

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: MICHAEL L. SHEESLEY, ESQ.,) **S. Ct. Crim. No. 2017-0026**
Appellant.) Re: Super. Ct. JD. No. 47/2016 (STT)
)

 THE PEOPLE OF THE VIRGIN ISLANDS)
IN THE INTEREST OF:)
)
M.P.J.H., a Minor.)

)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Debra S. Watlington

Considered and Filed: April 21, 2017

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

ORDER OF THE COURT

PER CURIAM.

THIS MATTER comes before the Court pursuant to an April 20, 2017 motion for stay pending appeal, filed by Appellant Michael L. Sheesley, Esq., requesting that this Court stay a February 14, 2017 order holding him in both criminal and civil contempt.

“To determine whether a litigant is entitled to a stay [or injunction] pending appeal, this Court considers: (1) whether the litigant has made a strong showing that he is likely to succeed on the merits; (2) whether the litigant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies.” *In re Najawicz*, S. Ct. Crim. Nos. 2008-0098, 099, 2009 WL 321342, at *3 (V.I. Jan. 8, 2009) (unpublished). Nevertheless, “[t]he first of these factors is ordinarily the most important.” *Rojas v. Two/Morrow Ideas Enterprises, Inc.*, S. Ct. Civ. No. 2008-0071, 2009

WL 321347, at *2 (V.I. Jan. 22, 2009) (unpublished) (citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

We conclude that Sheesley has failed to meet his burden. With respect to the first factor—likelihood of success on the merits—Sheesley alleges that the Superior Court failed to afford him with the constitutional protections required of a criminal contempt sanction, and that if construed as a civil contempt, the Superior Court’s actions were not remedial in nature. However, although the Superior Court conducted a contempt hearing on February 9, 2017—which the Superior Court references in its February 14, 2017 order—Sheesley has not provided a copy of the hearing transcript with his motion. *See* V.I. R. APP. P. 8(b) (“With the motion [for a stay] shall be filed such parts of the record as are relevant.”). In the absence of a transcript, this Court must presume that the Superior Court acted correctly and that its factual findings are not clearly erroneous. *SBRMCOA, LLC v. Beachside Assocs., LLC*, S. Ct. Civ. No. 2015-0053, 2015 V.I. Supreme LEXIS 42, at *1 n.1 (V.I. Dec. 28, 2015) (unpublished) (citing *Thomas v. Cannonier*, S. Ct. Civ. No. 2007-0042, 2009 V.I. Supreme LEXIS 33, at *4 (V.I. Apr. 7, 2009) (unpublished)).

Likewise, we are not persuaded that this matter may qualify for the limited exception utilized in *In re Drue*, 57 V.I. 517 (V.I. 2012) and *Crucians in Focus, Inc. v. VI 4D, LLLP*, 57 V.I. 529 (V.I. 2012), in which this Court vacated contempt sanctions after determining that the orders that were violated by the contemnor were unconstitutional. *Crucians in Focus*, 57 V.I. at 538-39; *In re Drue*, 57 V.I. at 527. In this case, the Superior Court found Sheesley in contempt for failing to comply with a December 20, 2016 order appointing him to represent the minor, M.P.J.H., in this matter. But while Sheesley alleges that the December 20, 2016 appointment order violates this Court’s holding in *In re Holcombe*, 63 V.I. 800 (V.I. 2015), this Court decided *Holcombe* on non-constitutional grounds. Moreover, this Court emphasized in *Holcombe* that involuntary

appointments are not per se unlawful, but that the Superior Court's former appointment practice was deficient because it provided for the systematic conscription of all active members of the Virgin Islands Bar to represent indigent parties. Importantly, this Court recognized that, even with the establishment of a volunteer panel, it may very well be the case that some involuntary appointments may be necessary, due to conflicts of interest among panel members, an insufficient number of volunteers, or other proper reasons. *Holcombe*, 63 V.I. at 840-41 & n.29. Consequently, this Court determines that Sheesley has not shown that he is likely to succeed on the merits of this appeal.

This Court also finds that Sheesley has failed to establish irreparable harm. Much of the harm that Sheesley identifies stems from an incident he alleges occurred on March 22, 2017, in which he asserts that he was arrested, searched, and jailed by marshals seeking to enforce the February 14, 2017 order. However, Sheesley also states that he was released later that same day. It is well-established that to support a finding of irreparable harm, the purported harm must not have already occurred. *See, e.g., CDI Energy Servs. v. W. River Pumps, Inc.*, 567 F.3d 398, 403 (8th Cir. 2009); *Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club*, 325 F.3d 712, 721 (3d Cir. 2003).

Sheesley maintains that he suffers the possibility of future irreparable harm because, absent a stay, he will be required to disclose the contempt order to the jurisdictions to which he is admitted to practice law. We question how this harm is irreparable, since due process requires that an attorney receive the right to be heard before discipline is imposed, even if that discipline is for a criminal conviction. *Cf. V.I.S.Ct.R. 207.9*. However, the irreparable harm factor cannot be satisfied when the alleged harm is self-inflicted and entirely avoidable. *San Francisco Real Estate Investors v. Real Estate Invest. Trust of Am.*, 692 F.2d 814, 818 (1st Cir. 1982). In his stay motion,

Sheesley concedes that he did not comply with the December 20, 2016 order because he believed it was unlawful. Yet in *Holcombe*, this Court held that an attorney who has been involuntarily appointed may take an immediate interlocutory appeal under the collateral order doctrine. 63 V.I. at 817-18. Rather than filing an immediate appeal with this Court and moving for a stay of the involuntary appointment order—as the appellant in *Holcombe* did—Sheesley chose to simply defy the order, thus unnecessarily assuming the risk of a criminal contempt sanction and potential attorney discipline.¹ *See, e.g.*, V.I.S.CT.R. 211.1.16(c) (“When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”).

Finally, the last two factors also do not support a stay. Based on Sheesley’s stay motion and the Superior Court orders attached as exhibits, it appears that Sheesley remains appointed counsel to M.P.J.H. in the underlying juvenile matter. If this Court were to issue a stay of the contempt order, it would essentially provide Sheesley with a license to abandon his representation of M.P.J.H., even though his appointment—although involuntary—may not necessarily have been unlawful. Such a result would clearly harm both M.P.J.H. and the People of the Virgin Islands, since the adjudication of the underlying matter would likely be delayed. Moreover, granting a stay of the contempt order—when, as noted above, Sheesley had the option of immediately appealing his involuntary appointment without standing in contempt—would harm the public interest by encouraging the gratuitous disobedience of orders of the Superior Court by members of the Virgin Islands Bar, which would lessen public confidence in the administration of justice.

¹ Moreover, this Court notes that Sheesley first moved the Superior Court for a stay pending appeal from the Superior Court on March 2, 2017, which denied his motion in a March 21, 2017 order. That Sheesley waited more than a month after the Superior Court denied his stay motion before filing it with this Court itself weighs against a finding of irreparable harm. *See Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004); *Hirschfeld v. Bd. of Elections in City of N.Y.*, 984 F.2d 35, 39 (2d Cir. 1993).

For the foregoing reasons, Sheesley has failed to meet his burden of demonstrating that any of the pertinent four factors favor a stay pending appeal in this case. Accordingly, it is hereby

ORDERED that the motion for a stay pending appeal is **DENIED**. It is further

ORDERED that copies be directed to the appropriate parties.

SO ORDERED this 21st day of April, 2017.

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