For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DANIEL DaCOSTA, Appellant/Plaintiff, v. **SELMA DaCOSTA,** Appellee/Defendant.	**S. Ct. Civ. No. 2019-0061** Re: Super. Ct. Di. No. 146/2012 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Jessica Gallivan

Considered: March 9, 2021
Filed: June 15, 2021

Cite as: 2021 VI 11

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

APPEARANCES:

Martial A. Webster, Sr., Esq.
Law Office of Martial A. Webster, Sr.
St. Croix, U.S.V.I.
Attorney for Appellant,

Kye Walker, Esq.
The Walker Legal Group
St. Croix, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Daniel DaCosta appeals from the Superior Court's July 17, 2019 order, which awarded $3,098.70 in costs and attorney's fees to Appellee Selma DaCosta. For the reasons that follow, we affirm.

I. BACKGROUND

¶ 2 On August 20, 2012, Selma[1] filed a petition for divorce from her then-husband, Daniel. In her petition, Selma represented that Daniel did not contest the divorce, and that they had jointly executed a marital settlement agreement addressing all aspects of the dissolution of their marriage. The agreement provided for the Superior Court to retain jurisdiction to enforce the terms of the settlement by way of contempt proceedings. The Superior Court, in an August 24, 2012, order, accepted the marital settlement agreement and issued a decree of divorce.

¶ 3 Nearly seven years later, on February 1, 2019, the Superior Court received a letter from Selma dated January 30, 2019, in which she alleged that Daniel had violated the marital settlement agreement by failing to make monthly mortgage payments on their jointly owned real property located at 219 Estate Judith's Fancy, make timely tuition payments to their children's school, and pay property taxes. Selma further requested that the Superior Court order Daniel to comply with the agreement and hold him in contempt of court. On February 12, 2019, the Superior Court received a letter from Daniel, which requested that the court revise the settlement agreement to order the sale of the real property, with direction that the proceeds be used to satisfy the mortgage and outstanding property taxes. In his letter, Daniel further requested that Selma be ordered to reimburse him for doors he purchased for the property, certain repairs made to the property, and for certain charges made on their joint credit card.

¶ 4 The next day, counsel entered an appearance on behalf of Daniel, and counsel appeared for Selma on April 8, 2019. The Superior Court construed the two letters as motions to respectively enforce and revise the settlement agreement, and ultimately held a hearing on May 29, 2019. At

[1] Because both parties share the same last name, for clarity we refer to each by their respective first names.

the hearing, Selma consented to reimbursement of Daniel for the cost of the doors and for the credit card charges. However, all other issues remained disputed, and the Superior Court took the matter under advisement after hearing evidence and arguments from both parties. Moreover, at the hearing, Selma requested that she receive an award of certain litigation costs[2] and attorney's fees if she were to prevail on her claim.

¶ 5 The Superior Court issued its decision in a June 5, 2019, order. In its decision, the Superior Court ruled in Selma's favor on all disputed issues and stated that it was granting Selma's motion for enforcement and denying Daniel's motion for modification. However, the Superior Court nevertheless included in the order a directive that Selma pay Daniel the monies that she had consented to reimburse him at the May 29, 2019, hearing.

¶ 6 In its order, the Superior Court also directed that Selma file an affidavit regarding costs and attorney's fees. Selma filed this affirmation on June 20, 2019, which requested an award of $3,098.70. Daniel filed an opposition to this request on June 25, 2019; however, in that filing, Daniel did not challenge the reasonableness of the requested $3,098.70 award for fees and costs. Rather, Daniel solely argued that Selma was not entitled to an award because she was purportedly not the prevailing party in the litigation, in that the June 5, 2019, order had ordered her to pay certain monies to Daniel.

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[2] Based on our reading of Selma's counsel's affirmation, it appears to us that Selma was only seeking reimbursement for copying costs in the amount of $158.70 and that she made no claim for reimbursement of court costs, filing fees, witness fees, or other kinds of litigation costs. Because the Superior Court awarded Selma all of her claimed attorney's fees in the amount of $2,940.00 and all of her claimed costs, awarding her a total of $3,098.70, it is clear that the Superior Court did not include in its award any reimbursement for litigation costs other than the $158.70 that Selma incurred for copying expenses. Such expenses qualify as costs by operation of 5 V.I.C. § 541(a)(5), providing that "[c]osts which may be allowed in a civil action include: . . . [n]ecessary expense[s] of copying any . . . document used as evidence on the trial."

¶ 7 The Superior Court, in a July 17, 2019, order, awarded Selma the full $3,098.70 she had requested. In doing so, the Superior Court expressly rejected Daniel's argument that Selma was not the prevailing party, emphasizing that the June 5, 2019, order had expressly granted Selma's motion and denied Daniel's motion, and that it only directed Selma to make those payments because she had consented to do so at the May 29, 2019 hearing. Daniel timely filed a notice of appeal with this Court on August 14, 2019. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 8 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court." Because the Superior Court's July 17, 2019, order resolved all of the claims between the parties, it is a final judgment within the meaning of section 32(a), thereby conferring jurisdiction on this Court. *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012).

¶ 9 This Court exercises plenary review of the Superior Court's application of law. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 436 (V.I. 2013) (citing *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)).

B. Prevailing Party

¶ 10 In its July 17, 2019, order, the Superior Court stated that it awarded attorney's fees pursuant to title 5, section 541 of the Virgin Islands Code. That statute provides, in pertinent part, that in civil cases other than non-frivolous personal injury actions, "there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of

indemnity for his attorney's fees in maintaining the action or defenses thereto." 5 V.I.C. § 541(b). In his appellate brief, Daniel renews his argument that Selma is not entitled to an award of attorney's fees and costs because she is purportedly not the "prevailing party in the judgment" as that phrase is used in section 541(b).

¶ 11 The issue of what constitutes a prevailing party for purposes of section 541 is one of first impression for this Court, and on which other courts in the Virgin Islands have not spoken with a consistent voice. In one line of cases, courts have interpreted the phrase "prevailing party" quite narrowly, as effectively requiring a complete victory by one party on all issues to qualify for an attorney's fees award under section 541. *See, e.g., Newfound Management Corp., General Partner of Newfound Ltd. Partnership v. Sewer*, 34 F. Supp. 2d 305, 318 (D.V.I. 1999); *Anderson v. Bryan*, 58 V.I. 181, 186 (V.I. Super. Ct. 2013). This narrow reading of the phrase is consistent with federal case law strictly construing fee-shifting statutes to preclude attorney's fees awards in many instances. *See, e.g., Estate of Hevia v. Portrio Corp.*, 602 F.3d 34, 46 (1st Cir. 2010); *Tunison v. Continental Airlines Corp., Inc.*, 162 F.3d 1187, 1191 (D.C. Cir. 1998); *Kropp v. Ziebarth*, 601 F.2d 1348, 1358 n. 27 (8th Cir. 1979); *Srybnik v. Epstein*, 230 F.2d 683, 686 (2d Cir. 1956). However, in another line of cases, the definition of "prevailing party" is far broader and permits attorney's fee awards to one party even when it would be precluded under federal case law, such as situations where both sides prevailed but one "was more successful." *See, e.g., Isaac v. Crichlow*, Super. Ct. Civ. No. 065/2012 (STX), 2016 WL 5468371, at *1 (V.I. Super. Ct. Sept. 29, 2016) (unpublished); *Melendez v. Rivera*, 24 V.I. 63, 66 (V.I. Super. Ct. 1988); *Trailer Marine Transp. Corp. v. Charley's Trucking, Inc.*, 20 V.I. 286, 299 (V.I. Super. Ct. 1984).

¶ 12 As with all questions of statutory interpretation, our inquiry begins with an analysis of the plain text of the statute – and, if the statutory text is unambiguous, will also end there. *Haynes v.*

Ottley, 61 V.I. 547, 561 (V.I. 2014). Here, the phrase "prevailing party" is not defined in section 541. The Legislature has instructed that "[t]echnical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meanings." 1 V.I.C. § 42. As the above cases demonstrate, there is no clear consensus as to the meaning of "prevailing party" in the law. *See also Merriweather Post Business Trust v. It's My Amphitheater, Inc.*, No. 2594, 2020 WL 4530659, at *25 & n.19 (Md. Ct. Spec. App. Aug. 20, 2020) (unpublished) (summarizing the different approaches jurisdictions have taken to determine who is the prevailing party in litigation). This is further reflected in the definition of "prevailing party" used in *Black's Law Dictionary*, which has not been consistent and has changed over the years. *Compare* BLACK'S LAW DICTIONARY 1188 (6th ed. 1990) (defining "prevailing party" as "[t]he party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention") *with* BLACK'S LAW DICTIONARY 1351 (11th ed. 2019) (defining "prevailing party" as "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded").

¶ 13 Since the term "prevailing party" is ambiguous, we next turn to legislative intent. "[I]t is axiomatic that where we can determine the intent of the Legislature in enacting a statute, we are required to read the statute to carry out that legislative intent." *Duggins v. People*, 56 V.I. 295, 304 (V.I. 2012). "[I]n the search for legislative intent, courts look to the objective to be attained, the nature of the subject matter and the contextual setting." *See* 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 45:5, at 35 (7th ed. 2007).

¶ 14 Applying this standard, we adopt the more liberal construction of "prevailing party." This

Court has already held that the Legislature enacted section 541 with the clear intent of abrogating the "American Rule" on attorney's fees.[3] *Hansen v. Bryan*, 68 V.I. 603, 613 (V.I. 2018). In this respect, section 541 differs from fee-shifting statutes adopted by the federal government and the fifty states, in that while those statutes serve as mere exceptions to the "American Rule," the Virgin Islands, by enacting section 541, became the only United States jurisdiction to abolish the "American Rule" entirely, subject to the limited exceptions set forth in section 541 itself. *Kalloo v. Estate of Small*, 62 V.I. 571, 579 & n.5 (V.I. 2015). The Legislature chose to abolish the "American Rule" for reasons of public policy, believing "that a party should not have to bear the legal expenses of demonstrating either that it is not at fault or that it is the victim of another's fault." *Int'l Leasing & Rental Corp. v. Gann*, Civ. No. 08-40, 2010 WL 1284464, at *1 (D.V.I. Mar. 23, 2010) (unpublished) (quoting *Bedford v. Pueblo Supermarkets of St. Thomas, Inc.*, 18 V.I. 275, 278 (D.V.I. 1981)).

¶ 15 Consistent with the express intent of the Legislature, we decline Daniel's invitation to

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[3] As this Court has previously explained,

> This rule is typically traced back to 1796, when the United States Supreme Court declined to create a judicial rule allowing the award of attorney's fees to the prevailing party in federal courts in the absence of legislation. *Arcambel v. Wiseman*, 3 U.S. (3 Dall.) 306 (1796) ("The general practice of the United States is in opposition to [awarding attorney's fees] .... and ... that practice ... is entitled to the respect of the court, till it is changed, or modified, by statute."); *see* John Leubsdorf, *Toward a History of the American Rule on Attorney Fee Recovery*, 47 LAW & CONTEMP. PROBS. 9, 15 (1984) ("*Arcambel* is cited as recognizing a general rule that attorney fees are not recoverable in the absence of legislation."). The United States Supreme Court "has consistently adhered to that early holding," explaining that "it would be inappropriate for the Judiciary, without legislative guidance, to reallocate the burdens of litigation," and almost all United States jurisdictions have followed suit. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247–50 (1975).

Kalloo v. Estate of Small, 62 V.I. 571, 579 n.5 (V.I. 2015).

interpret section 541 in a manner that precludes an award of attorney's fees and costs to a party that has substantially prevailed on the merits. In this case, the Superior Court ruled in Selma's favor on every disputed issue, and the monies awarded to Selma on those issues greatly exceed the sum that she consented to pay to Daniel. To hold, under these circumstances, that Selma is not a prevailing party for purposes of section 541 would effectively elevate form over substance, and improperly construe section 541 in the same manner as federal statutes providing limited exceptions to the "American Rule" when the Legislature instead intended to abrogate the "American Rule" entirely. Therefore, we hold that the Superior Court did not err when it determined that Selma was the prevailing party in the underlying litigation, and consequently affirm the July 17, 2019, order.[4]

III. CONCLUSION

¶ 16 Because the Legislature enacted section 541 with the purpose of abrogating the "American Rule" on attorney's fees, this Court liberally and broadly construes the phrase "prevailing party" in that statute, in light of the Legislature's intent to indemnify the party that is not at fault in the litigation. Since Selma prevailed on every disputed issue and obtained a monetary award far greater than monies she consented to pay Daniel, the Superior Court committed no error when it determined that she was the prevailing party and granted her motion for an award of attorney's fees and costs. Accordingly, we affirm the July 17, 2019, order.

Dated this 15th day of June 2021.

[4] As noted earlier, Daniel has not challenged the appropriateness of the $3,098.70 award of fees and costs but has only contended that Selma is not entitled to any award because she is purportedly not the prevailing party. Therefore, we decline to determine *sua sponte* whether the Superior Court may or may not have abused its discretion in selecting this amount. *See* V.I. R. APP. P. 22(m) ("Issues that were . . . not raised or objected to before the Superior Court . . . are deemed waived for purposes of appeal.").

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Natasha Illis
Deputy Clerk

Dated: June 15, 2021