

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

RAFAEL MASON,

Plaintiff,

v.

Case No.: PWG-13-1077

MONTGOMERY COUNTY,

Defendant.

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MEMORANDUM ORDER

Following the December 13, 2013 Order, ECF No. 14, in which Judge Williams¹ granted Defendant Montgomery County and former Defendant Montgomery County Police Department’s Motion to Dismiss, but granted Plaintiff Rafael Mason until January 13, 2014 to amend his complaint, Plaintiff filed a Motion for Leave to File Amended Complaint Out of Time, *Nunc Pro Tunc*, ECF No. 17, on January 14, 2014, having missed the deadline by one day. Plaintiff filed his proposed Amended Complaint with his motion. ECF No. 17-2. Plaintiff stated that “counsel inadvertently missed the deadline” by “accidentally calendar[ing] [the deadline] for January 14, 2014 instead of January 13, 2014.” Pl.’s Mot. 1. For the reasons that follow, I will grant Plaintiff’s motion, which Defendant opposes, ECF No. 18.²

¹ This case was reassigned to me on December 19, 2013. Docket.

² Plaintiff has not filed a reply, and the time for doing so has passed. *See* Loc. R. 105.2(a). A hearing is not necessary. *See* Loc. R. 105.6

Fed. R. Civ. P. 6(b)(1)(B) provides that, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.”

Whether neglect is “excusable” has been described by the Supreme Court as “at bottom an equitable [inquiry], taking account of all relevant circumstances,” including the following: (1) the danger of prejudice to the non-movant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993).

[T]he third *Pioneer* factor—the reason for the delay—is the “most important.” *Thompson*, 76 F.3d at 534.

Fernandes v. Craine, 538 F. App’x 274, 276 (4th Cir. 2013).

In *Fernandes*, the plaintiff’s attorney had until December 26, 2012 to file a motion for attorney’s fees following the entry of judgment in his party’s favor. But, “Fernandes’s lawyer did not learn of the judgment until December 27, 2012—one day too—late [sic] because the Notice of Electronic Filing (“NEF”) heralding the judgment had been diverted to his email system’s “junk mail” folder.” *Id.* at 275 (footnote omitted). On December 27, 2012, Plaintiff filed both his tardy motion for attorney’s fees and a motion for a one-day extension. *Id.* The district court denied the motions, “explaining that the lawyer’s failure to meet the filing deadline amounted to nothing more than ‘run of the mill inattentiveness.’” *Id.* The Fourth Circuit vacated the district court’s decision, reasoning that “there [was] nothing in th[e] record suggesting that Fernandes’s lawyer was aware of any computer problems, that he was willfully blind to the status of the electronic docket, or that he made a strategic choice to remain ignorant of the district court’s judgment.” *Id.* at 276.

Here, as in *Fernandes*, Plaintiff’s error was inadvertent and not an example of willful blindness. *See id.* And, as in *Fernandes*, Plaintiff immediately filed his motion upon realizing

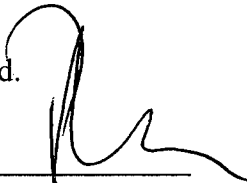
he missed the deadline, only one day later. *See id.* at 275. It is true that “court deadlines are not mere suggestions or guideposts,” *Metts v. Airtran Airways, Inc.*, No. DKC-10-466, 2010 WL 4183020, at *6 (D. Md. Oct. 22, 2010), and the Maryland Rules of Professional Conduct require that counsel “make reasonable efforts to expedite litigation consistent with the interests of the client,” Md. R. Prof’l Conduct R. 3.2; *see* Loc. R. 704. Yet, it also is true that the federal courts “favor . . . resolving cases on their merits instead of disposing of them on technicalities.” *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). Certainly, “[a] party may be excused from a single or occasional failure to meet a scheduling deadline, and a court ought to be mindful that even the most diligent lawyer or ardent party may need an extension of time to meet filing obligations.” *Wonasue v. Univ. of Md. Alumni Assoc.*, No. PWG-11-3657, 2013 WL 5719004, at *3 (D. Md. Oct. 17, 2013). Thus, given that the delay was *de minimus* and occasioned by a small, typographical error; there was no prejudice; and Plaintiff demonstrated that he acted in good faith, I find that the neglect was excusable. *See Fernandes*, 538 F. App’x at 276.

As for good cause, the “primary consideration” in determining whether good cause exists “is ‘the movant’s diligence.’” *Johnson v. Balt. City Police Dep’t*, No. WDQ-12-646, 2013 WL 1833021, at *3 (D. Md. Apr. 30, 2013) (quoting *Mesmer v. Rezza*, No. DKC-10-1053, 2011 WL 5548990, at *5 (D. Md. Nov. 14, 2011)). Indeed, “[l]ack of diligence and carelessness are the hallmarks of failure to meet the good cause standard.” *Id.* (quoting *Mesmer*, 2011 WL 5548990, at *5) (internal quotation marks omitted)). Here, as noted, Plaintiff diligently filed his motion for an extension and the untimely motion to amend within one day of his deadline. Therefore, I find that the good cause standard has been met, albeit narrowly.

Accordingly, it is, this 15th day of September, 2014, hereby ORDERED that

1. Plaintiff's Motion for Leave to File Amended Complaint Out of Time, *Nunc Pro Tunc*, ECF No. 17, IS GRANTED;
2. Plaintiff's Amended Complaint, ECF No. 17-2, is the operative complaint; and
3. Defendant IS DIRECTED to file a response by October 6, 2014.

Plaintiff is cautioned that any further delays will not be tolerated.



/s/
Paul W. Grimm
United States District Judge

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