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STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 167-3-18 Wncv

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Miles O. Dow,  
Plaintiff

v.

Lisa Menard,  
Defendant

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Opinion and Order on Motion to Reopen

Defendant moved to dismiss this matter in April 2019. Plaintiff failed to submit a timely opposition. On June 4, the Court granted the motion to dismiss. Over three months later, on September 19, Plaintiff moved to “reopen” the case. He maintains that his counsel mistakenly failed to notice that she had been sent the motion and did not notice the error until examining her files in relation to another case involving Defendant. The Court makes the following determinations.

The Court retains the ability to revisit a prior judgment under the authority of Vt. R. Civ. P. 60(b)(1), if the moving party can show “excusable neglect.” The Vermont Supreme Court, following federal precedent, has explained that the standard for excusable neglect is “elastic” and “equitable.” *In re Town of Killington*, 2003 VT 87A, ¶ 16, 176 Vt. 60, 68 (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 392 (1993)). Factors that may be evaluated include: “the danger of prejudice to the [nonmovant], the length of the delay and its

potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *In re Town of Killington*, 2003 VT 87A, ¶ 16 (citation omitted).

Despite those potential factors, “the appropriate focus is on the third factor: the reason for delay, including whether it was within the reasonable control of the movant.” *Id.* Courts must take a “hard line” and be “strict” on what is excusable “lest there be a de facto enlargement” of time. *Id.* ¶ 17; *see also Clark v. Baker*, 2016 VT 42, ¶ 19, 201 Vt. 610, 620 (“[T]he threshold created by the excusable neglect standard ‘remains high’ and will be found ‘only in rare cases.’” (citation omitted)).

In this instance, counsel’s oversight does not meet that high bar. While the Court appreciates the heavy workload attested to by counsel, “ordinary negligence,” and “office breakdowns” are insufficient to satisfy the standard. *Clark*, 2016 VT 42, ¶ 22, 201 Vt. 610, 621.<sup>1</sup> Plaintiff has not established excusable neglect.

Even if the Court were inclined to revisit the judgment, it has now considered Plaintiff’s arguments in opposition to Defendant’s motion. The Court continues to agree with Defendant that it has no jurisdiction to entertain this case under Vt. R. Civ. P. 75. Vt. R. Civ. P. 12(b)(1). Plaintiff’s claim stems from an alleged denial of an accommodation that occurred in 2016. That matter was not appealed, and the time for taking such an appeal has lapsed.

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<sup>1</sup> Counsel also makes passing reference to “two disabling injuries.” Those concerns might warrant a different outcome. The Court would permit counsel to submit greater information regarding those matters under seal if counsel wishes.

WHEREFORE, the motion to reopen is denied.

Electronically signed on November 05, 2019 at 2:58 PM pursuant to  
V.R.E.F. 7(d).

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Timothy B. Tomasi  
Superior Court Judge