FOR PUBLICATION

SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX

LINDA VALERINO, **PLAINTIFF / PETITIONER ON REVIEW,** **V.** **YOHANA MANNING,** **DEFENDANT / RESPONDENT ON REVIEW.**	**SX-15-RV-005** **On Review from the Magistrate Division** **Re: Case No. SX-15-SM-014**

Appearances:

LINDA VALERINO
Christiansted, VI 00823
Pro se Petitioner

YOHANA MANNING
Christiansted, VI 00820
Pro se Respondent

WILLOCKS, Harold W.L., Administrative Judge

MEMORANDUM OPINION

Linda Valerino filed suit against Yohana Manning in the Small Claims Division of the Superior Court of the Virgin Islands. Default judgment was entered against Manning when he failed to appear for trial, but vacated and a new trial date was set after Manning motioned for relief. Valerino appealed the order setting the default judgment aside. Manning motioned to dismiss her appeal, arguing that the order is interlocutory and not appealable. Valerino opposes dismissal and moves to strike Manning's motion. For the reasons stated below, Valerino's motion will be denied and Manning's motion granted. The Appellate Division of the Superior Court functions "as an intermediate appellate court," *Browne v. Gore*, 57 V.I. 445, 453 n.5 (2012), and appellate courts are limited by the final judgment rule. Since an order setting a default judgment aside is not a final order, this appeal is interlocutory and must be dismissed.

BACKGROUND

This appeal, as well as the small claims case, arose from another case involving Valerino and Manning in the District Court of the Virgin Islands ("District Court"). In that case, Valerino

> brought a Title VII action against the [United States] Government based on her employment by the U.S. Marshals Service in the Virgin Islands. She eventually settled with the Government for $350,000. Shortly thereafter, Andrew Simpson and Yohana Manning, the two attorneys who had represented Valerino during the course of the lawsuit, filed motions for attorneys' fees. Valerino had terminated the services of both attorneys prior to the settlement.
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> At the beginning of her Title VII lawsuit, Valerino retained Andrew Simpson, who represented her from January 2008 until April 27, 2010. . . . Ultimately, Valerino terminated Simpson because of his representation of a different U.S. Marshals Service client in an unrelated matter.
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> Valerino then proceeded *pro se* for nearly a year, after which she hired Yohana Manning, who represented her from March 9, 2011, to December 14, 2011. Valerino then fired Manning and proceeded *pro se* again, but several years later she rehired him. Manning represented Valerino from February 24, 2014, until she fired him again on December 14, 2014. . . .
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> When Valerino finally reached a settlement with the Government, she was not represented by counsel, having fired Manning ten days earlier. After the Government filed a notice of settlement, on December 24, 2014, the District Court ordered that the settlement money be deposited into the Registry of the Court pending the resolution of all disputes related to attorneys' fees. *Valerino v. Hoover*, 643 F. App'x 139, 140-41 (3d Cir. 2016), *cert. denied*, 137 S. Ct. 171 (2016).

Two days before, on December 22, 2014, Valerino moved the District Court for an order directing Manning to return her case files as well as a laptop computer she had loaned him to use while working on her case. On January 8, 2015, Valerino notified the District Court that Manning still had not returned her laptop. She then explained that, if the District Court

> deems that it is not proper or in a posture to rule on Plaintiff's Unopposed Emergency Motion for Court Order Directing The Return of Plaintiff's Case File and Laptop Computer (Doc. 209) by this date, January 8, 2015, Plaintiff will withdraw her Emergency Motion (Doc. 209) and instead pursue a monetary claim against Mr. Manning in lieu of the laptop computer in the Superior Court of the Virgin Islands. (Notice to Ct. 3-4, *Valerino v. Holder*, 1:08-cv-035 (D.V.I. Jan. 8, 2015), ECF No. 214.)

After the District Court failed to act and Manning failed to return her laptop, Valerino sued Manning for conversion in the Superior Court.

In her complaint, Valerino alleged that "Manning did not have an operable or reliable laptop computer" when he represented her in the District Court. (Compl. ¶ 2, filed Jan. 20, 2015, *Valerino v. Manning*, SX-15-SM-014.) Since her "case in federal court was an electronic case and the necessity for an operable computer was vital," she "provided a Dell laptop computer" for him to use. *Id.* ¶¶ 4, 3. Valerino claimed she later asked Manning "on various occasions" to return the computer. *Id.* ¶ 9. Manning said he would, but he didn't. Hence, Valerino sued him for "the price of the laptop computer in the amount of $640.00 plus daily interest." *Id.* ¶ 14.

Per the Superior Court's standard operating procedures, the Clerk's Office calendared Valerino's case for trial on March 3, 2015 and then notified the parties. Valerino and Manning appeared on March 3, 2015. Manning requested a continuance because the District Court had not ruled on Valerino's December 22, 2014 motion. Valerino objected, believing that her January 8, 2015 notice had effectively withdrawn the motion. The Magistrate Court disagreed, explaining that Valerino's notice had said that she would withdraw her motion if the District Court did not rule. "'[W]ill withdraw' means . . . that you will take that action." (Hr'g Tr. 10:24-25, Mar. 3, 2015.) "[B]ut if you have not," then a dispute over the computer could be "pending in two different courts." *Id.* at 10:25, 11:14-15. The Magistrate Court granted Manning's motion and continued the trial to April 14, 2015 to give Valerino time to notify the District Court that she was withdrawing the December 22, 2014 motion. Valerino withdrew her motion later that day. (*See* Pl.'s Formal Notice of With. of Mot., *Valerino v. Holder*, 1:08-cv-035 (Mar. 3, 2015), ECF No. 231.)

Valerino appeared for trial on April 14, 2015. Manning did not. The Magistrate Court "note[d] for the record that Yohana Manning was served with notice of today's proceeding. He is not here. He has not notified the court why he is not here." (Trial Tr. 3:19-21, Apr. 14, 2015.) The court then proceeded with the hearing. Valerino was sworn and moved into evidence a receipt from Amazon for a Dell laptop computer she purchased in 2014. The price was $599.99 plus $40.00 in shipping and handling costs. Based on the evidence, the court awarded Valerino a default judgment against Manning in the amount of $639.99 plus $100.00 in court costs. The judgment was entered on April 17, 2015.

The same day the judgment was entered, Manning filed a motion to vacate said judgment. He explained that his office had "miscalendared" the date and then argued that "'default judgments are not the favored means of resolving civil actions, that doubtful cases should be decided on their merits, and that the goal of the Small Claims Division is to achieve substantial justice.'" (Def.'s Mot. to Vacate Default Jgmt 1, filed Apr. 17, 2015, *Valerino*, SX-15-SM-014 (quoting *Spencer v. Navarro*, S. Ct. Civ. No. 2007-69, 2009 WL 1078144, *2 (V.I. Apr. 8, 2009)).) "As an officer of this Court," Manning "further certifie[d] that his failure to appear was not based on 'ill will or bad faith,'" and alleged in his defense that Valerino had "abandoned" the computer. *Id.* at 2 (quoting *Spencer*, 2009 WL 1078144 at *3).

For reasons unclear from the record, the Clerk's Office did not forward Manning's motion to the Magistrate Court until April 22, 2015. Valerino filed a response on April 30, 2015, which was the same day the Magistrate Court granted Manning's motion, vacated the default judgment, and set a date for trial. Whether the Clerk's Office notified the Magistrate Court that Valerino had filed a response is unclear. However, the Clerk's Office did not enter the April 30, 2015 Order until May 5, 2015.

Three days later, Valerino filed a petition for review in the Appellate Division. The Clerk's Office docketed the appeal and assigned it to the undersigned judge. The Clerk's Office also notified Valerino by letter, dated May 11, 2015, of the requirements associated with internal appeals, including the obligation to obtain a transcript and file briefs on appeal. Valerino requested transcripts of the March 3, 2015 and April 14, 2015 hearings, which were submitted on May 21, 2015. However, neither party filed a brief as such. Instead, on May 29, 2015, Manning filed a "Motion to Dismiss Petition for

Internal Review." Although Manning listed the number of the small claims case on his motion, not the number for this appeal case, the Clerk's Office docketed his motion in the appeal case based on the title. When Valerino did not respond, the Court issued an order directing Manning to show proof of service, explaining that

> the certificate of service attached to Manning's motion states that he served Valerino with a copy by electronic mail . . . and by first class mail . . . . Copies of court filings may be provided by electronic mail as a courtesy if the parties agree. But without leave of court, service by electronic mail is not proper. . . . [And] while the postal address Manning listed on his certificate does correlate with the address Valerino listed on her petition . . . the Court cannot . . . tell from this address whether the United States Post Office delivers mail to it.[1] Second, the email address Manning listed on his certificate of service does not correlate with the email address Valerino listed within the signature block on her petition. . . . So, it is not clear if any form of service (whether through the mail or by electronic mail) was effected. . . . Since Manning's May 29, 2015 motion challenges the Appellate Division's authority to hear this internal appeal and further because there is no settled law addressing whether the Appellate Division can hear interlocutory appeals, the Court will order Manning to clarify if he did serve Valerino and further grant Valerino leave to respond to his May 29, 2015 motion. (Order 1-2, entered Dec. 1, 2015 (paragraph break omitted).)

Manning filed proof on December 11, 2015, that Valerino had received actual notice by email on June 2, 2015 and formal notice on December 11, 2015 by certified mail. Valerino filed a response to Manning's motion on January 5, 2016. She also included within her response a motion to strike Manning's motion. Manning did not file a reply or a response to the motion to strike.

DISCUSSION

Manning raises three arguments for dismissing this appeal. First, he argues that the appeal must be dismissed because it is "an interlocutory appeal of a decision vacating default judgment." (Resp.'s Mot. to Dismiss 2, filed May 29, 2015 (hereinafter "Mot.").) Furthermore, Valerino "failed to demonstrate that the Magistrate [Court] abused [its] discretion" in vacating the default judgment, Manning argues. *Id.*

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[1] The United States Post Office does not deliver mail to many physical addresses throughout the Territory. Therefore, many residents receive mail at a post office box. Although not stated in the Order, the concern was whether the United States Post Office delivers mail to the physical address Manning had listed for Valerino on his certificate of service, given that she had not filed a response to the motion to dismiss.

Manning's second argument goes to the merits of Valerino's small claims case, not this appeal. The complaint should be dismissed, he argues, because it is "trifling" and "[t]he law does not care for, or take notice of, very small or trifling matters." *Id.* at 3 (quotation omitted).

Lastly, citing Superior Court Rule 64, Manning argues that Valerino has had substantial justice because "[t]he record now reflects that . . . prior to the lawsuit, [he] attempted to return" the laptop to her, but she never retrieved it. *Id.* at 3-4. So, "the continuation of the lawsuit is unnecessary," he argues, "and would only continue to allow the Plaintiff to harass the Defendant and usurp scarce judicial resources." *Id.* at 4. To support his assertions, Manning attached a copy of an email Valerino sent him on May 17, 2014 about the computer.

In response, Valerino argues that the Magistrate Court erred by ruling on Manning's motion before her response time had passed and further by not "conduct[ing] a hearing to gather evidence prior to the issuance of the order to vacate the judgment against Defendant Manning." (Pet'r's Opp'n 3, filed Jan. 5, 2016 (hereinafter "Opp'n").) "The Magistrate [Court] committed clear error," Valerino contends, "by setting essentially a do-over of the first trial without good cause." *Id.* at 3-4 (quotation marks omitted). Valerino then submits five reasons why the Court should deny Manning's motion. First, the order she is appealing is not interlocutory because a judgment was issued. Hence, this "Petition for Internal Review is a post judgment review, not an 'interlocutory' appeal." *Id.* at 6 (emphasis omitted). Second, Manning's reliance on *Spencer* is misplaced because *Spencer* involved an administrative hearing not a small claims case. "The circumstances are different," she explains. *Id.* Third, this internal appeal "is not on the merits," Valerino claims. Instead, the question is whether the Magistrate Court committed "abuse of discretion or clear error . . . by issuing an Order vacating judgment without first hearing from the other side . . . [or] conduct[ing] a hearing to determine whether the excuse given . . . rises to the level of excusable neglect." *Id.* at 7-8. Fourth, Manning's reliance on *Crowe v. Ragnar Benson, Inc.*, 307 F.2d 73 (3d Cir. 1962), is also misplaced, Valerino argues, because in *Crowe* a default judgment was set aside "in the interests of justice" whereas here the "default judgment was set aside post trial and for simple carelessness in recording the court date." (Opp'n 8.) Finally, Manning's argument that her case is "trifling" should be rejected, Valerino argues, because he raised that argument for the first time on appeal.

Within her response, Valerino also moves to strike Manning's motion to dismiss because of how he captioned his motion. Manning technically filed his motion in the small claims case, not in the appeal case, because he listed the small claims case number on the motion. Furthermore, he filed the motion to dismiss after the Magistrate Court had issued an order to continue the trial pursuant to Superior Court Rule 322.1(e), which provides that "[a] magistrate judge whose order is being challenged on review may not enter any subsequent order in the case after a petition for review is filed," except orders setting appeal bonds, granting or denying reconsideration or a stay pending appeal, or an opinion or written memorializing an order decision. Manning's motion must be stricken, Valerino argues, because it was filed after Magistrate Court "determined that [it] had 'no jurisdiction' after a Petition for Internal Review ha[s] been filed." (Opp'n 5.)

A. MOTION TO STRIKE[2]

"Courts have inherent authority to strike 'papers and other items' from 'becoming part of the record.'" *Xavier v. Treasure Bay V.I. Corp.*, SX-09-CV-450, 67 V.I. ___, ___; 2017 V.I. LEXIS 31, *20 (Super. Ct. App. Div. Feb. 23, 2017) (quoting *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 126 (Super. Ct. 2016) (brackets omitted)). But the "parties [also] have the right to file papers in their own cases." *Id.* at ____, 2017 V.I. LEXIS 31 at *24 (citation omitted). Hence, notices, motions, and "other papers should only be stricken when they are in themselves improper and objectionable, or improperly placed on file." *Id.* at ___; 2017 V.I. LEXIS 31 at *21 (quotation marks, ellipsis, and citation omitted).

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[2] Because Valerino's motion concerns whether Manning's motion is proper, the Court considers it first. *Cf. Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 120 (Super. Ct. 2016) (ancillary motions should be resolved first if resolving them might determine whether arguments in other motions are properly before the court).

Valerino argues that Manning's motion should be stricken because he filed it in the "Small Claims Court 8 days tardy and after [the] Magistrate [Court had] already determined that [it] had 'no jurisdiction' after a Petition for Internal Review had been filed." (Opp'n 5 (citing May 21, 2015 Order).) Valerino is correct.[3] Manning did file his motion in the wrong case and he also "disregarded" the Clerk's docketing letter. *Id.* That Letter had informed Valerino and Manning that Valerino's petition for review had been "docketed on May 8, 2015 and assigned a *new Case Number* SX-15-RV-5." (Docketing Letter 1, filed May 11, 2015 (emphasis added) (bold font and underlining omitting).) The Letter further explained that, "[p]ursuant to Rule 322.1, all subsequent pleadings related to [the] Petition for Review should be . . . captioned with the new Case number." *Id.* Manning either did not read the letter or disregarded it because the caption of his motion to dismiss listed the number of the small claims case, not the appeal case. For this reason Valerino claims Manning's "improperly filed document should be stricken." (Opp'n 5.)

Valerino might have prevailed if she was making this argument to the Magistrate Court. *See* Super. Ct. R. 322.1(e). "Captions serve a purpose . . . . Captions inform the court, the counsel, and the public who the parties are, what type of case it is, and what case file the papers should be docketed and filed in." *In re: Alumina Dust Claims*, SX-09-MC-031, 67 V.I. ___, ___, 2017 V.I. LEXIS 2, *39 n.40 (Super. Ct. Jan. 10, 2017). Had the Clerk's Office not caught Manning's mistake and proceeded to docket his motion in the small claims case, the Magistrate Court could have rightly struck Manning's

[3] In truth, Valerino's motion to strike could itself be stricken because she presented it within her response in opposition to Manning's motion to dismiss. That was also not proper. "Commingling arguments against one motion with arguments in a support of another motion in the same motion paper is improper," because it can make it "almost impossible to distinguish" arguments made in support of one motion from those made in opposition to another. *Goodwin v. Fawkes*, SX-11-CV-435, 67 V.I. ___, ____; 2016 V.I. LEXIS 198, *41 n.19 (Super Ct. Dec. 12, 2016); *accord Der Weer*, 64 V.I. at 129 ("Written motions should be filed separately and not be embedded within other motion papers."); *see also In re: Red Dust Claims*, SX-15-CV-620, 2017 V.I. LEXIS 98, *31 n.7 (Super. Ct. July 7, 2017) ("Courts and counsel should be able to trust that a document's title correlates with its content. A response should respond, not also incorporate a request or a motion."). Nevertheless, Valerino is representing herself and Manning did not file a response to her motion to strike. Since *pro se* litigants are generally given "greater leeway in dealing with matters of procedure and pleading," *Appleton v. Harrigan*, 61 V.I. 262, 267 (2014) (quotation marks and citation omitted), the Court has overlooked where Valerino made her motion and considered the arguments she raised.

motion because trial courts generally do not have any authority to rule on a motion to dismiss an appeal. *Cf. Barnes v. State*, 912 S.W.2d 405, 406 (Ark. 1995) (*per curiam*) ("It is not within the authority of a trial court to pass on the validity of a notice of appeal and dismiss it sua sponte."); *Robinson v. Director of Revenue*, 762 S.W.2d 872, 873 (Mo. Ct. App. 1989) ("[T]he dismissal of the notice of appeal by the trial court was without legal effect."); *accord* Super. Ct. R. 322.1(e)(5). *But cf., e.g.*, *Dep't of Human Res. v. Chambers*, 441 S.E.2d 77, 79 (Ga. Ct. App. 1994) ("A trial court is empowered to dismiss a notice of appeal where the questions presented have become moot." (citation omitted)).

But the Clerk's Office caught the mistake and corrected it. Listing the wrong case number on a document is a technical error that could have substantive impact. *See, e.g.*, *Ayala v. Lockheed Martin Corp.*, SX-08-CV-296, 67 V.I. ___, ____ 2017 V.I. LEXIS 39, *14-15 (Super. Ct. 2017) (motions stricken and orders vacated because wrong case numbers listed) (citing *Vanterpool v. Gov't of the V.I.*, 63 V.I. 563, 575 (2015)). But here, Valerino is elevating form over substance. There was no doubt what Manning sought: dismissal of this appeal. He just made a mistake in listing the case number on his motion. That mistake does not warrant striking the motion to dismiss, even though it did cause confusion and further delay.[4] Manning is a party to this case and the underlying small claims case. He has the right to file papers in both cases. Ergo, Valerino's motion must be denied.

B. Motion to Dismiss

In moving to dismiss Valerino's appeal, Manning raises an important question of first impression in the Virgin Islands. Unfortunately, his entire argument concerning the Appellate

[4] Courts assume that attorneys and self-represented parties read, understand, and follow their orders, opinions, and other directives, which inclues notices from the clerks. *Cf. Amantes v. B&R Mach., Inc.*, 610 F. Supp. 2d 979, 983 (W.D. Wis. 2009) ("All litigants in this court are expected to read, understand and comply with these rules, whether they are represented by counsel or proceeding *pro se*." (citation omitted)) (referring to pretrial conference order); *Martinez v. State Farm Mut. Auto. Ins. Co.*, 3:08-cv-1231, 2010 U.S. Dist. LEXIS 21654, *2 (M.D. Fla. Feb. 19, 2010) ("The parties and their counsel are expected to read and comply with the Court's orders as issued."); *In re: Flowers*, No. 12-60304, 2013 Bankr. LEXIS 2463, *7 (S.D Ga. Bankr. 2013) ("At the very least counsel is expected to read my orders and to research the law relevant to their clients' cases."); *accord Harris v. Pernsley*, 113 F.R.D. 615, 620 (E.D. Pa. 1986) ("The District Attorney of Philadelphia, as all lawyers in this Circuit, is expected to read decisions of the United States Supreme Court and those of the Court of Appeals for the Third Circuit, at the very least those pertaining to the areas of his sworn responsibilities.").

Division's authority to review interlocutory orders is contained in one paragraph. Manning concludes that "no authority exists that allows an interlocutory appeal of a decision vacating default judgment." (Mot. 2.) He cites one case in support, *Crowe*, and argues that "*Crowe* . . . is binding upon this Court through . . . *Connor*." *Id.* (citing *Gov't of the V.I. v. Connor*, 60 V.I. 597 (2014) (*per curiam*)). Manning is mistaken. *Crowe* is not binding. At best, *Crowe* is slightly persuasive.

Manning is correct, however, insofar as the Supreme Court of the Virgin Islands did explain in *Connor* that it "'has repeatedly held that the Superior Court should treat decisions of the United States Court of Appeals for the Third Circuit and the Appellate Division of the District Court as binding precedent with respect to issues of local law.'" *Id.* (quoting *Connor*, 60 V.I. at 605 n.1, parenthetically). But Manning misunderstands what *Connor* was referring to. The discussion in *Connor* about the precedential status of decisions of the Third Circuit and the Appellate Division of the District Court centered on "issues of local law" meaning "Virgin Islands *common law*." *Id.* (emphasis added). A few lines further down in the same footnote that Manning quoted, the Supreme Court clarified

> that while all decisions of this Court, the Third Circuit, and the Appellate Division should be considered with respect to the first *Banks* factor, the Superior Court need not consider itself foreclosed from adopting a different common law rule if those decisions were wholly based on a belief that application of the Restatements or the majority rule was mandatory pursuant to 1 V.I.C. § 4 as in effect prior to this Court's ruling in *Banks* [*v. International Rental & Leasing Corporation*, 55 V.I. 967 (2011)]. *Id.*

The issue Manning raises here—whether the Appellate Division can review interlocutory orders—does not concern Virgin Islands common law, but rather the rules and statutes governing the Magistrate and Appellate Divisions of the Superior Court. That said, many rules of procedure are rooted in precedent.[5] But Manning has not asked this Court to hold that the soundest rule for the Virgin

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[5] *See, e.g.*, *Crusan v. United States*, 86 Fed. Cl. 415, 417 (Fed. Ct. Cl. 2009) (explaining that Federal Rule of Civil Procedure 12(c), which provides for judgment on the pleadings, "derived from the common law practice of demurrer, which permitted either party, at any point in the proceeding, to demur to his or her opponent's pleading and secure a dismissal or final judgment on the basis of the pleadings." (quotation marks, citation, and alteration omitted)); *People v. Freeman*, 96 N.E.2d 1110, 1117 (Ill. Ct. App. 2010) ("In Illinois, we do not have a uniform system of codified evidentiary rules; rather, our rules of evidence generally derive from the common law."); *State v. Kusel*, 213 P. 367, 370 (Mont. 1923) ("Many of the principles of our criminal procedure find their root in the common law of England."); *Gianfillippo v. Northland Cas. Co.*, 861 P.2d 308, 310 (Okla. 1998) (requirement that "all averments of fraud or mistake . . . be stated with particularity . . .

Islands is to adopt the final judgment rule for the Appellate Division. *Cf. Connor*, 60 V.I. at 600 ("[C]ourts should consider three non-dispositive factors to determine Virgin Islands common law: (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands." (quotation marks and citations omitted)). Instead, Manning just cited *Connor* to get to *Crowe*. Buts *Crowe* is not binding because *Crowe* was decided by the Third Circuit on appeal "from an Order of the District Court for the Western District of Pennsylvania, vacating a default judgment." 307 F.2d at 73. The court from which an appeal is taken dictates whether the decision is binding or persuasive. "Third Circuit decisions are merely persuasive authority if the case was before that court on appeal from the District of Delaware, the District of New Jersey, the Eastern, Western, or Middle Districts of Pennsylvania, or the District Court of the Virgin Islands sitting as a federal trial court."[6] *Ernest v. Morris*, 64 V.I. 627, 638 (2016).

Even though *Crowe* is not binding—because it was not before the Third Circuit on appeal from the District Court of the Virgin Islands on a question of Virgin Islands law—*Crowe* is still persuasive. Only slightly persuasive, however, because the Third Circuit concluded in *Crowe* that orders vacating default judgment are "nonappealable interlocutory order[s]" and, thus, the court was "without jurisdiction to entertain th[e] appeal." 307 F.2d at 75 (citing *United States v. Agne*, 161 F.2d 331 (3d Cir. 1947) (footnote omitted). That is, the Third Circuit did not explain why orders vacating default

was carried from the common law into Rule 9(b) of the Federal Rules of Civil Procedure" and in turn adopted "verbatim" into Oklahoma's Pleading Code).

[6] Manning may not have fully appreciated these nuances and that is understandable because the Supreme Court of the Virgin Islands has continuously refined its own pronouncements of what decisions of the Third Circuit and the Appellate Division of the District Court are binding. *Cf. Najawicz v. People*, 58 V.I. 315, 327-28 ("Although we previously instructed that 'decisions rendered by the Third Circuit are binding upon the Superior Court even if they would only represent persuasive authority when this Court considers an issue,' we have made this statement in the context of decisions the Third Circuit rendered *while serving as* the *de facto* court of last resort in the Virgin Islands." (emphasis added) (ellipsis and brackets omitted) (quoting *In re: People of the V.I.*, 51 V.I. 374, 389 n.9 (2009) (*per curiam*)); *cf. Ernest*, 64 V.I. at 638 (further clarifying the precedential status of Third Circuit decisions seven years after *In re: People*); *but cf. Hamed v. Hamed*, 63 V.I. 529, 535 (2015) ("[D]ecisions of the Appellate Division and the Third Circuit addressing issues of Virgin Islands common law *are no longer binding* on the Superior Court." (emphasis added) (citing *Connor*, 60 V.I. at 605 n.1)).

judgments are interlocutory. The citation to *Agne* shed some light, but not much. *Agne* also concerned an appeal from an order vacating a default decree, but in a naturalization proceeding. *See* 161 F.2d at 331. Agne's citizenship had been revoked after he failed to appear in court. *See id.* Three years later, Agne filed a motion to vacate the default and the district court granted it. The United States appealed and the Third Circuit dismissed the appeal for lack of jurisdiction.

> [T]he instant case is not one of those where the distinction between a final order and an interlocutory order becomes vague and hard to find. The order of the District Court did nothing but open up for further consideration the action of the court in 1942 which cancelled Agne's naturalization. It did not decide that Agne is entitled to have his citizenship restored; it is entirely consistent with any order made so far that the revocation of citizenship may stand at the conclusion of whatever further proceedings may be taken. We do not see how in any sense of the word the order can be considered as final any more than can an order granting a new trial be taken as final. This Court has said before that the new trial order is not a final one. *Id.* at 332 (footnote omitted).

Both *Crowe* and *Agne* instruct that orders vacating or setting aside a default judgment are interlocutory and cannot be appealed directly. The other federal courts of appeals[7] who have

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[7] *See, e.g.*, *Joseph v. Office of Consulate Gen. of Nigeria*, 830 F.2d 1018, 1028 (9th Cir. 1987) ("A district court's grant of a motion to set aside a default judgment is not an appealable final order, where the setting-aside paves the way for a trial on the merits."); *Parks ex rel. Parks v. Collins*, 761 F.2d 1101, 1104 (5th Cir. 1985) ("When an order granting a Rule 60(b) motion, merely vacates the judgment and leaves the case pending for further determination, the order is akin to an order granting a new trial and is interlocutory and nonappealable." (quotation marks and citation omitted)); *accord Pollard v. Owens-Illinois, Inc.*, No. 89-2107, 1990 U.S. App. LEXIS 26240, *1 (4th Cir. May 29, 1990) (*per curiam*) ("The order which defendants appeal did not end the litigation on the merits, but rather set aside a settlement and judgment and returned the case for trial unless otherwise disposed of. Such an order is not appealable under 28 U.S.C. § 1291. Nor is it appealable under any exception to the final judgment rule." (internal citation omitted)); *Burton v. Cooks*, No. 85-1281, 1985 U.S. App. LEXIS 14168, *1-2 (6th Cir. Aug. 13, 1985) ("An order vacating a default judgment is a non-appealable, interlocutory order. Here, the order granting relief from the default judgment left the case pending for further determination, and will be reviewable only after the case is disposed of on the merits." (internal citations omitted)); *cf. In re: Appointment of Umpire for Hayes Family Trust*, 845 F.2d 997, 1003 (10th Cir. 2017) ("It is true that orders *granting* relief under Federal Rules of Civil Procedure 59 and 60(b) are generally not final decisions. They are not final—and, therefore, not immediately appealable—because they set aside or undo a judgment and so settle nothing with finality except the fact that more litigation is on the way." (quotation marks and citations omitted)); *Edwin Raphael Co. v. Maharam Fabrics Corp.*, 283 F.2d 310, 311 (7th Cir. 1960 ("It is true, an order vacating a default judgment is interlocutory in character. However, it may be reviewed in a[n] appeal from a final judgment in the same case, since it is merged in the final judgment." (citation omitted)); *see also Epting v. Precision Paint & Glass, Inc.*, 110 S.W.3d 747, 751 (Ark. 2003) ("Our review of the federal case law indicates that the federal courts have held that an order to set aside a default is not a final appealable order."). *But cf. Nat'l Passenger R.R. Corp. v. Maylie*, 910 F.2d 1181, 1182-83 (3d Cir. 1990) ("When an order granting a Rule 60(b) motion merely vacates the judgment and leaves the case pending for further determination, the order is akin to an order granting a new trial and in most instances, is interlocutory and nonappealable. However . . . a very limited exception to this rule [exists]. When the trial court's power to grant a new trial is challenged, what would otherwise be an interlocutory order is treated as an appealable final order." (quotation marks and citations omitted)).

considered the same question, as well as a majority of state appellate courts,[8] agree: orders setting aside a default judgment are not final and not appealable until litigation on the merits has ended. A few state appellate courts do permit direct appeal from orders vacating a default judgment, but they are in the minority.[9]

By citing *Crowe* as if it were binding and concluding that the Appellate Division cannot hear Valerino's appeal, Manning may have failed to appreciate the complexity of the question he has raised. No court in the Virgin Islands has decided whether an order setting aside a default judgment is interlocutory. *But cf. Meyers v. George*, ST-12-CV-394, 2014 V.I. LEXIS 9, *2 (Super. Ct. Mar. 5, 2014) (*dicta*) ("The November 12, 2013, Order vacated the Court's June 6, 2013, entry of default judgment in favor of Plaintiff, and is an interlocutory order."). Furthermore, the narrower question raised here, whether the Appellate Division can review interlocutory orders, is certainly an issue of first impression. Valerino disagrees with Manning, arguing that her "Petition for Internal Review is a post judgment review, not an 'interlocutory' appeal." (Opp'n 6 (emphasis omitted)). But she too fails

[8] *See, e.g.*, *Fisher v. Bush*, 377 So. 2d 968, 968 (Ala. 1979) ("[A]n order granting a motion to set aside a default judgment and proceed to trial is interlocutory and not appealable."); *Epting*, 110 S.W.3d at 751-52; *Werb v. D'Alessandro*, 606 A.2d 117, 118-19 (Del. 1992); *Lee v. Zentz*, 44 A.2d 872, 872 (D.C. 1945) ("The order vacating the judgment made no final disposition of the case. It left the case undecided, with the right in the plaintiff to proceed to trial and judgment. Such an order is interlocutory and not final." (citations omitted)); *Bates v. Berry*, 537 P.2d 189, 190 (Kan. 1975) ("Our rule is well settled that an order vacating a judgment is not a final order from which an appeal may be taken."); *Asset Acceptance, LLC v. Moberly*, 241 S.W.3d 329, 332-33 (Ky. 2007) ("[T]he general rule in Kentucky is, and for some time has been, that an order setting aside a judgment and reopening the case for trial is not final or appealable. We borrowed this rule from federal practice." (citations omitted)); *Allen v. Cole Realty, Inc.*, 325 A.2d 19, 25 (Me. 1974); *Trautman v. Keystone Dev. Corp.*, 156 N.W.2d 817, 818 (N.D. 1968) ("[T]he order granting the motion to vacate the judgment is purely interlocutory and is therefore not an appealable order." (citations omitted)); *Bremer v. Bremer*, 58 A.3d 922, 922-23 (R.I. 2013); *see also Massanutten Bank of Strasburg v. Glaize*, 14 S.E.2d 285, 286 (Va. 1941) ("A large majority of the state courts of last resort, including Virginia, have held an order granting a motion to set aside a default judgment to be interlocutory rather than final, and so not appealable under statutes restricting appeals to final judgments or order.").

[9] *See, e.g., Knight v. Mewszel*, 413 P.2d 861, 862 (Ariz. Ct. App. 1966) ("The order setting aside the default judgment is appealable as a special order made after final judgment within the meaning of the statutes." (citations omitted)); *Thorp v. Thorp*, 390 S.W.3d 871, 875 (Mo. Ct. App. 2013) ("A motion to set aside a default judgment . . . is an independent action. Accordingly, a judgment granting or denying a motion to set aside a default judgment is a final judgment eligible for immediate appellate review." (quotation marks, brackets, ellipses, and citations omitted)); *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 351 N.E.2d 113, 115 (Ohio 1976) ("Regardless of whatever else may be said of a default judgment, it is a judgment. It is as good as any other judgment. It is a final determination of the rights of the parties. Therefore, an order of the trial court pursuant to Civ. R. 60(B), setting aside a default judgment, is clearly within the express language of R.C. 2505.02. It is a final, appealable order."); *Davis v. Mitchell*, 265 S.E.2d 248, 249 (N.C. Ct. App. 1980) ("The Federal courts as well as a majority of the courts of other jurisdictions have concluded that the setting aside of a default judgment is not ordinarily appealable. Our appellate courts have, however, historically entertained such appeals." (citations omitted)).

to explain why. Neither Manning nor Valerino realizes that the Appellate Division has its own rule, Superior Court Rule 322.1(a), concerning "[f]inal orders or judgments of magistrates resolving completely the merits of cases which came before them pursuant to their original jurisdiction." Since Rule 322.1(a) is directly on point, the question is whether it limits the Appellate Division in the way Manning suggests, notwithstanding his failure to cite it. A few courts have cited Rule 322.1(a) in passing. *See, e.g., Chow v. Newton*, ST-12-SM-363, 2014 V.I. LEXIS 124, *2 (Super. Ct. App. Div. May 12, 2014) ("'Final orders or judgments of magistrates resolving completely the merits of cases are immediately reviewable by the judges of the Superior Court.'" (ellipsis and footnote omitted) (quoting Super. Ct. R. 322.1(a)).[10] But none have had occasion to construe it yet. This Court must consider that question.

Another Superior Court judge recently discussed the history of the Magistrate Division and what preceded the establishment of an appellate division. This history is relevant to the interpretation of Superior Court Rule 322.1(a). *See Corraspe v. People*, 53 V.I. 470, 481 (2010) ("The history of the Superior Court Rules" and what "the drafters intended" is relevant when construing the meaning of a court rule).

> Soon after the Legislature created the Magistrate Division and Superior Court magistrates took office, the Supreme Court held in *H&H Avionics, Inc. v. Virgin Islands Port Authority* that it lacks jurisdiction to hear an appeal directly from orders entered by magistrates that have not been appealed to and reviewed by a Superior Court judge because such orders do not constitute final, appealable orders. The Court reached that conclusion in part because section 125 of title 4 of the Virgin Islands Code directs that all appeals from the Magistrate Division, except as otherwise provided for in this chapter, must be filed in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law. The Supreme Court's appellate jurisdiction is limited to appeals arising from final judgments, final decrees or final orders of the Superior Court. Orders entered by magistrates are not final, the Court concluded, because a trial court's decision-making power is ultimately vested in its judges and thus, when an order—even a dispositive one—is entered by magistrate instead of a judge, a final order from the trial court does not exist. Since the Virgin Islands Magistrates Act was largely patterned after the Federal Magistrates Act, judicial

[10] *Stalker* cited Superior Court Rule 322.***3***(a), which concerns the record on review, rather than Superior Court Rule 322.***1***(a), which concerns final orders. However, because the language quoted above from *Stalker* is clearly taken from Superior Court Rule 322.1(a), the citation to Rule 322.3(a) was just a scrivener's error.

decisions of federal courts of appeals considering the finality of magistrate orders assist in interpreting our local statute, the Court explained. Because, in the federal courts, the law is settled that appellate courts are without jurisdiction to hear appeals directly from federal magistrates, the Virgin Islands Supreme Court agreed with the federal courts, and concluded that a litigant does not possess the right to directly appeal a magistrate's order to the Supreme Court without first filing an appeal with a Superior Court judge.

H&H Avionics was decided on December 14, 2009. Two weeks later, the Presiding Judge of the Superior Court promulgated rules for the Magistrate Division and Superior Court magistrates generally. However, the rules concerning reviews or appeals from decisions of magistrate courts were INTENTIONALLY LEFT BLANK. Instead, interim procedures were promulgated. The interim procedures provided for review from decisions of magistrates pursuant to their original jurisdiction and directed that all magistrate orders, for which no review is sought by either party within the time provided for by this section, which was and still is ten days, would become final orders of the court after expiration of the time for such filing.

By the end of the next year, 2010, the Presiding Judge had filled in the blank by rescinding the interim rules and promulgating a comprehensive set of rules in their place. Pursuant to statutory authority, the Presiding Judge also created an appellate division within the Superior Court to review by petition cases within the Magistrate Division's original jurisdiction. The preface to what became the rules for the Appellate Division further explained that

> in implementing the statute affecting the Magistrate Division, the Legislature of the Virgin Islands expressly set forth the jurisdiction and scope of authority of magistrates of the Court as 1) Original Jurisdiction 2) Designation and 3) Trial By Consent.
>
> Having set forth these three distinct sources of magistrates' authority, the Legislature provided for a direct right of appeal to the Supreme Court of the Virgin Islands, from judgments entered by magistrates while presiding over trials by consent, pursuant to 4 V.I.C. § 123(d). Moreover, the Legislature expressly created a right to reconsideration by a Superior Court judge of pretrial matters heard by designation under 4 V.I.C. § 123(b). However, the Legislature did not expressly set forth an appellate remedy for litigants who seek to challenge a decision entered pursuant to magistrates' original jurisdiction under 4 V.I.C. § 123 (a) (1)-(6).
>
> While declining to set forth specifically a procedure for litigants seeking review from magistrate decisions entered in original proceedings under 4 V.I.C. § 123(a), the Legislature nonetheless contemplated other avenues of review in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law, pursuant to this Court's rulemaking authority. The Supreme Court of the Virgin Islands has construed the absence of a specific statutory appellate remedy to preclude direct review of magistrate decisions in that Court

> and to require an internal review process for all magistrate decisions in the trial court, *see H&H Avionics, Inc. v. Virgin Islands Port Authority*, 52 V.I. 458 (V.I. 2009), thus necessitating the following amendments to the Rules of the Superior Court to provide for an internal review process.
> *Ortiz v. People*, 66 V.I. 124, 133-35 (Super. Ct. App. Div. 2017) (quotation marks, citations, brackets, and ellipses omitted).

As *Ortiz* shows, the Legislature created a magistrate division vested with jurisdiction over certain cases and directed that appeals in those cases must be filed in the Superior Court of the Virgin Islands.[11] But the Superior Court of the Virgin Islands is not an appellate court. To remedy this issue, the Superior Court created an appellate division, *see* 4 V.I.C. § 79(a), and promulgated rules to govern the Magistrate and Appellate Divisions of the Superior Court. *See* V.I. Code Ann. tit. 4, § 126 (1997 ed. & 2010 Supp.) ("The Superior Court shall promulgate rules and amendments to the Rules of the Superior Court as necessary to implement this chapter effectively."), *as amended by* Act No. 7888, § 6(d), 2016 V.I. Sess. L. 103, 111 (July 30, 2016). Superior Court Rule 322.1(a) was promulgated when the Superior Court had authority to promulgate rules to govern appeals from the Magistrate Division. Thus, Rule 322.1(a) is a rule "validly adopted by the Superior Court pursuant to its rulemaking authority." *Henry v. Dennery*, S. Ct. Civ. No. 2012-0130, 2013 V.I. Supreme LEXIS 4, *6 (Jan. 11, 2013) (*per curiam*). *But cf.* 4 V.I.C. § 126 (rule-making authority for the Magistrate Division now vested in the Supreme Court of the Virgin Islands).

Since Superior Court Rule 322.1(a) is a valid rule, this Court cannot disregard it. *See Henry*, 2013 V.I. Supreme LEXIS 4 at *6 ("[S]imply no excuse for a single judge setting aside a mandatory court rule that was validly adopted by the Superior Court pursuant to its rulemaking authority."). But

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[11] Section 125 of Title 4 of the Virgin Islands Code provides that "[a]ll appeals from the Magistrate Division, except as otherwise provided for in this chapter, must be filed in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law." "Filed in" does not necessarily mean "heard by" or taken to." *Cf. Orange Cty Emples. Ass'n, Inc. v. Super. Ct. of Orange Cty*., 15 Cal. Rptr. 3d 201, 207-08 (Ct. App. 2004) ("The legislative intent is clear: Petitions for an alleged violation of rule 6.702 shall be filed in the superior court and be heard by an out-of-district appellate justice."); *see also In re: Luxul Technology, Inc.*, No. 16-52004 SLJ, 2017 Bankr. LEXIS 4500, *5-6 (N.D. Cal. Bankr. Dec. 12, 2017) ("The Bankruptcy Local Rules also address a motion seeking to move the case back to the district court, which is known as withdrawing the reference. They state that such motions must be filed in the bankruptcy court but should be heard by the district judge assigned to the case." (quotation marks and citation omitted)). Yet, even though Section 125 says "filed in the Superior Court," the statute has been construed to mean heard by the Superior Court.

the Court can construe it. *Cf. King v. Appleton*, 61 V.I. 339, 345 (2014) ("[W]e examine the Superior Court's conclusions of law—including *its interpretation of a court rule*—*de novo* and its findings of fact for clear error." (emphasis added) (citing *Simmonds v. People*, 59 V.I. 480, 485-86 (2013); *Mustafa v. Camacho*, 59 V.I. 566, 570 (2013) (*per curiam*)). Thus, the question is should Rule 322.1(a) be construed to embody the final judgment rule?

Courts construe rules of procedure in the same way as statutes. Ergo, "the canons of statutory construction . . . apply." *In re: Application of Shores*, 59 V.I. 994, 1001 n.5 (2013) (citing *In re: Petition for Disbarment of Plaskett*, 56 V.I. 441, 447 (2012) (*per curiam*)). When construing a rule, courts first "look at the language of the rule" and then give the "words their plain, ordinary and commonly understood meaning." *Disbarment of Plaskett*, 56 V.I. at 447 (quotation marks, ellipsis, and citations omitted). When the language of a rule is clear, there generally is no reason to inquire further. *See In re: L.O.F.*, 62 V.I. 655, 661 (2015) ("The first step . . . is to determine whether the language at issue has a plain and unambiguous meaning. If the . . . language is unambiguous . . . no further inquiry is needed." (quotation marks and citation omitted)); *cf. Mustafa*, 59 V.I. at 570 (reversing Appellate Division and remanding to dismiss internal appeal because Appellate Division failed to follow its own rules) ("The *plain, unambiguous language* . . . provides that "[n]o review may be submitted to a judge for consideration, or decided, *unless* payment of the filing fee is made in accordance with these rules.'" (emphasis added) (quoting Super. Ct. R. 322.1(b)(4)). But if a rule is "ambiguous in terms or because of doubtful language . . . would seem to have two meanings," *Braffith v. Gov't of the V.I.*, 1 V.I. 582, 588 (3d Cir. 1928), then courts must look beyond the rule's language to determine its meaning.

Superior Court Rule 322.1(a) provides that that "[f]inal orders or judgments of magistrates resolving completely the merits of cases which came before them pursuant to their original jurisdiction . . . are immediately reviewable by judges of the Superior Court of the Virgin Islands." At first blush, the rule's meaning seems clear. Superior Court Rule 322.1(a) allows (1) immediate review, (2) of final orders or judgments, (3) issued in Magistrate Division cases. But when the rule is applied—for example, to the order Valerino appealed—it becomes apparent that a crucial word is missing. Rule 322.1(a) does not expressly limit itself to appellate review ***after*** the merits of a case have been completely resolved and a final order has been entered. Hence, Superior Court Rule 322.1(a) could be construed in at least two ways. Superior Court Rule 322.1(a) either speaks to the level of priority the Appellate Division must afford to final orders or it embodies the final judgment rule as between the Magistrate and Appellate Divisions of the Superior Court. Since the rule could have more than one meaning, it is ambiguous. So, the Court must decide which controls.

The first way Superior Court Rule 322.1(a) could be interpreted is as a rule of priority. Other rules of the Appellate Division lend support to this interpretation. Superior Court Rule 322.2(a) directs that reviews in criminal matters must take "priority over all other reviews," with reviews challenging pretrial detention or bail determinations "granted [e]xpedited [r]eview status." Superior Court Rule 322.1(a) could be viewed in the same vein: prioritizing review of final orders over review of interlocutory orders. Decisions challenging bail and pretrial detention would be given first priority, followed by decisions in criminal matters generally, then final orders and judgments (presumably in civil cases only), and then all other orders. An order similar to the one Valerino appealed would come last in the priority of review under this interpretation of Superior Court Rule 321.1(a). Considering that the Virgin Islands Magistrates Act was "[p]atterned in large part after the Federal Magistrates Act," *Xavier,* 67 V.I. at ____, 2017 V.I. LEXIS 31 at *10, it could be argued that the Legislature anticipated that orders in Magistrate Division cases could be appealed interlocutory, but left it to the Superior Court to promulgate rules to address when interlocutory orders are heard. Federal courts have construed the Federal Magistrate Act in a similar fashion.[12] Since "'judicial decisions of federal courts

[12] *See* Fed. R. Civ. P. 72(a) (decisions on non-dispositive matters) ("A party may serve and file objections to the order within 14 days after being served with a copy."); Fed R. Civ. P. 72(b)(2) (recommendations on dispositive matters) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations."); Fed R. Crim. P. 59(a) (same deadline for non-dispositive

of appeals considering the finality of magistrate order assist . . . in interpreting our local statute,'" *Davis v. People*, S. Ct. Crim. No. 2015-0061, 2015 V.I. Supreme LEXIS 40, *6 (V.I. Dec. 16, 2015) (*per curiam*) (quoting *H&H Avionics, Inc. v V.I. Port Auth.*, 52 V.I. 458, 461 (2009) (*per curiam*)) (ellipsis omitted), Superior Court Rule 322.1(a) could be viewed akin to the rule the Supreme Court of the United States approved of in *Thomas v. Arn*, 474 U.S. 140 (1985). *See id.* at 142 ("The question presented is whether a court of appeals may exercise its supervisory powers to establish a rule that the failure to file objections to the magistrate's report waives the right to appeal the district court's judgment. We hold that it may."). Every order issued in a Magistrate Division case could be reviewed in the Appellate Division and the priority would be determined by court rule. If this interpretation is correct, the Court could construe Valerino's petition as an objection and review the order she is appealing because her appeal was timely filed.

The second way Superior Court 322.1(a) could be interpreted is as a final judgment rule, which "generally requires a party 'to raise all claims of error in a single appeal following final judgment on the merits.'" *Joseph v. Daily News Publ. Co., Inc.*, 57 V.I. 566, 578 (2012) (quoting *Bryant v. People*, 53 V.I. 395, 400 (2009)). A decision is considered final "for purposes of appeal . . . [if it] leaves nothing for the court to do but execute the judgment." *Bryant*, 53 V.I. at 400 (citation omitted). "[T]he purpose of the final judgment rule is to 'promote efficient judicial administration,' 'emphasize the deference appellate courts owe to trial court decisions,' 'avoid the delay that inherently accompanies time-consuming interlocutory appeals,' and generally avoid 'unreasonable disruption, delay, and expense.'" *First Am. Dev. Group/Carib, LLC v. WestLB AG*, S. Ct. Civ. No. 2012-0023, 2012 V.I. Supreme

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rulings): Fed. R. Crim. P. 59(b)(2) (same deadline for dispositive recommendations); *cf. Thomas v. Arn*, 474 U.S. 140, 154 (1985) ("Any party that desires plenary consideration by the Article III judge of any issue need only ask."); *Smith v. Estate 13 Friis*, Civ. No. 2011-41, 2017 U.S. Dist. LEXIS 46797, *12 (D.V.I. Mar. 14, 2017) (citing 28 U.S.C. § 636(b)(1)(A) and explaining parenthetically that it "allow[s] a district judge to 'reconsider' any order of a magistrate judge shown to be 'clearly erroneous or contrary to law'."); *Alexander v. McAdams*, 3:16-cv-190, 2017 U.S. Dist. LEXIS 11559, *6 (N.D. Miss. Jan. 27, 2017) ("If plaintiff desires to appeal this or any order by a magistrate judge deciding a pretrial, non-dispositive matter, plaintiff may do so pursuant to Federal Rule of Civil Procedure 72.").

LEXIS 39, *4 (V.I. Apr. 30, 2012) (*per curiam*) (quoting *Enrietto v. Rogers Townsend & Thomas, P.C.*, 49 V.I. 311, 315 (2007), parenthetically).

Having considered the two ways that Superior Court Rule 322.1(a) can be interpreted—and based on the history of the Appellate Division, the language of the rule, and the relevant statutory and case law pertaining to the establishment of the Magistrate and Appellate Divisions—tthis Court holds that Superior Court Rule 322.1(a) should be interpreted as the final judgment rule. Any other construction would lead to absurd results, contravene binding precedent, and conflict with legislative intent.

Rules like statutes should be "construed so as to avoid absurd results." *Application of Shores*, 59 V.I. at 1001 n.5. Courts consider this canon of construction to be a "cardinal principle" for a very important reason. *Id.* Construing a rule or a statute in a way that might "produce odd or absurd results . . . [is] inconsistent with common sense." *Id.* (quotation marks and citation omitted); *accord* 1 V.I.C. § 42 ("Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language."). Construing Rule 322.1(a) to permit "'[i]mmediate review of every trial court ruling . . . [might] permit[] more prompt correction of erroneous decisions." *Enrietto*, 49 V.I. at 315 (quoting *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 430 (1985)). But it would also "impose unreasonable disruption, delay, and expense . . . [and] undermine the ability of [magistrate] court judges to supervise litigation." *Id.* (quotation marks and citation omitted). The Legislature vested the Magistrate Division with original jurisdiction over cases that often involve *pro se* litigants like small claims cases, *see* 4 V.I.C. § 112(d), or civil stalking cases, *see* 5 V.I.C. § 1473(a), as well as cases that historically have consumed significant judicial resources like probate proceedings. *Cf. Estate of George*, 59 V.I. at 917 (probate opened in 1999 and concluded in 2010); *In re: Estate of Watson*, SX-91-PB-126, 2015 V.I. LEXIS 151, *1-3 (Super. Ct. App. Div. Mar. 19, 2015) (probate opened in 1992, closed in 2008, reopened in 2012). Furthermore, the

Legislature recently increased, not decreased, the jurisdiction of the Magistrate Division to include "all civil cases where the amount in controversy does not exceed $75,000." 4 V.I.C. § 123(a)(7). Permitting interlocutory review in every Magistrate Division cases whenever an order has been issued would cause the Virgin Islands court system to "grind nearly to a halt." *Wellness Int'l Network*, 135 S. Ct. at 1939. This Court does not believe that Superior Court Rule 322.1(a) should be read to yield that result.

Rules "cannot be interpreted to overturn a precedent." *People v. Armstrong*, 64 V.I. 528, 538 n.7 (2016) (citing *Sweeney v. Ombres*, 60 V.I. 438, 552 (2014) (*per curiam*)). Interpreting Superior Court Rule 322.1(a) as a rule of priority and not as a final judgment rule would effectively overturn binding precedent. The Supreme Court of the Virgin Islands implicitly held in *In re: Estate of George*, 59 V.I. 913 (2013), that the final judgment rule applies to the Appellate Division. The Appellate Division had concluded in *Estate of George* that it could not review interlocutory orders issued by the Magistrate Division, only the final order. *See generally In re: Estate of George*, SX-99-PB-103, 2012 V.I. LEXIS 105, *4-5 (V.I. Super. Ct. App. Div. July 27, 2012), *rev'd by* 59 V.I. 913 (2013). The Supreme Court expressly rejected that conclusion, explaining that "prior interlocutory orders merge with the final judgment in a case, and the interlocutory orders may be reviewed on appeal from the final order." 59 V.I. at 919 (quotation marks, ellipsis, and citation omitted). While this appeal is distinguishable from *Estate of George*—because the question here is *when* an interlocutory order can be reviewed, not whether—*Estate of George* lends support to interpreting Superior Court Rule 322.1(a) as a final judgment rule.

But it is not just *Estate of George* that compels this result. Time and again, the Supreme Court of the Virgin Islands has held that the relationship between the Magistrate and Appellate Divisions of the Superior Court of the Virgin Islands is akin to that of a trial court and an appellate court. This precedent is binding. It is the law of the Virgin Islands. The Magistrate Division is the trial court in all Magistrate Division cases. *See In re: Estate of Small*, 57 V.I. 416, 429 (2012) ("In conclusion, we hold that the magistrate is the finder of fact for all section 123(a)(4) original jurisdiction cases."); *Moore v. Walters*, 61 V.I. 502, 508 (2014) ("This explicit determination of credibility by the magistrate cannot be overturned if a rational person could agree with the assessment *of the trial court*, as is the case here." (emphasis added)). The Appellate Division is the appellate court in all Magistrate Division cases. *See In re: Estate of George*, 59 V.I. 913, 921 (2013) ("Since this Court serves as *a second level of appellate review* in this case, we would, consistent with traditional appellate practices, ordinarily reverse . . . and remand the matter to the Appellate Division so that it may conduct a proper inquiry." (emphasis added)); *Browne*, 57 V.I. at 453 n.5 ("[W]hen considering a petition for review of a final decision rendered by a Superior Court magistrate, a Superior Court judge essentially *acts as an intermediate appellate court*, with this Court serving as a second level of appellate review." (emphasis added)).

Finally, construing Superior Court Rule 322.1(a) as anything other than a final judgment rule would conflict with legislative intent. The Legislature directed that "[a]ll appeals from the Magistrate Division . . . must be filed in the Superior Court." 4 V.I.C. § 126. "Courts presume that the legislature knew the law when it passed a statute, including judicial interpretations of the law." *Brooks v. Gov't of the V.I.*, 58 V.I. 417, 428 (2013) (quotation marks and citation omitted). It would be illogical to conclude that the Legislature used the word "appeal" in Section 32 of Title 4 of the Virgin Islands Code, which established the appellate jurisdiction of the Supreme Court of the Virgin Islands, differently than in Section 125 of Title 4 of the Virgin Islands Code, which provided for appeals from the Magistrate Division to the Superior Court. *Compare* 4 V.I.C. § 32(a) ("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."), *with id.* § 125 ("All appeals from the Magistrate Division, except as otherwise provided for in this chapter, must be filed in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law."). "'[A]ppeal' is a legal term of art." *People v. Jones*, 651 N.W.2d 906, 908 (Mich. 2002); *accord Wiscart v. Dauchy* 3 U.S. (3 Dall.) 321, 327 (1796) (Elsworth, C.J.) ("An appeal is a process of civil law origin, and removes a cause entirely; subjecting the fact as well as the law, to a review and re-trial: but a writ of error is a process of common law origin, and it removes nothing for re-examination but the law.").[13] "The right of appeal is a statutory right, not a common law right . . . [and] legislatures can set conditions and impose limitations on how and when an appeal is taken." *Xavier*, 67 V.I. at ___, 2017 V.I. LEXIS 31 at *16 (internal citations omitted). But appeal is not the same as reconsideration, trial *de novo*, or review. *Cf. id.* at ___- ___; 2017 V.I. LEXIS 31 at *17-19. The Legislature used the word appeal in Section 125 and precedent has construed "appeal" to encompass the final judgment rule. Construing Superior Court Rule 322.1(a) to permit "piecemeal appellate review of trial court decisions which do not terminate the litigation," *Enrietto*, 49 V.I. at 315 (quotation marks and citations omitted), would conflict with the intent of the Legislature.

All questions surrounding the Magistrate Division have not been laid to rest. Courts have had to continually reexamine the impact of the changes the Legislature made. *See, e.g.*, *Estate of Small*, 57 V.I. at 528 ("We have yet to address who the 'finder of fact' is in the context of a probate decision that came from the Magistrate Division of the Superior Court under section 123(a)(4)." (citation omitted)); *Ortiz*, 66 V.I. at 135 ("None of the legislation concerning the Magistrate Division directed that it applies retroactively, at least not as to what jurisdiction was vested in the Magistrate Division."); *Dennie*, 66 V.I. at 154 n.6 (noting potential impact of the Magistrate Division on traffic cases); *Xavier*,

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[13] *Cf. United States v. Coe*, 155 U.S. 76, 83 (1894) (retrial on appeal ceased to be available in 1803) ("The remedy by appeal in its original sense was confined to causes in equity, ecclesiastical, and admiralty jurisdiction. Undoubtedly appellate courts proceeding according to the course of the civil law may allow parties to introduce new allegations and further proofs, and such has been the settled practice of the ecclesiastical courts in England and of the admiralty courts in this country. Nevertheless, orders allowing this to be done are not granted as matter of course, but made with extreme caution, and only on satisfactory grounds. As to appeals to this court from the decrees of Circuit Courts in equity causes, it was provided by the second section of the act of Congress of March 3, 1803, c. 40, 2 Stat. 244, carried forward into section 698 of the Revised Statutes, which was the first enactment giving the remedy by appeal, that no new evidence shall be received in the said court, on the hearing of such appeal, except in admiralty and prize causes. And in respect of the allowance of amendments, when the ends of justice require it, the course has been to remand the cause with directions." (quotation marks and citations omitted)).

67 V.I. at ____, 2017 V.I. LEXIS 31 at *17-18 (distinguishing between appeal and reconsideration); *see also, e.g.*, *Davis*, 2015 V.I. Supreme LEXIS 40 at *3-7 (dismissing for lack of jurisdiction appeal from order issued by magistrate denying motion for reduction of bail) ("[T]he appeal must first be taken to a Superior Court judge pursuant to section 125 [of title 4 of the Virgin Islands Code."). Some of the uncertainty stems from the way in which the Legislature established the Magistrate Division: "***in*** the Superior Court of the Virgin Islands," 4 V.I.C. § 120 (emphasis added), not separate and apart from it. That is, the Legislature did not establish a new court for certain kinds of case. Instead, the Legislature established a new division within the same court but without establishing an appellate division or directing how appeals should proceed. The Legislature left it to the Superior Court to adopt rules to govern appellate review and the Superior Court adopted Rule 322.1(a).

Manning is correct. "[N]o authority exists that allows . . . interlocutory [review in the Appellate Division] of a decision vacating default judgment." (Mot. 2.) Therefore, Valerino's review must be dismissed. Orders *granting* relief from a default judgment are not immediately appealable because they "settle nothing with finality except the fact that more litigation is on the way." *Appointment of Umpire for Hayes Family Trust*, 845 F.2d at 1003 (quotation marks and citations omitted)). Since more litigation is on the way, this Court cannot consider whether the Magistrate Court abused its discretion in granting Manning's motion to vacate the default judgment or whether Valerino's small claims case is trivial.[14] The parties can reassert these arguments on direct appeal.

[14] Neither the Supreme Court nor the Appellate Division have considered whether the Appellate Division is limited to the standards of review stated in the Rules of the Superior Court. *See* Super. Ct. R. 322.3(b)(1)-(2) ("Factual determinations are to be reviewed for clear error" and "[l]egal findings, statements of law, and the application thereof, are to be afforded plenary review."); *cf. Estate of Small*, 57 V.I. at 429-30 (adopting clear error standard for facts and plenary standard for legal questions for Magistrate Division cases). Valerino argues that her review is not "on the merits, but on the abuse of discretion or clear error that the Magistrate Court committed by issuing an Order vacating judgment without first hearing from the other side . . . or conduct[ing] a hearing to determine . . . excusable neglect." (Opp'n 7-8.) If the Appellate Division can review for clear error, presumably it can review for plain error too. But plain error review also requires determining whether "the error affects the fairness, integrity, or public reputation of the judicial proceedings," *Azille v. People*, 59 V.I. 215, 221 n.2 (2012) (quotation marks and citations omitted), something traditionally reserved to higher courts with superintendent authority over lower courts. It is not clear that a single Superior Court judge sitting in the Appellate Division has the superintendent authority typically vested in higher courts to declare that a Superior Court magistrate—or a Superior Court judge sitting as a Superior Court magistrate, *see Brown*, 59 V.I. at 588—abused her or his discretion. *Cf. Hurtado v. Statewide Home Loan Co.*, 213 Cal. Rptr. 712, 715-17 (Ct. App. 1985) (explaining that the abuse of discretion standard is

CONCLUSION

For the reasons stated above, Valerino's motion to strike will be denied and Manning's motion to dismiss granted. This appeal will be dismissed and the case will be remanded to the Magistrate Division for further proceedings consistent with this Opinion. An appropriate order follows.

DONE this 9 day of March, 2018.

HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

ATTEST:
Estrella H. George
Clerk of the Court

By: ____________________
Court Clerk Supervisor

Dated: 3/9/18

rooted in the "structure of the judicial system [which] resembles a pyramid, with appellate courts and ultimately the Supreme Court occupying the top of that pyramid," and through which "[t]he primacy of appellate court decisions" results in part from the "discussion and debate among judges which attends the creation of an appellate opinion."); *see also P.G. Pub. Co. v. Commw By & Through Dist. Att'y of Erie Cty*, 566 A.2d 857, 859 (Pa. Super. Ct. 1989) ("An abuse of discretion is not merely an error of judgment, but is an overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence or the record."); Hon. Henry J. Friendly, *Indiscretion about Discretion*, 31 Emory L.J. 747, 762 (1982) ("There are a half dozen different definitions of 'abuse of discretion,' ranging from ones that would require the appellate court to come close to finding that the trial court had taken leave of its senses to others which differ from the definition of error by only the slightest nuance, with numerous variations between the extremes."). Since the order Valerino appealed is interlocutory, the Court declines to address her argument at this time. Valerino will be able to raise it again should either party return to the Appellate Division after the merits have been resolved in the Magistrate Division.