FOR OFFICIAL PUBLICATION

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

PATRICIA M. JAMES,	)	CASE NO. SX-16-RV-009
	)	(RE: Case No. SX-15-SM-270)
Petitioner,	)	
	)	
v.	)	
	)	
TAMIEKA M. PHILLIPUS,	)	
	)	
Respondent.	)	
	)	

On Review from the Magistrate Division
District of St. Croix
Superior Court Magistrate Judge: Hon. Jessica Gallivan

APPEARANCES:

PATRICIA JAMES
Christiansted, VI 00820
Pro se

TAMEKA M. PHILLIPUS
Christiansted, VI 00823
Pro se

MEMORANDUM OPINION

MOLLOY, Robert A., Judge.

THIS MATTER is in the Appellate Division on appeal from the Magistrate Division. Patricia M. James appeals after a judgment debtor hearing, claiming her due process rights were violated because the Superior Court failed to serve her with a copy of the underlying judgment that lead to the hearing or the writ that issued to execute on the judgment. For the reasons stated below, this appeal will be dismissed.

I. FACTUAL AND PROCEDURAL BACKGROUND

Nelson Cruz and Tamieka M. Phillipus got into a physical fight in the early morning hours of Saturday, March 7, 2015. Cruz and Phillipus were married and at home when the fight occurred.

Phillipus was cut on her arm during the fight, allegedly because Cruz had a knife. Cruz left after the fight and drove off in Phillipus' car. The police were called to the home, took a statement from Phillipus and her daughter, and arrested Cruz sometime later for assault in the third degree, carrying or using a dangerous weapon during the commission of a crime of violence, disturbance of the peace, and unauthorized use of a vehicle. Because the crimes Cruz allegedly committed were acts of domestic violence, he was detained pending court determination of bail, pursuant to section 99 of title 16 of the Virgin Islands Code.

Cruz appeared in court for an advice of rights hearing on March 9, 2015. The court set bail at $25,000 and allowed Cruz and his third-party custodian, Enrique James Sanes, to post an unsecured bond of $22,500 with the balance, $2,500, posted in cash. However, because Phillipus was the complaining victim, Cruz could not reside with her pending trial. So, the order releasing him from custody directed instead that he reside with James. Two weeks later, Cruz filed an emergency motion to substitute Patricia M. James for Sanes and for permission to stay with her until trial. Cruz was still detained at this time. The same day, the People of the Virgin Islands formally charged Cruz by information with third-degree assault, simple assault and battery, unauthorized use of a vehicle, carrying or using a dangerous weapon during a commission of a crime of violence, and disturbing the peace.

Cruz appeared two days later, on March 25, 2015, before the magistrate court for arraignment and plead not guilty. The court granted his emergency motion and ordered him released from custody. He and James signed the $22,500 unsecured bond and posted a $2,500 cash bail bond. The criminal case, assigned number SX-15-CR-081, was randomly assigned to a Superior Court judge once Cruz asserted his right to a trial by jury.

Five months later, James sent a letter to the Superior Court, dated and docketed August 13, 2015, asking to be discharged as Cruz's third-party custodian. James said she did not know Cruz's whereabouts and he no was longer living with her. The court discharged James the same day, vacated the March 25, 2015 pretrial release order, and issued a warrant for Cruz's arrest. Cruz was arrested a day later and three days after that, Cruz's attorney filed a second emergency motion to substitute Dorithy V. McIntosh as third-party custodian.

The court heard argument on Cruz's second motion on September 2, 2015, continued to September 16, 2015 because McIntosh was off-island and could not be questioned to determine her fitness as Cruz's custodian. McIntosh was allowed to substitute as third-party custodians in place of James, with Dorithy's sister, May McIntosh, standing in because Dorithy had upcoming travel plans. Two days later, on September 18, 2015, Dorothy and Cruz signed third second unsecured bond in the amount of $22,500. Cruz was released again to reside with the McIntosh sisters pending trial.

Eleven days later, the People filed a motion, on September 29, 2015, to dismiss the charges. The People explained that "[t]he victim . . . no longer has an interest in assisting the People in the prosecution of [this] case, and has reduced her decision to a written notarized statement." (Pl.'s Mot. to Dismiss 1, filed Sept. 29, 2015, *People of the V.I. v. Cruz,* SX-15-CR-081.) Since the People could not meet their burden of proof, they moved to dismiss all charges against Cruz with prejudice. The court issued an order the next day, granting the motion, removing the release conditions, and exonerating bail. The Clerk's Office entered the order on October 2, 2015 and closed the criminal case. Because the bail was exonerated, the Cashier's Division returned the $2,500 James posted on March 25. 2015 as security for Cruz's release.

Approximately six weeks later, on November 12, 2015, Phillipus filed a complaint in the Small Claims Division, claiming that she had raised the money to cover her husband's bail and had given it to James to post on his behalf. Phillipus asked her to give it back, but James told her to sue her. The Clerk's Office processed Phillipus' complaint, number SX-15-SM-270, and assigned it to a Superior Court magistrate judge. Trial was scheduled for November 24, 2015, but continued because James had not been served. For reasons not clear from the record, a Superior Court judge sitting in the Magistrate Division—the same judge who presided over *People of the Virgin Islands v. Nelson Cruz*—issued an order, entered January 15, 2016, scheduling bench trial for February 16, 2016. Phillipus and James appeared and testified at trial. After hearing their testimony, the court found in favor of Phillipus and entered judgment against James for $2,500 plus $100 in court costs. The judgment was entered on February 17, 2016 and became final once the time to appeal passed. *See* Super. Ct. R. 322.1(b)(2)(A) (ten days to appeal); *see also* Super. Ct. R. 322.1(c) ("[O]rders for which no internal review is sought by either party within the time provided for by this section become final orders.").

On March 7, 2016, Phillipus filed a praecipe for a writ of execution. She stated that James owned real estate and had a bank account. The praecipe was not sworn or supported by affidavit, however. The Clerk's Office issued the writ the same day. Whether it was returned, and if so when, is unclear from the trial court record. However, on March 21, 2016, a Superior Court marshal returned the February 17, 2016 judgment as unserved, stating that he attempted to serve James but was unable to locate her.

Six months later, Phillipus filed a motion on September 20, 2016 to request a judgment debtor hearing because the writ of execution did not yield any payment. The Superior Court magistrate judge to whom the case was initially assigned granted the motion and scheduled a judgment debtor hearing for October 11, 2016. Both James and Phillipus appeared. The examination revealed that, other than her home, James had no assets and no funds in any bank accounts that could be used to satisfy the judgment. James offered to pay twenty dollars a month until the debt was paid off. She also made one twenty-dollar payment on October 6, 2016, five days before the judgment debtor hearing.

Immediately after the hearing, James filed a petition for review, paid the filing fee, and asked to have the transcript requirement waived. She asserted in her petition that her "due process was denied" because she "was never served" with the "judgment nor writ of execution" and now her "personal assets are being examined for payment." (Pet. 1, filed Oct. 11, 2016.) The Clerk's Office processed the petition, opened a new case numbered SX-16-RV-009, and assigned it to the undersigned judge sitting in the Appellate Division. The Clerk's Office also notified James by briefing letter, dated October 17, 2016, of the requirements associated with internal appeals from the Magistrate Division, including the need to file briefs unless excused by the Court.

On April 6, 2017, the Court issued the following order:

> **THIS MATTER** is in the Appellate Division on review from the Magistrate Division. Patricia M. James, the defendant below and the petitioner on review, filed a petition for review following a judgment debtor hearing before the Magistrate Court on October 11, 2016. No order was issued after the judgment debtor hearing. Having reviewed the record, this Court, sitting as an appellate court, questions whether the Appellate Division has authority, or jurisdiction, to hear this review.
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> Superior Court Rule 322.1(a) provides that "[f]inal orders or judgments of magistrate[court]s resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately reviewable by judges of the Superior Court of the Virgin Islands" sitting in the Appellate Division. The Virgin Islands Supreme Court has held that the Superior Court must provide the parties with a chance to be heard even when the court, on its own, questions whether it has jurisdiction. *Cf. Hughley v. Gov't of the V.I.*, 61 V.1. 323,

> 334 n.6 (V.l. 2014) ("[T]he Superior Court's right to raise questions as to its jurisdiction *sua sponte* does not grant it a corresponding license to adjudicate the jurisdictional issue without first providing the parties with a right to be heard.") Even though the Court was referring to the trial court divisions of the Superior Court, and not the Appellate Division, out of an abundance of caution the Court will alert the parties to the concerns addressed above and give the parties a chance to address them in writing.

(Order 1-2, entered Apr. 7, 2017.) The Court granted James and Phillipus leave to file briefs, which could be in letter form, "addressing whether the Appellate Division has any authority to hear the review . . . since the Magistrate Court did not issue an order following the October 11, 2016 hearing." *Id.* at 2. The Court warned James that if she failed to respond "within the time provided . . . or as may be extended by the Court on motion, then this review may be dismissed, **WITHOUT FURTHER WARNING**." *Id.* And because James had alleged that she had not been served with the judgment or the writ, the Court directed the Clerk's Office to "serve a copy of this Order on Petitioner by regular mail **AND** certified mail, return-receipt requested **IN ADDITION TO** service by Virgin Islands marshal." *Id.* Neither James nor Phillipus responded to the April 6, 2017 Order.

II. JURISDICTION AND DISCUSSION

The Magistrate Division of the Superior Court of the Virgin Islands has original jurisdiction over small claims cases. *See* 4 V.I.C. § 123(a)(4). "Superior Court magistrates—and Superior Court judges sitting in the Magistrate Division—serve as the trial court in an original jurisdiction case, presiding over the case from commencement through dismissal or issuance of a judgment." *David v. People*, SX-15-RV-007, 2016 V.I. LEXIS 15, *9 (Super. Ct. App. Div. Feb. 22, 2016) (citing *Brown v. Brown*, 59 V.I. 583, 587 (V.I. 2013) (*per curiam*)). "Because cases in the Magistrate Division are decided without a jury, the magistrate court hears the testimony and considers the evidence before finding the facts and applying the law." *Carlos Warehouse v. Thomas*, 64 V.I. 173, 180 (Super. Ct. App.

Div. 2016) (citing *In re: Estate of Small*, 57 V.I. 416, 428-29 (2012)). Here, the trial was conducted by a Superior Court judge. But "Superior Court judges . . . hear Magistrate Division cases from time to time." *Xavier v. Treasure Bay V.I. Corp.*, ___ V.I. ___, _____ SX-09-CV-450, 2017 V.I. LEXIS 31, *8 (Super. Ct. App. Div. Feb. 23, 2017) (citation omitted). Irrespective of whether a judge or a magistrate judge presides over the small claims case, the case is still heard in the Magistrate Division and appealed to the Appellate Division. *See Brown*, 59 V.I. at 588-89. "'A judge does not take his court with him when he sits as a magistrate.'" *Id.* at 588 (quoting *People v. Randall*, 111 Cal. Rptr. 590, 593 (Ct. App. 1973), parenthetically).

James asserts that she was denied due process because she was not served with a copy of the judgment or the writ of execution. But James did not appeal the judgment. She could have. Phillipus could have as well.[1] She chose to execute on the judgment instead, which was her right. *See* 5 V.I.C. § 471; *cf. Fuller v. Browne*, 59 V.I. 948, 955 (V.I. 2013) ("Since a stay pending appeal had never been ordered, nothing prevented Browne from executing the April 18, 2011 Default Judgment in the interim."). James did nothing until Phillipus moved for a judgment debtor hearing, a post-judgment proceeding to "require the judgment debtor to appear and answer under oath . . . before such court" whether "the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment." 5 V.I.C. § 501. James received notice of that examination and appeared. And it is from that hearing she appealed. But the hearing did not end

[1] *Cf. Brown*, 59 V.I. at 587 ("The Virgin Islands Code does not simply provide that all appeals from decisions rendered by Superior Court magistrates are appealable to Superior Court judges; rather, it provides that "all appeals from the Magistrate Division must be filed in the Superior Court." (quoting 4 V.I.C. § 125) (brackets, ellipses, and emphasis omitted)); *see Malloy v. Reyes*, 61 V.I.163, 171 n.4 (V.I. 2014) ("4 V.I.C. § 32(a) vests th[e Supreme] Court with 'jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court' without restricting that jurisdiction only to appeals taken by aggrieved parties." (quoting *Farrell v. People*, 54 V.I. 600, 607 (V.I. 2011)). If a party must appeal to the Appellate Division before it can appeal to the Virgin Islands Supreme Court, and if the "aggrieved party" requirement "is at best 'a claims processing rule,'" *id.* (quoting *Farrell*, 54 V.I. at 608), then it follows that any party, not just the "losing" or "aggrieved" party, may appeal to the Appellate Division too.

with a written order. James failed to respond to the Court's April 7, 2017 order questioning whether the Appellate Division has jurisdiction and has not request a transcript for the Court to determine whether an oral ruling was made. *Cf.* Super. Ct. R. 322.1(b)(2)(C) ("Where a petition for review is filed after an oral decision but before entry of a written order or judgment, it is deemed filed as of the date of the written order or judgment appealed from."). Instead, James asked that the transcript requirement be waived. That is her right. *Cf.* Super. Ct. R. 322.1(h)(2)(A). But it can also mean—if a review of the record revealed that a transcript was necessary—that the magistrate court's decision might have to be summarily affirmed. *See Fuller v. Browne*, 59 V.I. 948, 957 n.4 (V.I. 2013) ("And to the extent the parties' briefs or a more thorough review of the record reveal that the transcript is necessary, the Appellate Division could, at that point, summarily affirm the Magistrate Division based on the lack of the transcript." (citing *Thomas v. Cannonier*, S. Ct. Civ. No. 2007-0042, 2009 V.I. Supreme LEXIS 33, *4 (V.I. Apr. 7, 2009)). James' request is still pending, so the Court could deny it and set a deadline for requesting the transcript. But that is unnecessary here because, even if the Magistrate Division had issued an order following the judgment debtor hearing, James' due process claims would still have no merit. *Cf. Reyes v. Atty Gen. of the U.S.*, 514 F. App'x 129, 132 (3d Cir. 2013) ("Even if we had jurisdiction, we would conclude that the claims lack merit."); *Marquez v. Mineta*, 424 F.3d 539, 542 (7th Cir. 2004) ("We hasten to add that even if we had jurisdiction over Marquez's appeal, his case is meritless."); *Schoppe v. First Trust Co.*, 101 F.2d 417, 421 (8th Cir. 1939) ("We are of the opinion, however, that even if this Court had jurisdiction of this case, the appellant could not prevail.").

"Generally, due process requires that all litigants be given notice and an opportunity to be heard." *Henry v. Dennery*, 55 V.I. 986, 993 (V.I. 2011) (citation omitted). James is correct. The marshal did not serve her with a copy of the judgment. The marshal could not find her to effectuate service. But James had actual notice of the judgment because she testified at trial and was present when the court rendered its decision. Actual notice was sufficient. *See id.* at 994 ("[W]hen a defendant receives actual notice of an action in time to give him an opportunity to present his objections, that notice, however provided, meets the requirements of due process." (citing *Rubin v. Johns*, 22 V.I. 194,198-99 (D.V.I. App. Div. 1986))). Whether James received notice of the writ of execution is unclear from the record. The Marshal's Office returned the writ unsatisfied. Since the record is silent, the Court takes James at her word. *Cf. Dept. of Hwy. Safety & Motor Vehicles v. Green,* 702 So. 2d 584, 585 (Fla. Ct. App. 1997) ("We assume the truth of this allegation, but the record is silent on this issue."). But James also assumes that she was supposed to be served with a copy of the writ. That's not correct.

"[D]ue process usually does not require that a debtor be given notice prior to issuance of a writ of execution or even prior to the levy on the property, as long as the debtor is given notice of the property seizure in a manner which protects the debtor's ability to assert exemptions." *Dorwart v. Caraway*, 966 P.2d 1121, 1144 (Mont. 1998) (citing *Dionne v. Bouley*, 757 F.2d 1344, 1352 (1st Cir. 1985); *Finberg v. Sullivan*, 634 F.2d 50, 59 (3d Cir. 1980)), *overruled on other grounds by Trustees of Ind. Univ. v. Buxbaum*, 69 P.3d 663 (Mont. 2003). James would have had to receive notice if the marshal was able execute on her personal or real property. "'[O]nce the attachment is made, removing the possibility that the debtor will secrete his assets, the debtor must receive and be notified of a timely opportunity to challenge any sequestration of his property which the law makes unattachable.'" *Dorwart*, 966 P.2d at 1144 (quoting *Dionne*, 757 F.2d at 1352). But if "the creditor's interest has been adjudicated, and a favorable judgment entered, it is reasonable that the creditor's right to collect in the most effective way should be given great weight." *Dionne*, 757 F.2d at 1352. Here, Phillipus is the judgment creditor and James is the judgment debtor. If James were given notice that a marshal was coming to seize her property, she might have taken steps to protect it from seizure. "[I]f notice were given the judgment debtor before issuing the [execution], 'the very advantage sought by the writ would possibly be of no avail, as a disposition could be made of the funds or property before service could be had.'" *Id.* (quoting *Endicott Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285, 290 (1924)). James had no right to be notified of the writ of execution *before* the writ issued. Moreover, the marshal was unable to seize James' property. So, even if there were error here, it was harmless. Therefore, her due process claims have no merit.

III. CONCLUSION

For the reasons stated above, the Court lacks jurisdiction over this appeal because no written order issued after the judgment debtor hearing. Even if jurisdiction were not lacking, James' due process claims have no merit. She was preset in court when judgment was pronounced and knew she was found liable to Phillipus. Not being served with a copy of the written judgment was harmless. James also assumes she had to be served with a copy of the writ of execution before it issued. That is incorrect. Moreover, the writ was returned unsatisfied. So, any error would be harmless here as well.

Date: February 21, 2018

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By: ______________________
Court Clerk Supervisor
Dated: 2/21/18