Case No. 22-AP-017

VERMONT SUPREME COURT 109 State Street Montpelier VT 05609-0801 802-828-4774 www.vermontjudiciary.org



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

MAY TERM, 2022

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Justin Ames Gamache* v. State of Vermont

APPEALED FROM:

Superior Court, Bennington Unit,

- **Civil Division**
- } CASE NO. 21-CV-01639

Trial Judges: Cortland Corsones, Brian J. Grearson

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

Plaintiff appeals the trial court's dismissal of his complaint for failure to provide proof of service on defendant. We affirm.

In June 2021 plaintiff filed a complaint in the civil division against the State, alleging that it forced him into pleading guilty to impersonating a police officer and disorderly conduct, violated his Fourth and Fifth Amendment rights, and refused to provide assistance when he requested help to stop neighbors from harassing him. The complaint sought to have plaintiff's convictions expunged, \$162 million in damages, to have his student debt paid off, and for another individual to be charged with impersonating an officer and disorderly conduct.

Shortly thereafter plaintiff filed motions seeking to recuse various judges. First, he sought recusal of Judge Corsones, Judge Valente, and the Assistant Judges of Bennington County. He contended that these judges should be recused if they did not rule in his favor. Judge Corsones referred the motion to then-Chief Superior Judge Brian Grearson. Judge Grearson denied the motion on the basis that plaintiff had failed to attach any affidavit supporting the motion. Plaintiff then refiled his recusal motion with an affidavit that essentially repeated the allegations of his complaint. The motion was again forwarded to Judge Grearson. Plaintiff moved to recuse Judge Grearson on the basis that he was taking too long to rule on plaintiff's motion. Judge Grearson denied both motions, reasoning that plaintiff had failed to show that his or the other judges' impartiality might reasonably be questioned.¹

¹ We note that under Vermont Rule of Civil Procedure 40(e)(3), Judge Grearson was permitted to rule on the motion that sought his own disqualification only if he could not refer the motion to another judge. The record here does not indicate whether or not Judge Grearson was able to refer this motion to a different judge. To the extent any violation of this provision occurred or may have affected plaintiff's case in any way, we need not consider it because

Subsequently, plaintiff moved again to recuse Judge Valente, arguing that Judge Valente "knew the outcome" of one of plaintiff's prior lawsuits, which was referenced in the complaint. Judge Valente recused himself. He acknowledged that his name appeared in plaintiff's pleadings and determined that, "given the specific facts and circumstances here," recusal was warranted.

Plaintiff failed to file proof of service on defendant. In December 2021 the trial court sent plaintiff a letter advising him that the case would be dismissed if he did not file proof of service within fourteen days. In response, plaintiff filed documents indicating that he had accepted service on behalf of certain state employees and entities. Judge Corsones ruled that this was not proper proof of service and dismissed the complaint in January 2022.²

Plaintiff's arguments on appeal are difficult to comprehend, but his brief focuses almost entirely on recusal. He contends that the decisions of Judges Corsones and Grearson not to recuse themselves violated his due process rights and the Vermont Judicial Code of Conduct.³

We review the denial of a recusal motion for abuse of discretion. <u>Velardo v. Ovitt</u>, 2007 VT 69, ¶ 13, 182 Vt. 180. "A fair trial before an impartial decisionmaker is a basic requirement of due process" <u>Sec'y</u>, <u>Agency of Nat. Res. v. Upper Valley Reg'l Landfill Corp.</u>, 167 Vt. 228, 234 (1997). Under the Code of Judicial Conduct, a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." A.O. 10, Canon 3E(1). "Judges are accorded a presumption of honesty and integrity, with the burden on the moving party to show otherwise in the circumstances of the case." <u>Ainsworth v. Chandler</u>, 2014 VT 107, ¶ 15, 197 Vt. 541 (quotation and alteration omitted).

Here, plaintiff makes generalized statements that Judges Corsones and Grearson were biased against him and should have been recused. He also refers broadly to duties of judges to be impartial and respect the law. But he points to no evidence to lend factual support to any of his conclusory allegations of bias. See <u>id</u>. (holding that party seeking recusal bears burden to demonstrate dishonesty or lack of integrity). The primary arguments plaintiff presented below—that Judge Corsones and others should be disqualified if they ruled against him and that Judge Grearson should be recused for taking too long to rule on his motion—were utterly without merit. See <u>Luce v. Cushing</u>, 2004 VT 117, ¶ 23, 177 Vt. 600 (mem.) (holding that "adverse rulings, no matter how erroneous or numerous" are not sufficient to establish prejudice (quotations omitted)). Plaintiff offers no legitimate basis to disturb any of the trial court's rulings on recusal.

Plaintiff does not address the reason the trial court dismissed his complaint—that he failed to file proof of service of the summons and complaint on defendant. Nevertheless, we see no error in this ruling. When a civil action is commenced by filing, like in this case, the defendant must be served with the complaint within sixty days. See V.R.C.P. 3 (requiring that

plaintiff has never raised this issue, much less asserted that it prejudiced him. See <u>DeLeonardis</u> <u>v. Page</u>, 2010 VT 52, ¶ 31, 188 Vt. 94 (holding that where litigant fails to seek disqualification of trial judge in trial court, issue is not preserved for appeal); <u>Farris v. Bryant Grinder</u> <u>Corp./Wausau Ins. Co.</u>, 2005 VT 5, ¶ 11, 177 Vt. 456 ("[A]ppellant bears the burden of demonstrating that a trial court error resulted in prejudice.").

² Defendant never appeared in this matter.

³ Plaintiff does not challenge the denial of his recusal motion as to the Bennington County Assistant Judges.

when action is commenced by filing complaint with court, "summons and complaint must be served upon the defendant within 60 days after the filing of the complaint," and "[i]f service is not timely made..., the action may be dismissed" under Vermont Rule of Civil Procedure 41(b)(1)); V.R.C.P. 4 (describing how summons and complaint must be served). It is the plaintiff's responsibility to complete service within the required time. <u>Smith v. Brattleboro Reformer, Inc.</u>, 147 Vt. 303, 304 (1986). After reasonable notice, the court may dismiss an action when the plaintiff has not filed proof of service on a defendant within ninety days of filing the action. V.R.C.P. 41(b)(1)(ii). The trial court here provided clear notice to defendant that his complaint would be dismissed if he did not serve defendant and file proof of that service as required by Rule 4. Plaintiff plainly failed to comply with Rule 4 and dismissal was therefore proper.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice