IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
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SCT-CIV-2020-0028
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

KELVIN B. DENNIE, Appellant/Plaintiff, v. **OLYMPIC RENT-A-CAR, CENTERLINE CAR RENTALS, BUDGET RENT-A-CAR, RICHARD EVANGELISTA, COMMISSIONER, V.I. DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS, TREVOR VELINOR, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE VIRGIN ISLANDS POLICE DEPARTMENT, JOHN AND JANE DOE, AND KENDRICK ROBERTSON,**[1] Appellees/Defendants.	**S. Ct. Civ. No. 2020-0028** Re: Super. Ct. Civ. No. 586/2008 (STX)

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

Considered: May 11, 2021
Filed: April 17, 2023

Cite as: 2023 VI 6

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

APPEARANCES:

Beverly A. Edney
St. Croix, U.S.V.I.

[1] Robertson was not a party within the original complaint. He was listed in the caption of Dennie's third amended complaint in his capacity as Commissioner of the Virgin Islands Department of Licensing and Consumer Affairs ("VIDLCA"). (Vol. 2 of JA: Pg. 46 of 76). However, Dennie removed Robertson as a party from his fourth and final amended complaint, (See Superior Court Docket Entry 169 of 211; 05/03/16), and Dennie makes no argument against Robertson or the VIDLCA within his brief. Additionally, pursuant to Virgin Islands Rule of Civil Procedure 25(d), the Superior Court substituted Richard Evangelista and Trevor Velinor, in their official capacities, as parties. (JA 47). Dennie makes no argument regarding Evangelista or Velinor, or against John and Jane Doe. Only the car rental companies have participated in this appeal.

Attorney for Appellant,

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St. Croix, U.S.V.I.
Attorney for Appellees Olympic Rent-A-Car and Centerline Car Rental,

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Attorney for Appellee Budget Car Rental.

OPINION OF THE COURT

CABRET, Associate Justice.

¶ 1 Kelvin Dennie appeals from the Superior Court's January 8, 2020 order, entered on a defendant's motion for recovery of costs and fees following the granting of a summary judgment for the defense in this case. However, for the reasons discussed below, the January 8, 2020 order is a non-final order. We therefore dismiss Dennie's appeal for lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 Dennie, a taxicab driver, alleges claims of business interference, unfair competition, and defamation against Appellees Budget Car Rental, Olympic Rent-a-Car, and Centerline Car Rental (the "car rental companies"). He also alleges a claim of defamation against Kendrick Robertson, a former Commissioner of the Virgin Islands Department of Licensing and Consumer Affairs, asserting that Robertson made false statements regarding the case in the *St. Croix Avis* newspaper. In this appeal, Dennie does not brief nor argue the claims of defamation made in the Superior Court, and we focus solely on his claims of business interference and unfair competition.

¶ 3 As a courtesy, the car rental companies pick up customers near the Christiansted harbor on Saint Croix and provide rides to their car rental facilities for the limited purpose of leasing their fleet of vehicles. Dennie owns a taxi medallion, which authorizes him to pick up and transport fares for a fee in the Virgin Islands. He claims that the car rental companies' courtesy rides deny

him the business opportunities his medallion affords him, as the companies are collecting and transporting his would-be passengers from the harbor without authorization under the automobile for hire statutes. *See* 20 V.I.C. §§ 407, 413. Therefore, he claims that the car rental companies are liable to him for damages stemming from the lost business opportunities.

¶ 4 On November 15, 2019, the Superior Court granted summary judgment to the car rental companies on Dennie's claims, finding that Dennie has no private cause of action under the automobile for hire statutes, and that car rental companies are excluded from the definition of "automobile for hire" under 20 V.I.C. § 101. Budget Car Rental filed a motion for recovery of its costs and fees on December 4, 2019, expressly referencing the November 15, 2019, judgment entered in its favor.[2] Dennie filed a motion in opposition on December 9, 2019.[3] Dennie's opposition motion did not address Budget Car Rental's motion for costs and fees; Dennie alleged that the litigation was still ongoing, which, to him, meant that the merits of the motion need not be addressed because costs could not be awarded since – at this stage of the proceedings – there was as yet no prevailing party. Curiously, despite this contention his motion nonetheless included a request for recovery of his own costs and fees.

¶ 5 The Superior Court then issued the January 8, 2020, order, finding that Dennie had not

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[2] This motion is not within the Appendix filed by Dennie. The appellant must "prepare and file an appendix to the briefs which shall contain... relevant portions of the... parts of the record referred to in the briefs at such length as may be necessary to preserve context." V.I. R. APP. P. 24(a). It is also "the *joint responsibility* of the parties to ensure that the contents of the joint appendix are sufficient to enable review[,]" *Fontaine v. People*, 56 V.I. 660, 665 n.2 (V.I. 2012) (emphasis kept) and therefore the appellee(s) are just as responsible for deficiencies within the appendices. Deficient appendices waste scarce judicial resources and delay the appellate process for litigants seeking redress in courts of the Virgin Islands. To protect the appellate process, the failure to follow this Court's rules regarding appendices will result in sanctions against the appellant or his counsel or appellee or its counsel. *Id.*
We note that, among other deficiencies, the pages of the appendix in this case are also not clearly and sequentially numbered, many pages require varying levels of zooming out or in, and they are in several separate document files. *See* V.I. R. APP. P. 15(a)("All pages of the appendix shall be clearly and sequentially numbered.") Indeed, the Clerk of the Supreme Court could have rejected this appendix. V.I. R. APP. P. 20.

[3] The Appendix's index lists this motion, but it is also nowhere to be found within the Appendix.

received a copy of the judgment. Therefore, the Superior Court granted Dennie more time to file a response addressing the merits of Budget Car Rental's motion for costs. (JA 40-41). But Dennie did not avail himself of the additional time to respond to the motion for costs. Instead, on January 16, 2020, Dennie filed a purported motion to reconsider the January 8, 2020 order. He argues that he filed the motion to dispute the Superior Court's determination of who the prevailing party was in the underlying judgment. (Appellant's Br. at 20). Yet, this motion is not in the record, nor is it in the Superior Court docket.[4] Indeed, Dennie states within his brief that "[t]he record... shows that on January 16, 2020, Appellant filed his motion for reconsideration of the Superior Court's January 8, 2020 Order," without any citation to the record.[5] Nonetheless, Dennie also filed a motion to expedite ruling on this motion on February 27, 2020. However, before the Superior Court ruled, Dennie filed a notice of appeal of the January 8, 2020 order with this Court on April 20, 2020. The following day, the Superior Court issued an order reserving ruling on Budget Car Rental's motion for costs and fees, concluding that it could not exercise jurisdiction over the motion while the case is on appeal.

II. DISCUSSION

¶ 6 Before considering the merits of an appeal, this Court must first determine whether it has appellate subject matter jurisdiction over the matter. *First Am. Dev. Group/Carib, LLC v. WestLB*

[4] The Superior Court acknowledges in its order issued on April 21, 2020, that some motion was filed on January 16, 2020, but states only that the motion "supplemented" Dennie's earlier response in opposition to Budget's motion for costs, not that the motion was a motion for reconsideration. (JA 66). Additionally, the docket sheet within the Appendix classifies the motion as a "supplemental response to Budget's motion for costs and fees...." (JA 9). The only individual that states that Dennie filed a motion for reconsideration on January 16, 2020, is Dennie, and even he contradicts this assertion within his brief. (*See* Appellant's Br. at 7, 20: describing the motion as supplemental). He also contradicts this assertion within his reply brief. (*See* Appellant's Reply Br. at 7: claiming instead that February 27, 2020, motion is the qualifying motion under Rule 59 for purposes of tolling time to appeal).

[5] All assertions of fact within appellate briefs submitted to this Court need to be supported by a specific reference to the record. *Walters v. Parrott*, 58 V.I. 391, 407 (V.I. 2013); V.I. R. APP. P. 22(d). *See also* V.I. R. APP. P. 24(a).

AG, 55 V.I. 594, 601 (V.I. 2011). "This Court has 'jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court,' 4 V.I.C. § 32(a), and typically a notice of appeal must be filed within thirty days of the entry of a final order." *Simpson v. Bd. of Directors of Sapphire Bay Condominiums W.*, 62 V.I. 728, 730 (V.I. 2015). *See* V.I. R. APP. P. 5(a)(1). Here, "[s]ince [Dennie] did not appeal the [November 15, 2019, j]udgment, and a motion for costs is not among the motions that toll the time to file a notice of appeal of an otherwise final judgment, any challenge to the correctness of the underlying [summary judgment ruling] has been waived." *Terrell v. Coral World*, 55 V.I. 580, 583 n.1 (V.I. 2011) (internal citation omitted). *See Bernhardt v. Bernhardt*, 51 V.I. 341, 345 (V.I. 2009); V.I. R. APP. P. 5(a)(4). However, despite this waiver, Dennie appears to be attempting to appeal the November 15, 2019 judgment by instead appealing the January 8, 2020 order where the Superior Court made clear its November 15, 2019 order was a final judgment in favor of the car rental company defendants, which completely disposed of all matters pertaining to this case. (JA 5) (*See* Appellant's Br. at 7). But the January 8, 2020 order is not the judgment, and its mere reference to the November 15, 2019 ruling that disposed of all the matters then before the Superior Court – thus qualifying that ruling as a final judgment – does not allow Dennie to reach and resurrect that judgment to argue its merits by appealing the entirely separate January 8, 2020 order, as he is attempting to do. *Terrell*, 55 V.I. at 584 n.1; *In re Lang*, 414 F.3d 1191, 1196 (10th Cir. 2005) (on appeal from a ruling on a post-judgment motion, the scope of the stand-alone appeal should be restricted to the questions properly raised by the post-judgment motion and should not extend to revive lost opportunities to appeal the underlying judgment).[6] Additionally, as explained below, the January 8, 2020 order

[6] There are circumstances where this Court may obtain jurisdiction over an underlying judgment where a notice of appeal does not expressly designate the judgment as an order that the appellant wants the Court to review. *See, e.g.*,

is not a final order capable of appellate review. Nevertheless, we conclude that even if it were, Dennie could still not use it to obtain review of the judgment on its merits. *In re Lang*, 414 F.3d 1196.

¶ 7 Regarding the January 8, 2020 order, while "an order granting or denying costs is itself an appealable final judgment[,]" *Terrell*, 55 V.I. at 584 n.1; *see V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008), the Superior Court's order did not grant or deny costs, but merely permitted Dennie additional time to address Budget Car Rental's motion for recovery of its costs. Indeed, the Superior Court reserved ruling on the motion for costs by written order on April 21, 2020, pending this appeal. (JA 66). Therefore, the order Dennie purports to appeal is a non-final order, and we do not have jurisdiction under 4 V.I.C. §32(a).

¶ 8 Although we do not have jurisdiction over the appeal of a non-final order, even assuming Dennie's appeal encompasses the November 15, 2019, judgment, the appeal is nevertheless untimely, and must be dismissed. Dennie asserts that his appeal is timely under either Virgin Islands Rule of Appellate Procedure 5(a)(10) or Rule 5(a)(4). (Appellant's Br. at 27; Reply Br. at 5-6). We address each argument in turn.

¶ 9 Dennie argues that his "Notice of Appeal was file[d] April 20, 2020, in accordance with the provisions of Appellate Rule 5[(a)](10)." (Appellant's Br. at 27). Rule 5(a)(10) reads, in pertinent part:

> The Superior Court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the Clerk of the Superior

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Chavayez v. Buhler, No. 2007-060, 2009 WL 1810914, at *1 n.2 (V.I. 2009) (where a notice of appeal only seeks review of a motion to alter or amend a judgment, but the motion to alter or amend is filed within ten days of the judgment, and the appellant's intent to appeal the judgment is clear, this Court may obtain jurisdiction); *Virgin Islands Taxi Ass'n v. Virgin Islands Port Auth.*, 67 V.I. 643, 673-74 (V.I. 2017) (where the appellant indicated in its notice of appeal that it was appealing "[a]ll rulings adverse" to it, and the appellees claimed no prejudice from the appellant's failure to identify the order, and both parties briefed the issue this Court addressed the merits of the appeal). However, such circumstances are not present in this case.

> Court or any party and (b) that no party would be substantially prejudiced, may, upon motion filed within 90 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days after the date of entry of the order reopening the time for appeal....

Dennie argues that his January 16, 2020 motion would reopen the time to appeal, and validate his untimely April 20, 2020 appeal. (Appellant's Br. at 27). However, Dennie did not file this motion within 14 days of receiving notice of the judgment, as expressly required by the Rule.

¶ 10 The Superior Court's January 8, 2020 order states that it appeared as if Dennie did not receive the November 15, 2019 judgment. (JA 40). However, Budget Car Rental's December 4, 2019 motion expressly moved "for costs and fees **in light of the Memorandum Opinion and Judgment that were entered on November 15, 2019**." (emphasis added). Thus, pursuant to the terms of the Rule, Dennie received "notice of the entry of a judgment... from... [a] party" on December 4, 2019. V.I. R. APP. P. 5(a)(10). Under Rule 5(a)(10) Dennie had until fourteen days after receiving this notice to file a motion to reopen the time to appeal.[7] The time to file a motion reopening the time to appeal ran on December 18, 2019. Dennie's January 16, 2020 filing was nearly a month past this deadline, and his argument under this Rule therefore must fail.[8]

¶ 11 Regarding Dennie's timeliness argument under Appellate Rule 5(a)(4), a party must *timely* file a motion to alter or amend the judgment in order to toll the time to take an appeal. "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." V.I. R. CIV. P. 59(e). Because Dennie received notice of the judgment on December 4, 2019 he

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[7] The reopened period to appeal would have only lasted fourteen days as well. V.I. R. APP. P. 5(a)(10).

[8] Additionally, the rule Dennie invokes, Rule 5(a)(10), explicitly states that the "Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Superior Court." *Id.* Dennie asserts that he was unaware of any judgment until January 16, 2020. (Appellant's Br. at 27). This means that Dennie did not monitor the status of the case from at least November 15, 2019, until January 16, 2020.

was required to file a motion to alter or amend by January 1, 2020 in order to receive the benefit of a tolling of the time to appeal under the provisions of Appellate Rule 5(a)(4). Since his January 16, 2020 filing was made fifteen days past the deadline imposed by Rule 59(e), it does not qualify as a motion to alter or amend the November 15, 2019 judgment. Rather, it could only be considered as a motion seeking relief from a judgment under the provisions of Rule 60(b) of the Virgin Islands Rules of Civil Procedure,[9] and such a motion does not toll the time to appeal. *Banister v. Davis*, 140 S. Ct. 1698, 1703, 1710 (2020) (observing that "[t]he filing of a Rule 59(e) motion within the 28-day period suspends the finality of the original judgment for purposes of an appeal," that "[b]y contrast, a Rule 60(b) motion does not affect the [original] judgment's finality or suspend its operation," and that absent a timely-filed Rule 59(e) motion, "a litigant must take an appeal no later than 30 days from the . . . court's entry of judgment") (citing *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 373, n.10 (1984), FED. R. CIV. P. 60(c)(2),[10] and FED. R. APP. P. 4(a)(1)(A)[11]). Therefore, Dennie's argument premised on Rule 5(a)(4) also must fail.

¶ 12 This Court *strictly* construes all temporal deadlines. V.I. R. APP. P. 17. Indeed "relaxing the requirements of Rule 5 under normal circumstances would severely undermine and weaken the rule's purpose...." *Simpson*, 62 V.I. at 732. Dennie presents no grounds to support the view that this is a rare circumstance where this Court should overlook its own rules to hear an appeal. *Id.*

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[9] *See, e.g.*, 3SM Realty & Dev., Inc. v. F.D.I.C., 393 Fed. Appx. 381, 383 & n.1 (7th Cir. 2010) (noting that under Rule 59(e) of the Federal Rules of Civil Procedure, which is identical to Rule 59(e) of the Virgin Islands Rules of Civil Procedure, a litigant has 28 days from the date of entry of a judgment in which to file a motion seeking to alter or amend such judgment, and concluding that "even if [a] motion . . . sa[ys] that it sought Rule 59(e) relief, [because] it was not filed within [28] days of judgment as Rule 59(e) require[s]. . . it still would . . . be[ ] construed as a motion under Rule 60(b)"); Shepherd v. Int'l Paper Co., 372 F.3d 326, 328 n.1 (5th Cir. 2004).

[10] This rule is identical to Rule 60(c)(2) of the Virgin Islands Rules of Civil Procedure.

[11] Rule 5(a)(1) of the Virgin Islands Rules of Appellate Procedure similarly provides that the notice of appeal "shall be filed . . . within 30 days after the date of entry of the judgment or order appealed from."

Therefore, even assuming, *arguendo*, that Dennie's appeal raises the November 15, 2019, judgment for review on its merits, his appeal is untimely, and would be dismissed.

III. CONCLUSION

¶ 13 This Court does not have jurisdiction over Dennie's appeal of the Superior Court's non-final January 8, 2020 order. Additionally, assuming *arguendo* that Dennie's appeal could raise the November 15, 2019 judgment for this Court's review on the merits, his appeal was untimely under Virgin Islands Rules of Appellate Procedure 5(a)(4) and 5(a)(10). We therefore dismiss Dennie's appeal for lack of jurisdiction.

Dated this 17th day of April 2023.

BY THE COURT:

MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____
Deputy Clerk II

Dated: 4-17-2023

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HODGE, C.J., concurring.

¶ 14 Although I agree that Dennie did not timely file his notice of appeal, I disagree with the analysis employed by the majority, specifically its interpretation of Rule 77(d) of the Virgin Islands Rules of Civil Procedure.

¶ 15 Rule 77(d)(1) requires that the clerk immediately serve all orders or judgments on all parties not in default for failing to appear. Civil Rule 77(d)(2) provides that lack of such notice does not affect the time for filing a notice of appeal except as authorized by Rule 5(a) of the Virgin Islands Rules of Appellate Procedure. Although Appellate Rule 5(a)(8) authorizes the Superior Court to extend the time to file a notice of appeal for no more than 30 days after the expiration of the time to appeal, it may do so only "upon a showing of excusable neglect or good cause," while Appellate Rule 5(a)(10) permits the Superior Court, if it "finds . . . that a party entitled to notice of the entry of a judgment or order did not receive such notice," to "reopen the time for appeal for a period of 14 days."

¶ 16 While Dennie did not file an affidavit in this case stating that he did not receive the November 15, 2019 opinion and order, the Superior Court expressly made a finding in its January 8, 2020 order that Dennie had not received those documents. Although the Superior Court did not state in the January 8, 2020 order that it would extend any deadline other than the time to respond to the attorney's fees motion, the same reasoning that justified reopening the period to respond to that motion would not only justify, but *require*, reopening those deadlines as well, including the time to appeal and to file post-judgment motions. *Accord, Harris v. Garcia*, S. Ct. Civ. No. 2008-0082, 2010 WL 330331, at *4 (V.I. April. 18, 2016) (unpublished).

¶ 17 The majority acknowledges the Superior Court's finding in its January 8, 2020 order that Dennie had not received the November 15, 2019 judgment. Nevertheless, the majority would not

apply Appellate Rule 5(a)(10) to this case because Dennie supposedly received "notice of entry of [the] judgment . . . from a party" on December 4, 2019. The majority reaches this conclusion by holding that Budget Rental Car's December 4, 2019 motion for costs and attorneys' fees, which stated that it was seeking "costs and fees in light of the Memorandum Opinion and Judgment that were entered on November 15, 2019," provided "notice" to Dennie that the Superior Court had entered the November 15, 2019 judgment.

¶ 18 If Appellate Rule 5(a)(10) permitted an extension of time to file a notice of appeal if "a party entitled to notice of a judgment did not receive such notice from the Clerk of the Superior Court or any party," I might agree with the majority that this fleeting reference to the November 15, 2019 judgment in Budget Rental Car's motion for costs may be sufficient. But Appellate Rule 5(a)(10) does not use the phrase "notice of a judgment"—rather, it uses the phrase "notice *of entry* of a judgment." This Court construes the Virgin Islands Rules of Appellate Procedure and other court rules using the same rules of construction that traditionally apply to statutes. *In re Petition for Disbarment of Plaskett*, 56 V.I. 441, 447 (V.I.2012) (citing *Corraspe v. People*, 53 V.I. 470, 480 (V.I. 2010)); *see also Nichino America, Inc. v. Valent U.S.A. LLC*, 44 F.4th 180, 184 n.8 (3d Cir. 2022). This necessarily includes the longstanding principle that we must interpret words pursuant to their common and approved usage in the English language, except for technical words and phrases and other terms of art which have acquired a peculiar or appropriate meaning in the law. *See Greer v. People*, 74 V.I. 556, 580 (V.I. 2021) (citing 1 V.I.C. § 42 and collecting cases); *United States v. Melvin*, 948 F.3d 848, 851-52 (7th Cir. 2020) (in applying court rules, the ordinary, contemporary, and common meaning of their words is applied by looking at what those words meant when the rules were promulgated, oftentimes by referencing contemporary dictionaries).

¶ 19 The phrase "notice of entry of a judgment" is such a term of art. A "notice of entry of judgment" refers to a written document produced by the Clerk of the Court that accompanies the judgment and states the date that the judgment was entered onto the docket. *See Bass v. U.S. Dep't of Agriculture*, 211 F.3d 959, 963-64 (5th Cir. 2000) (applying federal law); *Acevedo v. Capra*, 545 F.Supp.3d 107, 110 n.7 (S.D.N.Y. 2021) (applying New York law); *Alan v. American Honda Motor Co., Inc.*, 152 P.3d 1109, 1113-14 (Cal. 2007). In other words, a court rule that requires that a party receive "notice of entry of a judgment" from the clerk or another party does not mean that a party must merely receive notice of the judgment, such as through an oral communication from opposing counsel. *See Benavides v. Bureau of Prisons*, 79 F.3d 1211, 1215 (D.C. Cir. 1996); *Avolio v. County of Suffolk*, 29 F.3d 50, 53 (2d Cir. 1994). Rather, the party must receive "notice of entry of a judgment" which, if served by another party rather than by the clerk, must nevertheless be served in the same manner as would be done by the clerk. *Bass*, 211 F.3d at 963-64.

¶ 20 Rule 77(d) of the Virgin Islands Rules of Civil Procedure, like its federal counterpart, provides that a party who elects to serve "notice of the entry" of a judgment must do so "as provided in Rule 5(b)." Rule 5(b) reads, in its entirety, as follows:

> **(b) Service: How Made.**
> (1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.
> (2) *Service in General.* A paper is served under this rule by:
> (A) handing it to the person;
> (B) leaving it:
> (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
> (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
> (C) mailing it to the person's last known address — in which event service is complete upon mailing;

> (D) leaving it with the Virgin Islands Marshal for service, if possible, if the person has no known address;
>
> (E) sending it by electronic means if the person has consented in writing — in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or
>
> (F) delivering it by any other means that the person has consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

Civil Rules 77(d) and 5(b), when read together, thus require that a party electing to serve a notice of entry of a judgment must actually serve the notice of entry of the judgment—that is, duly serve the other party with the written document produced by the Clerk of the Court that accompanies the judgment and states the date the judgment was entered onto the docket. It is not sufficient for the party to simply tell the other party that there was a judgment, or indirectly refer to the notice of entry of a judgment without serving the written document. *See Bass*, 211 F.3d at 963-64. *Benavides*, 79 F.3d at 1215; *Avolio*, 29 F.3d at 53.

¶ 21 Here, the record contains no indication whatsoever that Budget Rental Car served Dennie with notice of entry of the November 15, 2019 judgment in the manner required by Civil Rules 77(d) and 5(b). Thus, under the Rules, Dennie did not receive "notice of entry of [the] judgment . . . from a party" for purposes of Appellate Rule 5(a)(10) so as to preclude him from receiving an extension of time to file a notice of appeal.

¶ 22 Nevertheless, I ultimately would conclude that Dennie did not timely file his notice of appeal. While Appellate Rule 5(a)(10) authorizes the reopening of the time to appeal if a party did not receive notice of the entry of a judgment, it also expressly provides that "[t]his Rule shall not be construed as excusing the parties from their affirmative responsibility to regularly monitor the status of their case in the Superior Court." While I do not believe the reference to a November 15,

2019 judgment in Budget Rental Car's December 4, 2019 motion for costs and attorneys' fees constituted "notice of entry of [the] judgment . . . from a party" so as to immediately trigger the start of the 30-day period to file a notice of appeal, that Budget Rental Car's motion mentioned a judgment that Dennie had not received should have then alerted him of the need to check the docket to see if such a judgment had in fact been entered. Even if that failure could be excused, I can discern no legitimate reason for the failure of Dennie—who at all pertinent times was represented by counsel—to take any meaningful action after receiving the Superior Court's January 6, 2020 order confirming that a judgment did in fact issue on November 15, 2019. While Dennie asserts that he filed a motion for reconsideration on January 16, 2020—a document which, as the majority correctly notes, is not in the record—a motion for reconsideration is not among the motions listed in Appellate Rule 5(a)(4) that tolls the time to file a notice of appeal. And while this Court has construed documents captioned as motions for reconsideration as motions under Rules 59 or 60 of the Virgin Islands Rules of Civil Procedure, *see Ruiz v. Jung*, S. Ct. Civ. No. 2008-0035, 2009 WL 3568182, at *3 (V.I. Oct. 19, 2009) (unpublished) (collecting cases), Appellate Rule 5(a)(4) expressly provides that the time to file a notice of appeal is only tolled by a Rule 59 motion if it is timely filed and by a Rule 60 motion if filed within 28 days. Thus, even if Dennie actually filed a motion with the Superior Court on January 16, 2020, that motion would not have been sufficient to toll the time to appeal from the November 15, 2019 order. And while—for the reasons given above—I believe Dennie could have filed a notice of appeal from the November 15, 2019 order pursuant to Appellate Rule 5(a)(10), based on the findings in the Superior Court's January 6, 2020 order, he did not file a notice of appeal until April 20, 2020, several months after the time for him to do so expired. Consequently, I concur in the dismissal of

this appeal as untimely.

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____
Deputy Clerk II

Dated: 4-17-2023