

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EDITH WILLIAMS,)	S. Ct. Civ. No. 2007-118
)	
Appellant/Plaintiff,)	Re: Super. Ct. Civ. No. 478/2002
)	
v.)	
)	
UNITED CORP. d/b/a PLAZA EXTRA,)	
)	
Appellee/Defendant.)	
)	

On Appeal from the Superior Court of the Virgin Islands
Filed: January 7, 2009

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **EDGAR D. ROSS**, Designated Justice.¹

ATTORNEYS:

K. Glenda Cameron, Esq.
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St. Croix, U.S.V.I.
Attorney for Appellant

Carl A. Beckstedt III, Esq.
Bryant, Barnes, Moss, Beckstedt & Blair, LLP
St. Croix, U.S.V.I.
Attorney for Appellee

ORDER OF THE COURT

PER CURIAM.

THIS MATTER came before the Court on appeal from a Superior Court order granting a motion for summary judgment brought by Appellee. In an Opinion entered on July 10, 2008,

¹ Associate Justice Maria M. Cabret is recused from this matter. Designated Justice Edgar D. Ross, a retired judge of the Superior Court, has been designated in her place pursuant to title 4, section 24(a) of the Virgin Islands Code. However, having returned to private practice during pendency of this attorney's fees matter, Designated Justice Ross took no part in the decision herein.

we vacated the order appealed from and remanded to the trial court to reinstate this matter on the trial calendar. On July 24, 2008, Appellant filed with this Court a Motion for an Award of Costs and Fees, accompanied by an affidavit of Appellant's counsel. In her motion, Appellant requests that we award \$16,547.18 in attorney's fees and costs incurred as a result of her appeal, pursuant to Supreme Court Rule 30 and title 5, section 541 of the Virgin Islands Code. Appellee filed its objection on August 5, 2008, and Appellant replied on August 20, 2008.

In enacting title 4, sections 31(c) and 34 of the Virgin Islands Code, the Legislature granted the Supreme Court broad rulemaking authority to promulgate Rule 30.² Supreme Court Rule 30(a) states, in relevant part:

Except as otherwise provided by law, if an appeal is dismissed, reasonable costs, *which may include attorney's fees*, shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Supreme Court; if a judgment is affirmed, reasonable costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, reasonable costs shall be taxed against the appellee unless otherwise ordered; *if a judgment is affirmed or reversed in part, or is vacated, reasonable costs shall be allowed only as ordered by the Supreme Court.* . . . The Supreme Court shall, in its discretion, determine whether costs are reasonable.

(emphases added). In addition, Rule 30(b) sets out the procedural requirements for requesting costs and attorney's fees. Specifically, a party seeking costs to be taxed must file an itemized and verified Bill of Costs with the Clerk of this Court within fourteen days after entry of judgment. In this case, our Opinion was entered on July 10, 2008 and Appellant's motion and itemized affidavit were filed on July 24, 2008, the last day of the fourteen-day period. Additionally, Appellee's objection and Appellant's reply were timely filed under the rule's ten-

² Title 4, section 31(c) of the Code requires the Supreme Court to adopt "its own Rules of Appellate Procedure, which the Supreme Court may amend from time to time as it considers appropriate[, and] [u]nless otherwise provided by law, the Supreme Court may regulate its practice in any manner." Title 4, section 34(a) provides that "[t]he Supreme Court may . . . promulgate or amend general rules, . . . provide for the conduct of the business of the Court, . . . [and] regulate the practice and procedure governing causes and proceedings in the Court"

day deadline. Therefore, we may properly consider Appellant's request for reasonable costs.

First, we note that attorney's fees are not customarily part of the costs allowed on appeal. *See, e.g.,* Fed. R. App. P. 39(e) (prevailing party on appeal is entitled to costs incurred only for preparation of record, cost of transcript, premiums paid for bond, and filing fee for notice of appeal). However, as the Appellate Division of the District Court of the Virgin Islands aptly noted:

In the courts of the Virgin Islands, including the Appellate Division of the District Court of the Virgin Islands, the American Rule against shifting fees to the losing party *does not apply*. Rather, "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).

Prosser v. Prosser, 40 F.Supp.2d 663, 671 (D.V.I. App. 1998), *rev'd on other grounds*, 186 F.3d 403 (3d Cir. 1999) (emphasis added). The inclusion of attorney's fees within the definition of reasonable costs in the rules of this Court and the Appellate Division,³ therefore, is derived from title 5, section 541 of the Virgin Islands Code, which provides, in relevant part:

(a) Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence on the trial; and
- (6) *Attorney's fees as provided in subsection (b) of this section.*

(b) The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but 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

³ Virgin Islands Rule of Appellate Procedure 30, which governs costs on appeal, is identical to this Court's Rule 30.

thereto; provided, however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed or the defense is frivolous.

(Emphasis added).

Significantly, title 5, section 541(b) expressly prohibits a prevailing party from collecting attorney's fees as part of costs in personal injury cases, unless the trial court finds that the complaint filed or defense asserted is frivolous. The matter before us, a slip and fall action, is a personal injury case. Pursuant to the statute, it is the policy in the trial court that attorney's fees are not awardable as part of costs in personal injury cases. As a policy matter, although Supreme Court Rule 30 can be interpreted independent of title 5, section 541, this Court will not award on appeal what is strictly unavailable at the trial level. To hold otherwise would encourage a party to appeal solely in the hopes of receiving fees not available in the trial court.⁴

Appellee objected to Appellant's request for attorney's fees on several other grounds—namely that Supreme Court Rule 30(a) permits attorney's fees as part of costs only when we dismiss an appeal and that title 5, section 541 applies only to the trial court. However, because we reject the taxation of attorney's fees as part of costs as a policy matter, we deem it unnecessary to consider at this time whether the statute is in fact binding on this Court or whether the clause “which may include attorney's fees” applies to dispositions other than dismissal of an appeal.

In addition, the parties disagree over the reasonableness of the \$1,759.68 claimed by Appellant as other costs, exclusive of attorney's fees. Of the \$1,759.68 sought, \$210.00 is charged for seven hours of paralegal work at \$30.00 per hour, \$105.00 is billed as the filing fee for the notice of appeal, \$4.38 is labeled “Certified Mail,” and seven entries are labeled

⁴ We note that there is no contention by either party that this appeal is frivolous; therefore, the statutory exception to the prohibition on attorney's fees in personal injury cases is not applicable.

“Photocopies.” In particular, Appellee argues that we should deny the \$1,374.30 billed on January 31, 2008 as “Photocopies,” because the amount is listed as a single lump sum without any indication of the purpose of copying or the per-page charged applied. Curiously, there are additional charges of \$13.20 and \$17.10 for “Photocopies” on January 31, 2008. Merely listing a date and cost under the general label “Photocopies” makes it impossible for this Court to determine whether the amount requested for photocopying is reasonable or includes duplicative charges. Accordingly, Appellant is ordered to submit to the Clerk of this Court detailed proof of the charges requested for photocopies.

Lastly, the \$210.00 requested for paralegal fees is disallowed because paralegal fees are of the same nature as attorney’s fees, which we have already determined may not be awarded as part of costs on appeal of personal injury cases.

The premises having been considered, it is hereby

ORDERED that the \$14,997.50 requested by Appellant as attorney’s fees and paralegal labor is **DENIED**. It is further

ORDERED that Appellant shall **FILE**, within ten days of the date of entry of this Order, with the Clerk of this Court **DETAILED PROOF** of the costs expended on appeal for photocopying; and it is further

ORDERED that **THE CLERK OF THE COURT** shall, following receipt of Appellant’s proof of costs, **TAX** the reasonable costs of this appeal against Appellee. It is finally

ORDERED that copies of this order be directed to the parties’ counsel.

SO ORDERED this 7th day of January, 2009.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court