Not for Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JOSEPH B. W. ARELLANO, Appellant/Plaintiff,	)	**S. Ct. Civ. No. 2012-0096** Re: Super. Ct. DI. No. 56/2005(STT)
v.	)	
CAROL ANN RICH, Appellee/Defendant.	)	

On Appeal from the Superior Court of the Virgin Islands
Considered and Filed: October 7, 2013

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

ATTORNEYS:

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OPINION OF THE COURT

PER CURIAM.

This matter comes before us pursuant to a "Petition for Rehearing Before the Full Court" filed by Joseph B. Arellano, which we construe as a motion for full panel review, since this filing requests that the entire Court review an order issued by the Chief Justice dismissing this appeal for lack of jurisdiction. For the reasons that follow, we deny the motion.

I. BACKGROUND

On March 21, 2005, Arellano petitioned for divorce from his wife, Carol Ann Rich. The

parties proceeded to mediation, and on June 15, 2006, filed a mediated settlement agreement with the Superior Court, which addressed custody of their minor daughter. From that point, the matter lay largely dormant until October 20, 2008, when Rich filed an "Emergency Motion for Interim Relief Regarding Custody." The filing of this motion spurred a flurry of activity, with both parties filing numerous motions, cross-motions, oppositions, replies, and other documents over a relatively short period of time; most notably, Arellano filed a motion for a temporary restraining order and preliminary injunction on March 11, 2009. However, as a result of several judicial recusals, the Superior Court did not act on any of these motions for more than a year and a half. While a new judge was eventually assigned to the matter and held several hearings, the Superior Court never ruled on the March 11, 2009 motion, perhaps as a result of both parties continuing to file literally dozens of motions in the case,[1] including Arellano's December 27, 2011 motion for a temporary restraining order, preliminary injunction, or permanent injunction.

Eventually, Arellano filed a notice of appeal with this Court, which cited section 33(b)(1) of title 4 of the Virgin Islands Code as the jurisdictional basis. Rather than designating a particular order or judgment, as required by Supreme Court Rule 4(c), Arellano stated that he was appealing from "[t]he Superior Court's refusal to issue a preliminary injunction." (Notice of Appeal 1.) After the Clerk of this Court noted his failure to comply with Rule 4(c) and directed that he submit an amended notice of appeal, Arellano filed a motion in this Court explaining that the Superior Court had not ruled on his motions in that court, and that "[t]he gravamen of this appeal is the *refusal* of the Superior Court . . . to complete or to fully conduct a hearing . . . "and correspondingly, to issue any Order granting or denying the requests therein for preliminary

[1] This Court notes that the certified docket sheet prepared by the Clerk of the Superior Court is 56 pages long.

injunction." (Mot. 2-3.) Based on Arellano's admission, the Chief Justice, acting pursuant to section 31(b)(1) of title 4,[2] dismissed this appeal for lack of jurisdiction, and Arellano filed a "petition for rehearing" requesting that the entire Court review that decision.

II. DISCUSSION

Ordinarily, to justify rehearing, a party must demonstrate that this Court "overlooked or misapprehended" either a question "of law or fact" in its prior disposition. V.I.S.CT.R. 31(a). But while Arellano labeled his filing as a petition for rehearing, it is well established that "the substance of a motion, and not its caption, shall determine under which rule that motion is construed." *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 611-12 (V.I. 2012). Since Arellano requests that the entire Court review a decision rendered by a single justice, we construe it as a motion for full panel review pursuant to Supreme Court Rule 21, which provides that "[t]he action of a single justice may be reviewed by the Court or the appellate panel." V.I.S.CT.R. 21(c). *See also In re Admission of McFaul*, S. Ct. BA. No. 2008-0092, 2009 WL 530716, at *1 (V.I. Mar. 2, 2009) (unpublished) (construing a "motion for reconsideration" of an order of a single justice granting *pro hac vice* admission as a motion for full panel review). When reviewing a decision of a single justice, the Court does not grant any special deference to the single justice's judgment, but instead "exercise[s] its own judgment, applying the same standard as the single justice." *Commonwealth v. Allen*, 392 N.E.2d 1027, 1033 (Mass. 1979).

Even applying this lesser standard, we find that Arellano has not met his burden. Section 33(b)(1) of title 4 provides, in pertinent part, that "[t]he Supreme Court of the Virgin Islands has jurisdiction of appeals from . . . Interlocutory *orders* of the Superior Court of the Virgin Islands .

[2] "The Chief Justice alone . . . may make any appropriate order with respect to an appeal or dismiss an appeal for want of jurisdiction . . . in accordance with applicable law or rules of procedure." 4 V.I.C. § 31(b)(1).

. . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." (Emphasis added). While Arellano devotes the vast majority of his motion to discussing the meaning of the word "refusing," he completely ignores the express language of section 33(b)(1), which by its own terms requires an "order[]." This requirement is echoed in our Rule 4(c), which requires every notice of appeal "shall. . . designate the judgment [or] order" appealed from. V.I.S.CT.R. 4(c). "Since the Superior Court neither granted nor denied" the pertinent motions, "there is nothing for this Court to review" on appeal. *Caribbean Healthways, Inc. v. James*, S. Ct. Civ. No. 2012-0018, 2013 WL 5348534, at *4 n.2 (V.I. Sept. 25, 2013) (collecting cases). Importantly, "this Court reviews the Superior Court's overall decision to grant or deny an injunction for abuse of discretion," *Yusuf v. Hamed*, S. Ct. Civ. No. 2013-0040, 2013 WL 5429498, at *3 (V.I. Sept. 30, 2013), and thus this Court cannot simply decide, in the first instance, whether Arellano is entitled to the relief he seeks from the Superior Court. While we share Arellano's concern that trial judges could theoretically maintain the status quo indefinitely and prevent appellate review by simply not ruling on a motion for an injunction, a remedy for this potential abuse already exists, in the form of a petition for a writ of mandamus. *In re Fleming*, 56 V.I. 460, 465 (V.I. 2012) ("[T]he failure of a Superior Court judge to issue a ruling in a timely manner may rise to the level of a breach of a ministerial duty" that warrants mandamus relief) (citing *In re Elliot*, 54 V.I. 423, 429 (V.I. 2010)).

III. CONCLUSION

For the foregoing reasons, we deny the motion for full panel review.

Dated this 7th day of October, 2013.

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