Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-052

JULY TERM, 2021

Cheryl J. Brown* v. State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 473-5-15 Cncv
		Trial Judge: Samuel Hoar, Jr.

In the above-entitled cause, the Clerk will enter:

Plaintiff unsuccessfully sued the State of Vermont for personal injuries resulting from a traffic accident with a state trooper. She now appeals from the denial of her motion to set aside that judgment under Vermont Rule of Civil Procedure 60(b). We affirm.

This is one of a series of appeals filed by plaintiff stemming from her suit against the State for alleged injuries she suffered in a May 2012 car accident. Following a March 2017 jury trial, the jury found that although the trooper was negligent in hitting plaintiff's car, plaintiff suffered no harm. The court thus entered judgment for the State. On appeal, we affirmed trial court's entry of judgment for the State, its denial of plaintiff's request for a new trial, and its grant of partial summary judgment to the State on plaintiff's constitutional claims. See Brown v. State, 2018 VT 1, 206 Vt. 394. We rejected plaintiff's various challenges to the trial court's pretrial and evidentiary rulings, many of which she sought to pursue again in her Rule 60 motion, including her assertions that the jury had been presented with false and misleading evidence about the accident and that the trial court had improperly excluded the "true" facts concerning the accident. See id. ¶¶ 20, 25, 33.

In January 2021, three years after our decision, plaintiff filed the Rule 60 motion at issue here. The trial court denied the motion. It found that plaintiff was essentially asking for a new trial under Civil Rule 59(e); the motion was years too late with no excuse given for the delay; plaintiff was attempting to relitigate issues that were or should have been raised and decided in the first appeal; and she identified no valid reason justifying relief from judgment under Rule 60(b)(6). The court explained that plaintiff had already been given the chance to pursue her claims at trial, through post-trial motions, and then in a direct appeal. She lost at each turn and the court found no basis for giving her a fourth opportunity. Plaintiff moved for reconsideration, which the court

denied, finding that plaintiff presented no information or argument that it had not already considered and rejected. This appeal followed.

Plaintiff has filed a lengthy brief, focusing on the underlying jury trial. She asserts that the court there relied upon falsified facts and that the "true facts" have never been heard. She further asserts that: the trial judges failed to act impartially and diligently in violation of the Code of Judicial Conduct; the law of the case doctrine should not apply; and she was denied a fair trial. She raises additional arguments in a similar vein.

The only question before us is whether the trial court abused its discretion in denying plaintiff's Rule 60(b)(6) motion. See Kotz v. Kotz, 134 Vt. 36, 40 (1975) (explaining that trial court's decision on Rule 60 motion will not be disturbed unless it "clearly and affirmatively appears" that court abused or withheld its discretion). Under Rule 60(b)(6) the trial court may "relieve a party from a final judgment, upon such terms as are just, for any reason other than those set forth in the other sections of the rule, as long as the request for relief is made within a reasonable time." McCleery v. Wally's World, Inc., 2007 VT 140, ¶¶ 10-11, 183 Vt. 549 (mem.). The rule is not a "substitute for a timely appeal" and "[i]nterests of finality" require that relief from a previous judgment should be granted only in "extraordinary circumstances." Id. (quotation omitted)

The trial court acted well within its discretion in denying plaintiff's motion here. Among other reasons, the court found the motion untimely, explaining that it was filed three years after our decision in plaintiff's direct appeal. See id. ¶ 13 (recognizing that "[t]here must be an end to litigation someday" (quotation omitted)). To the extent plaintiff attempted to pursue new claims of bias against various trial judges or other new arguments related to the trial, it found those claims equally untimely. While plaintiff argues on appeal that she did file her motion within a reasonable time, citing other litigation that she pursued against a medical doctor, the court provided reasonable grounds for finding otherwise and its finding is supported by the record. See Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion); Chase v. Bowen, 2008 VT 12, ¶ 15, 183 Vt. 187 (reiterating that it is exclusively the province of trial court to assess credibility and weigh evidence). We thus affirm the court's denial of plaintiff's Rule 60(b) motion on timeliness grounds alone.

Given our conclusion, we find it unnecessary to address plaintiff's remaining arguments. Even if we were to reach these arguments, however, we would reject them. As the trial court explained, Rule 60(b) is not a vehicle to relitigate claims that were, or could have been, raised at trial and on direct appeal. See Wally's World, Inc., 2007 VT 140, ¶¶ 9, 13 (reaching similar conclusion and recognizing that "[o]f course, a Rule 60(b) motion can be denied as barred by the doctrine of the law of the case if it attempts to argue over exactly what was finally determined in an appeal" and "[i]ssues that could and should have been fully settled at trial or on appeal may not

be raised for the first time on a Rule 60(b) motion" (quotations omitted)). Plaintiff offers no persuasive argument to the contrary.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice