion for reconsideration of the April 25, 2016 order, which the Superior Court denied on May 11, 2016. Although the Superior Court stated that it would issue an opinion explaining its basis for denying Stiles's motion, it has not yet done so.

On May 23, 2016, Stiles filed a document captioned "Expedited Motion for Rule 54(b) Certification, Alternative Motion for Certification; Alternative Motion for Certification Under 4 V.I.C. § 33(c)." The Superior Court, in a May 26, 2016 order, stated that it was certifying its April 25, 2016 and May 11, 2016 orders for immediate appeal under Federal Rule of Civil Procedure 54(b), which it concluded were applicable through Superior Court Rule 7. However, the Superior Court failed to certify either of these orders for interlocutory appeal under 4 V.I.C. § 33(c).

Stiles filed a notice of appeal with this Court on May 27, 2016, citing the Superior Court's certification under Federal Rule 54(b). However, this Court, in a June 1, 2016 order, noted that it had previously decided that Federal Rule 54(b) does not apply to proceedings in this Court, and cannot be invoked to transform an otherwise non-final judgment into one that is immediately appealable as of right. Consequently, this Court directed the parties to file briefs on the issue of whether this appeal should be dismissed for lack of jurisdiction.[1] Both parties timely filed their briefs as of June 3, 2016, and thus this matter is ripe for a decision.

[1] In our June 1, 2016 order, this Court further noted that Stiles was the only individual to file a notice of appeal, and that none of the plaintiffs or defendants to the underlying lawsuit sought to appeal any order to this Court. Moreover, this Court noted that it appeared that Stiles sought to impermissibly enlarge the issues beyond those that had been raised by the principal parties. *Bryan v. Fawkes*, 61 V.I. 201, 221 (V.I. 2014). Although this Court also directed the

II. JURISDICTION

Prior to considering the merits of an appeal, this Court must first determine if it has appellate jurisdiction over the matter. *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't*, 50 V.I. 276, 279 (V.I. 2008). "The Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." 4 V.I.C. § 32(a). "Section 32 embodies the final judgment rule, which generally requires a party 'to raise all claims of error in a single appeal following final judgment on the merits.'" *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010) (quoting *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315 (V.I. 2007)).

A final judgment is "one that ends the litigation on the merits and leaves nothing to do but execute the judgment." *Rojas v. Two/Morrow Ideas Enters., Inc.*, 53 V.I. 684, 691 (V.I. 2010) (quoting *V.I. Gov't Hosps. & Health Facilities Corp.*, 50 V.I. at 279). In this case, the Superior Court itself recognized in its May 26, 2016 order that its April 25, 2016 and May 11, 2016 orders had not terminated the litigation; in fact, it noted that it still had not issued its opinion providing the reasons for denying Stiles's April 11, 2016 motion. Consequently, the April 25, 2016 and May 11, 2016 orders are clearly not final judgments for purposes of section 32. [2]

parties to brief the issue of whether Stiles, as an intervenor, could bring this appeal, we need not resolve this issue given our conclusion that we otherwise lack jurisdiction.

[2] In its May 26, 2016 order, the Superior Court described its earlier rulings as "in practical effect a final adjudication on all claims presented by Stiles." *Yob v. Fawkes*, Super. Ct. Civ. No. 114/2016, slip op. at 2 (V.I. Super. Ct. May 26, 2016) (unpublished). However, this Court reviews the denial of a motion to amend a pleading only for abuse of discretion. *Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 264 (V.I. 2012). When—as here—the Superior Court issues a ruling that is subject to a deferential standard of review without providing any reasoning for its decision, it is not possible for this Court to determine whether the Superior Court abused its discretion, and the only possible remedy is to remand the matter to the Superior Court for it to issue its findings. *See, e.g.*, *Turnbull v. Turnbull*, S. Ct. Civ. No. 2009-0092, 2011 V.I. Supreme LEXIS 4, at *16 (V.I. Mar. 1, 2011) (unpublished). Since the Superior Court has promised an opinion explaining its decision, but has not yet issued one, the practical finality exception to the final judgment rule cannot apply. *See SBRMCOA, LLC v. Beachside Assocs., LLC*, S. Ct. Civ. No. 2015-0053, 2015 V.I.

Nevertheless, the Superior Court invoked Federal Rule of Civil Procedure 54(b) to purportedly certify those orders as final, primarily because "prompt, expedited appellate review of the limited issues [Stiles] proposes to appeal" was warranted "due to the time constraints imposed by the impending Republican National Convention (scheduled for July 18-21, 2016)." *Yob v. Fawkes*, Super. Ct. Civ. No. 114/2016, slip op. at 2-3 (V.I. Super. Ct. May 26, 2016) (unpublished). The Superior Court invoked Federal Rule 54(b) through Superior Court Rule 7, which provides that "[t]he practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith . . . the Federal Rules of Civil Procedure . . . ."

This Court has repeatedly questioned whether Superior Court Rule 7 represents a valid exercise of rule-making authority under the Revised Organic Act of 1954. *See, e.g.*, *Vanterpool v. Gov't of the V.I.*, 63 V.I. 563, 576-82 (V.I. 2015); *Percival v. People*, 62 V.I. 477, 485 n.1 (V.I. 2015); *Estick v. People*, 62 V.I. 604, 619 n.7 (V.I. 2015). However, regardless of Superior Court Rule 7's validity, this Court has expressly held that no rule adopted by the Superior Court may limit or expand this Court's review on appeal. *Tindell v. People*, 56 V.I. 138, 150 n.12 (V.I. 2012). In fact, this Court has already held that a purported certification under Federal Rule of Civil Procedure 54(b) does not make an order immediately appealable to this Court, but may—at best—merely "inform" this Court's consideration of whether the order qualifies as a final judgment under section 32 or may be appealed under one of the judicially-created exceptions to the final judgment

Supreme LEXIS 42, at *10-11 (V.I. Dec. 28, 2015) (unpublished) (noting that the practical finality rule only applies when the remaining issues are "purely ministerial").

rule.[3] *First Am. Dev. Group/Carib, LLC v. WestLB AG*, S. Ct. Civ. No. 2012-0023, 2012 V.I. Supreme LEXIS 39, at *4 (V.I. Apr. 30, 2012) (unpublished).

The Virgin Islands Legislature unquestionably possesses the authority to determine the jurisdiction of Virgin Islands courts. 48 U.S.C. § 1611(b) ("The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands . . . ."). The Legislature has exercised that power to adopt the final judgment rule, *see* 4 V.I.C. § 32(a), and to establish a set of permissible interlocutory appeals as of right, *see* 4 V.I.C. § 33(b), (d). For those cases that may benefit from immediate appeal but do not fall within any of those categories, the Legislature has established a certification procedure that permits an interlocutory appeal by permission of both the Supreme Court and the Superior Court:

> Whenever the Superior Court judge, in making a civil action or order not otherwise appealable under this section, is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation, the judge shall so state in the order. The Supreme Court of the Virgin Islands may thereupon, in its discretion, permit an appeal to be taken from the order, if application is made to it within ten days after the entry of the order; except that application for an appeal hereunder may not stay proceedings[] in the Superior Court unless the Superior Court judge or the Supreme Court or a justice thereof orders a stay of the proceedings.

4 V.I.C. § 33(c). Unquestionably, it is this procedure—and not that set forth in Federal Rule 54(b)—that governs certification of interlocutory appeals in the Virgin Islands, for to hold

[3] In her brief, Stiles notes that this Court appeared to approve of the Federal Rule 54(b) decision in *Hagley v. Hendricks*, S. Ct. Civ. No. 2007-0026, 2007 V.I. Supreme LEXIS 8 (V.I. Dec. 28, 2007) (unpublished). However, Stiles ignores that *Hagley*—which had been issued by a single justice acting pursuant to 4 V.I.C. § 31(b)(1) and not the entire Court—had been abrogated by a subsequent decision of this Court. *See, e.g.*, *First Am. Dev. Group/Carib, LLC v. WestLB AG*, S. Ct. Civ. No. 2012-0023, 2012 V.I. Supreme LEXIS 39, at *3-4 (V.I. Apr. 30, 2012) (unpublished) (noting that *Hagley* "implicitly recognized that a valid certification made pursuant to Rule 54(b) permits this Court to accept jurisdiction over a judgment that does not dispose of all of the parties or claims below" but then holding that "this Court's appellate jurisdiction is not determined or impacted by the rules of the Superior Court—including the Federal Rules, such as Rule 54(b), that it might choose to adopt by reference").

otherwise would effectively divest the Legislature of its authority under the Revised Organic Act of 1954 to determine the jurisdictional limits of Virgin Islands courts.[4]

In this case, the Superior Court never certified any of its orders for interlocutory appeal under 4 V.I.C. § 33(c), but only issued a certification pursuant to Federal Rule 54(b), a provision which is wholly invalid with respect to this Court.[5] Importantly, in making its defective Federal Rule 54(b) certification, the Superior Court never made any of the findings required under section 33(c), such as that "the order involves a controlling question of law as to which there is substantial ground for difference of opinion."[6] Accordingly, we lack jurisdiction over Stiles's appeal.

III. CONCLUSION

For the foregoing reasons, we dismiss this appeal for lack of appellate jurisdiction.

Dated this 8th day of June, 2016.

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[4] Because the power to set the contours of this Court's jurisdiction is one that belongs to the Legislature, we decline Stiles's request that we "incorporate" the Federal Rule 54(b) certification procedure "into the jurisprudence of this Court," since doing so would impermissibly expand, through court rule, the jurisdiction of this Court. *See* V.I.S.CT.R. 1(i) ("These rules shall not be considered to extend or limit the jurisdiction of the Supreme Court of the Virgin Islands as established by law.").

[5] In her brief, Stiles correctly notes that this Court previously approved of Federal Rule 54(b) in *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596 (V.I. 2012). As a threshold matter, we note that the opinion in *Island Tile & Marble* had been issued prior to our recent decisions in *Vanterpool*, *Estick*, and *Percival*, in which we questioned the continuing validity of Superior Court Rule 7. But more importantly, in *Island Tile & Marble* we held that "Federal Rule 54(b) represents the applicable legal authority the Superior Court should apply to determine whether it should exercise its discretion to revise or otherwise alter a prior interlocutory order." 57 V.I. at 614. That this Court found that one provision of Federal Rule 54(b) is valid in one narrow context—the Superior Court revising one of its own interlocutory orders—does not mean that this Court has found every provision of Federal Rule 54(b) valid in all possible contexts. *See Antilles School, Inc. v. Lembach*, S. Ct. Civ. No. 2015-0039, __ V.I. __, 2016 V.I. Supreme LEXIS 7, at *8 n.2 (V.I. Mar. 14, 2016) ("[T]he fact that this Court may have cited to—or even adopted a section of—a particular Restatement should not be construed as a 'wholesale adoption' of the Restatements."). This is particularly true when this Court, in its *First Am. Dev. Group/Carib* decision that had been issued within months of the *Island Tile & Marble* decision, expressly stated that "this Court's appellate jurisdiction is not determined or impacted by the rules of the Superior Court—including the Federal Rules, such as Rule 54(b), that it might choose to adopt by reference." 2012 V.I. Supreme LEXIS 39, at *4.

[6] Once the Superior Court issues an order properly certifying a question for appeal, this Court may "thereupon, in its discretion, permit an appeal to be taken[.]" 4 V.I.C. § 33(c).

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