

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-148

AUGUST TERM, 2004

	}	APPEALED FROM:
	}	
Brenda Peters	}	Chittenden Superior Court
	}	
v.	}	
	}	DOCKET NO. S0793-03 CnC
Benways Transportation and	}	
David Ritchie	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Plaintiff appeals the superior court's March 11, 2004 order dismissing her complaint against defendants for failing to timely complete service before the applicable statute of limitations had expired. We affirm.

Plaintiff's tort action accrued on September 18, 2000. Therefore, she had until September 17, 2003 to file her lawsuit. See 12 V.S.A. § 512. She filed her complaint on June 27, 2003. Under V.R.C.P. 3, plaintiff was required to serve defendants within sixty days of the filing of the complaint. She failed to do so. On September 26, 2003, nine days after the statute of limitations had expired, she filed a motion to extend time for thirty days to serve defendants. See V.R.C.P. 6(b)(2) (when rules require that act be done within specified time, court may, upon motion made after expiration of specified period, permit act to be done where failure to act resulted from excusable neglect). The court granted the motion the same day without obtaining a response from defendants. After plaintiff served the complaint in October 2003, defendants filed a motion to dismiss. The court granted the motion, ruling that plaintiff could not use Rule 6(b)(2) to extend the statutory deadline imposed by 12 V.S.A § 512. On appeal, plaintiff argues that her attorney' s failure to serve her complaint in a timely manner was the result of excusable neglect, and that the superior court should have denied defendants' motion to dismiss because defendants were not prejudiced by the late service.

We find no basis to overturn the superior court's decision. " [I]f the filing of a complaint is to be effective in tolling the statute of limitations as of that filing date, timely service under the Rules of Civil Procedure must be accomplished." Weisburgh v. McClure Newspapers, Inc., 136 Vt. 594, 595 (1979). Here, both the sixty-day period for service and the statute of limitations had passed before plaintiff sought an extension of time to serve defendants. Thus, plaintiff' s lawsuit had not been perfected at the end of the applicable limitations period. Plaintiff' s attempt to revive her complaint through a Rule 6(b)(2) motion is unavailing. She seeks to apply the rule to extend the statutory limitations period, but Rule 6(b) expressly limits its scope to enlarging the time provided by court rules or orders. See Hammons v. Int'l Playtex, Inc., 676 F. Supp. 1114, 1118 (D. Wyo. 1988) (sixty-day period for service established by state court rule is integral part of statute of limitations, and Rule 6(b)(2) may not be used to circumvent statute of limitations); see also Cuocci v. Goetting, 812 F. Supp. 451, 453 (D. Vt. 1993) (plaintiffs' failure to timely serve complaint resulted in running of limitations period). We recognize that plaintiff could have filed her complaint one day before the limitations period had run and still had sixty days to serve defendants, but in this case the complaint was not perfected by timely service, and the complaint could not be revived after the statutory limitations period had expired.

Moreover, even assuming Rule 6(b)(2) could be used to extend the statutory limitations period, plaintiff has utterly failed to demonstrate excusable neglect. Plaintiff's failure to serve defendants was the result of oversight. " Excusable neglect requires, at a minimum, some reasonable basis for noncompliance within the allotted time period." Miller v. Ladd, 140 Vt. 293, 297 (1981). Mere oversight does not cross the threshold of excusable neglect. Shields v. Gerhart,

163 Vt. 219, 221 (1995). Otherwise, there would be no limits upon extensions of time for any reason. Miller, 140 Vt. at 297.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice