

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

SUSAN SPENCER,)	S. Ct. Civ. No. 2007/69
)	Re: Super. Ct. SM No. 32/2007
Appellant/Defendant,)	
)	
v.)	
)	
CARMEN NAVARRO,)	
)	
Appellee/Plaintiff.)	
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On Appeal from the Superior Court of the Virgin Islands
Argued: December 20, 2007
Filed: June 27th, 2008

BEFORE: Rhys S. Hodge, Chief Justice; **Maria M. Cabret**, Associate Justice; and **Ive Arlington Swan**, Associate Justice.

APPEARANCES:

Susan Spencer
St. Croix, USVI
Pro Se

Carmen Navarro
St. Croix, USVI
Pro Se

MEMORANDUM OPINION

PER CURIAM.

In the underlying action, Carmen Navarro (“Navarro”) sued Susan Spencer (“Spencer”) in the Small Claims Division of the Superior Court for damages to her vehicle as the result of a hit-and-run traffic accident on December 31, 2006. Spencer filed an answer to the complaint denying the allegations, but failed to appear at the scheduled March 20, 2007 trial.

Consequently, the Superior Court entered judgment by default against her.¹ On March 23, 2007, Spencer filed a motion to reconsider, and the court scheduled a hearing on the motion for April 24, 2007. At the hearing, the court heard testimony from both parties and two witnesses, and denied Spencer's motion for reconsideration. The court entered a written order denying the motion for reconsideration on May 11, 2007. On the same day, Spencer filed a motion for relief from judgment or, alternatively, for a new trial, which the court denied by order entered on May 23, 2007. Spencer timely filed the instant appeal on May 29, 2007, arguing that the trial court overlooked evidence and violated the collateral source rule. For the reasons which follow, we remand this matter to the Superior Court to make findings of fact.

As a threshold matter, this Court has jurisdiction to review the trial court's judgment pursuant to title 4, section 32(a) of the Virgin Islands Code, which vests the Supreme Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court."

The standard of review for this Court in examining the Superior Court's application of law is plenary. Findings of fact are reviewed on appeal under a clearly erroneous standard of review. The appellate court must accept the factual determination of the fact finder unless that determination either (1) is completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data.

St. Thomas-St. John Board of Elections v. Daniel, 2007 WL 4901116, at *4 (V.I. Sept. 17, 2007) (citations and internal quotation marks omitted). Additionally, since this matter was initiated in the Small Claims Division of the Superior Court, this Court must consider the Superior Court Rules governing procedure in Small Claims cases. Specifically, Superior Court Rule 64 provides

¹ The Superior Court entered judgment in favor of Navarro in the amount of \$5,263.85 plus court costs. The court did not address her claim of \$5,000 for stress in its judgment, and neither party addresses that claim on appeal.

in pertinent part that “[t]he judge shall conduct the trial in such a manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence, except such provisions relating to privileged communications.” Super. Ct. R. 64.

In her motion for reconsideration of the entry of default judgment, Spencer stated that she missed the scheduled trial because she had mistakenly entered the wrong date on her calendar. As a result of Spencer’s motion, the trial court stayed the entry of default judgment and scheduled the matter for a hearing on the motion. At the hearing, Navarro testified that she had been involved in a hit-and-run accident and that her vehicle suffered damages as a result of the accident. Navarro and two witnesses also testified that Spencer had been the driver of the hit-and-run vehicle. Spencer testified that she had been home on the night of the accident, that her license plates had been stolen, and that she had missed the scheduled trial as a result of mistakenly entering the wrong date on her calendar. After listening to the testimony, the trial court determined that there was no “reason to disturb the judgment . . . previously entered in [the] case. And therefore the judgment will stand and the plaintiff may have execution upon it.” (J.A. at 47.)

Spencer’s first argument on appeal is that the trial court violated the collateral source rule. The rule, under certain circumstances, prohibits a tortfeasor from deducting compensation paid to an injured party by an independent source from the damages the tortfeasor must pay. *See* V.I. CODE ANN. tit. 5, § 427; *Lomax v. Nationwide Mut. Ins. Co.*, 964 F.2d 1343, 1345 (3d Cir. 1992). The record indicates that Spencer raised the issue of collateral recovery in her Answer to the Complaint. The record further indicates that Spencer also raised the issue in the affidavit

which she attached to her motion for reconsideration of the entry of default. Spencer failed, however, to raise the issue at trial, even after an admonishment by the trial judge that, despite her motion, she needed to testify about anything she wanted on the record at that time. (App. at 34.) Spencer also failed to raise the issue of collateral recovery in her motion for relief from judgment or for a new trial. There is no indication on the record that any evidence of collateral recovery was ever presented to the trial court or that the trial judge considered collateral recovery in making his determination, and we will not consider the issue for the first time on appeal. *Newark Morning Ledger Co. v. U.S.*, 539 F.2d 929, 932 (3d Cir. 1976) (courts “generally refuse to consider issues that are raised for the first time on appeal”). Therefore, we render no decision as to whether the collateral source rule is applicable or as to how the rule should be applied.

Additionally, Spencer argues that the trial court overlooked evidence. According to Spencer, the trial court overlooked the police report and the affidavit of Gary Spencer. It is unclear from the record what evidence was considered by the court. The hearing included testimony both on the merits of the claim and on the motion to reconsider. Essentially, the trial court conducted a new trial in the matter without overtly granting one. The court itself noted in its oral ruling following the hearing on the motion for reconsideration that “[w]ithout explicitly granting the motion [it had] already, in essence, had a new trial” (App. at 47.) The court, however, did not make any findings of fact, either on the record or subsequently in writing, after conducting the new trial.

Superior Court Rule 65 provides, in pertinent part, that “[j]udgment shall be entered at the time of entry of findings by the judge unless stayed.” Clearly the rule contemplates an entry of findings of facts upon entry of a judgment in small claims matters. Similarly, in civil matters,

Rule 52(a) of the Federal Rules of Civil Procedure requires that “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.” There is, however, an exception to that general rule. As a matter of judicial efficiency, when applying the Rule 52(a), appellate courts “will determine the appeal without further elaboration by the trial judge if the record sufficiently informs it of the basis of the [trial] court's decision of the material issues in the case” 9C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2577 (1998); *see Hooper's Estate v. Government of Virgin Islands*, 427 F.2d 45, 48 (3d Cir. 1970) (appellate court did not reverse and remand in the absence of specific findings of fact where such findings were incorporated in the court’s opinion and a full understanding of the question presented could be gained in spite of the absence).

The foregoing exception regarding judicial efficiency, however, does not apply to the instant small claims appeal. This Court cannot determine whether substantial justice was done by the trial court absent sufficient information explaining the basis of the trial court’s decision. In the underlying matter, the trial court simply allowed the default judgment that had been previously entered to stand after essentially conducting a new trial. The court made no findings with regards to liability or damages. “[T]he present state of the record and the findings of fact leave this court unsatisfied as to the delineation of these issues and the factors which should be considered as bearing on them. The findings of fact are so inadequate . . . that we are not properly apprised of the basis of the [trial] court's judgment.” *In re Vose's Estate*, 317 F.2d 281, 289 (3d. Cir. 1963) (citation omitted). Because the record does not sufficiently inform the Court

of the basis for the Superior Court's decision, the matter will be remanded for the Superior Court to enter findings of fact.

Dated this 27th day of June, 2008.

ATTEST:
GLENDALAKE, ESQ.
Acting Clerk of the Court