

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-271

JANUARY TERM, 2007

Mark Mumley

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APPEALED FROM:

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v.

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Grand Isle Superior Court

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John Mumley

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DOCKET NO. S17-3-05 Gicv

Trial Judge: A. Gregory Rainville

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

Plaintiff appeals an order of the superior court granting summary judgment to defendants on plaintiff=s claims related to an automobile accident in which he was injured. We affirm.

While plaintiff originally alleged in his complaint that the accident at issue occurred on April 1, 2002, in fact the accident occurred on April 30, 2001. Thus, plaintiff=s complaint, filed on March 18, 2005, fell outside the three-year statute of limitations period. Defendants made this argument in a summary judgment motion

once they realized that the date in the complaint was incorrect. Plaintiff argued in response that the running of the limitations period should be tolled due to plaintiff=s insanity. See 12 V.S.A. ' 551 (tolling limitations period in cases of minority, insanity or imprisonment). Based on this assertion, the superior court gave plaintiff sixty days to provide relevant affidavits in opposition to the summary judgment motion. When plaintiff failed to do so, the superior court granted summary judgment in favor of defendants. Following this ruling, plaintiff submitted a motion for reconsideration which the superior court denied.

On appeal, plaintiff describes the circumstances leading to his failure to file within the limitations period, including depression, difficulties managing his diabetes, changing residences, and imprisonment resulting from probation violations. He argues in essence that it is unfair to impose the time bar on this action due to his personal circumstances around the time when he should have filed his complaint.

In reviewing the superior court=s decision to grant summary judgment, we apply the same standard: summary judgment is appropriate where there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. V.R.C.P. 56 (c)(3); Weale v. Lund, 2006 VT 66, & 3 (mem.). Rule 56(e) requires the nonmoving party to respond to a motion for summary judgment with affidavits or sworn documents; the nonmoving party Amay not rest upon . . . mere allegations or denials.@ Id. For purposes of the tolling provision listed in 12 V.S.A. ' 551, a person is Ainsane@ when the person=s Amental disability makes him unable to manage his business affairs or estate, or to comprehend his legal rights and abilities.@ Fila v. Spruce Mountain Inn, 2005 VT 77, & 8 (citation and quotation omitted). Here, plaintiff submitted no affidavits or sworn documents relevant to this standard.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice