

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-061

AUGUST TERM, 2008

Paul Murphy	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
	}	
Prison Health Services, Inc.	}	DOCKET NO. 576-8-07 Wrcv
	}	
	}	Trial Judge: Walter M. Morris, Jr.

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

Plaintiff appeals from the voluntary dismissal with prejudice of this personal-injury case, Docket No. 576-8-07 Wrcv, arguing that the voluntary dismissal is void because: (1) defendant violated the terms of the stipulation to dismiss; and (2) plaintiff has “serious mental health problems” which precluded him from understanding the implications of his stipulation to the voluntary dismissal. Plaintiff also filed a motion asking for a continuance of his appeal. We dismiss plaintiff’s appeal, rendering plaintiff’s motion moot.

On August 29, 2007, plaintiff, a prisoner at Southern State Correctional Facility, filed a complaint against defendant Prison Health Services, Inc. in the Windsor County Superior Court, alleging that he left his room in the facility, slipped, and fell. Plaintiff’s complaint sought \$1,000,000 for “pain and anguish” and \$1,000,000 for the “emotional and mental anguish” he allegedly suffered as a result of the incident.

In a letter dated December 21, 2007, counsel for defendant wrote to plaintiff to “memorialize the agreement” that they had reached by phone. According to the letter, plaintiff had agreed to dismiss his personal injury complaint against defendant with prejudice, and, in return, defendant had agreed to waive service of summons in a preexisting matter involving the same parties, Docket No. 558-8-07 Wrcv, in which plaintiff sought damages for injuries that he allegedly suffered when he supposedly was given the wrong medication by defendant’s staff.\*

In early February 2008, the parties executed a stipulation of dismissal with prejudice, and, on February 11, 2008, the superior court ordered that “an entry of Dismissed with Prejudice . . . be made in the . . . matter.” On February 12, 2008, plaintiff wrote a letter to the superior court indicating that he did not want his personal injury complaint to be dismissed because “the agreement I made did not come through.” In response, the court sent plaintiff a copy of the docket sheet, notifying him that the matter was closed. On February 19, 2008, counsel for defendant made an appearance in superior court and answered plaintiff’s complaint

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\* The docket entries for 558-8-07 Wrcv indicate that the superior court sent plaintiff numerous letters indicating the need for plaintiff to provide the superior court with proof of service of summons lest plaintiff have his complaint dismissed.

in the preexisting matter, Docket No. 558-8-07 Wrcv. After moving for a continuance in the superior court, plaintiff appealed.

Plaintiff's February 20, 2008 notice of appeal stated that "with [defense counsel] not keeping his word [p]laintiff respectfully requests that this case should be appealed." On appeal, plaintiff contends that he suffers from "serious mental health problems" that rendered him unable to "realize what [he] was doing" with respect to the stipulation.

For its part, defendant argues that this Court does not have jurisdiction over this matter, because: (1) "the [Court] cannot reverse a stipulation of dismissal freely agreed to by both parties," and (2) the superior court's entry of an order, which dismissed the case with prejudice pursuant to a stipulation executed by both parties, was merely "ministerial" in nature and not a final, appealable order.

We need not reach the merits of the parties' arguments. If, as is suggested in his appeal, plaintiff contends either that his acceptance of the stipulation was induced by misrepresentation or fraud, or due to lack of mental capacity, plaintiff must first attempt to set aside the judgment in the trial court by filing a motion pursuant to Vermont Rule of Civil Procedure 60(b), which is committed to the sound discretion of the trial court. See V.R.C.P. 60(b) ("On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reason[] . . . (3) not more than one year after the judgment, order or proceeding was entered or taken."); see also Moore v. Beecher, 145 Vt. 659, 659, 482 A.2d 1225, 1225 (1984) (mem.) ("Motions under . . . [Rule 60(b)] are properly addressed only to the trial court."). Plaintiff has not filed a Rule 60(b) motion with the superior court (the trial court in this matter); therefore, plaintiff's appeal is dismissed.

Appeal Dismissed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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