

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-473

APRIL TERM, 2004

	} APPEALED FROM:
	}
	} Chittenden Superior Court
	}
Robert R. Smith	}
	}
v.	} DOCKET NO. S0462-03 CnC
	}
Vermont Air National Guard and IBM	} Trial Judge: Matthew I. Katz
	}
	}

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

Plaintiff Robert R. Smith appeals pro se from the trial court= s dismissal of his complaint against the Vermont Air National Guard and IBM for failure to complete proper service. We affirm.

In April 2003, plaintiff filed a complaint with the Chittenden Superior Court alleging that he had been the A victim of a hate crime with the Vermont Air National Guard@ and that he had been wrongfully discharged by IBM after reporting that he had been sexually harassed. He sought economic and noneconomic damages. In a letter dated April 25, 2003, plaintiff requested that the court serve a summons on defendants based on the complaint that he had filed. On April 30, 2003, the court issued two summonses and forwarded them to plaintiff with a reminder that it was A his responsibility to serve the defendants as provided in the [Vermont] Rules of Civil Procedure.@ On June 13, 2003, the Chittenden County Sheriff= s Department served plaintiff= s summons and complaint on an officer of the Vermont Air National Guard. On July 21, 2003, IBM was served with a summons and with a copy of plaintiff= s complaint.

The Vermont Air National Guard moved to dismiss the complaint for insufficient service of process under V.R.C.P. 4(d) (2), and for failure to comply with the pleading requirements of V.R.C.P. 8(a). IBM similarly moved to dismiss the complaint for insufficient service of process and for failure to comply with the pleading requirements of V.R.C.P. 8. Plaintiff did not oppose either motion, although he did file a motion for a default judgment against the Vermont Air National Guard, which the court denied. On September 11, 2003, the trial court issued an entry order granting the Vermont Air National Guard= s motion to dismiss, stating A No service, per Rule 4.@ On the same date, the trial court issued an entry order granting IBM= s motion to dismiss for insufficient service of process, noting that there had been A [n]o timely service.@ Plaintiff then filed a series of motions against IBM and the Vermont Air National Guard, all of which were denied by the trial court. Plaintiff also filed a motion for a new trial pursuant to V.R.C.P. 50(b), which the court denied. This appeal followed.

In his brief, plaintiff does not address the procedural grounds on which the court dismissed his complaint. Instead, plaintiff makes substantive allegations about tampering with a urinalysis sample and about sexual harassment. We find no error in the trial court= s dismissal of plaintiff= s complaint.

First, because the Vermont Air National Guard is part of the State government, plaintiff was required to deliver a copy of the summons and of the complaint to the Attorney General or the Deputy Attorney General. See V.R.C.P. 4(d)(2); see also 20 V.S.A. ' 361(a) (A The military department, created by [3 V.S.A. ' 212] . . . shall include the national guard.@ ); 3 V.S.A. ' 212(16) (military department is an administrative department of state government). Plaintiff did not deliver his complaint and summons to either of these officials. Instead, these materials were delivered to Colonel Joel Clark in Colchester, Vermont. Because the summons and complaint were not served on either the Attorney General or the

Deputy Attorney General, service of process was insufficient to obtain jurisdiction over the Vermont Air National Guard, and the complaint was properly dismissed under V.R.C.P. 12(b).

Second, the court properly dismissed plaintiff's complaint against IBM for failure to complete timely service. Pursuant to V.R.C.P. 3, when an action is commenced by the filing of a complaint with the court, the summons and complaint must be served on the defendant within sixty days of the date of filing. If service of the complaint and summons is not timely made, the action may be dismissed on motion and notice. See V.R.C.P. 3; see also Morrisseau v. Fayette, 155 Vt. 371, 371-72 (1990) (plaintiff's failure to serve certain defendants within thirty days as required by rule or to request enlargement of time to serve defendants warranted dismissal of complaint). In this case, plaintiff filed his complaint with the court on April 14, 2003. Pursuant to V.R.C.P. 3, he then had sixty days to complete service on IBM. Plaintiff did not request an extension of time, and he did not complete service on IBM until July 21, 2003, outside the sixty day period. Thus, because plaintiff failed to complete timely service, the court properly dismissed his complaint against IBM. To the extent that plaintiff argues that the court erred in denying his numerous post-judgment motions, we find no error.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice