



Subsequently, plaintiff moved again to recuse Judge Valente, arguing that Judge Valente “knew the outcome” of one of plaintiff’s prior lawsuits, which was referenced in the complaint. Judge Valente recused himself. He acknowledged that his name appeared in plaintiff’s pleadings and determined that, “given the specific facts and circumstances here,” recusal was warranted.

Plaintiff failed to file proof of service on defendant. In December 2021 the trial court sent plaintiff a letter advising him that the case would be dismissed if he did not file proof of service within fourteen days. In response, plaintiff filed documents indicating that he had accepted service on behalf of certain state employees and entities. Judge Corsones ruled that this was not proper proof of service and dismissed the complaint in January 2022.<sup>2</sup>

Plaintiff’s arguments on appeal are difficult to comprehend, but his brief focuses almost entirely on recusal. He contends that the decisions of Judges Corsones and Grearson not to recuse themselves violated his due process rights and the Vermont Judicial Code of Conduct.<sup>3</sup>

We review the denial of a recusal motion for abuse of discretion. Velardo v. Ovitt, 2007 VT 69, ¶ 13, 182 Vt. 180. “A fair trial before an impartial decisionmaker is a basic requirement of due process . . . .” Sec’y, Agency of Nat. Res. v. Upper Valley Reg’l Landfill Corp., 167 Vt. 228, 234 (1997). Under the Code of Judicial Conduct, a judge “shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” A.O. 10, Canon 3E(1). “Judges are accorded a presumption of honesty and integrity, with the burden on the moving party to show otherwise in the circumstances of the case.” Ainsworth v. Chandler, 2014 VT 107, ¶ 15, 197 Vt. 541 (quotation and alteration omitted).

Here, plaintiff makes generalized statements that Judges Corsones and Grearson were biased against him and should have been recused. He also refers broadly to duties of judges to be impartial and respect the law. But he points to no evidence to lend factual support to any of his conclusory allegations of bias. See id. (holding that party seeking recusal bears burden to demonstrate dishonesty or lack of integrity). The primary arguments plaintiff presented below—that Judge Corsones and others should be disqualified if they ruled against him and that Judge Grearson should be recused for taking too long to rule on his motion—were utterly without merit. See Luce v. Cushing, 2004 VT 117, ¶ 23, 177 Vt. 600 (mem.) (holding that “adverse rulings, no matter how erroneous or numerous” are not sufficient to establish prejudice (quotations omitted)). Plaintiff offers no legitimate basis to disturb any of the trial court’s rulings on recusal.

Plaintiff does not address the reason the trial court dismissed his complaint—that he failed to file proof of service of the summons and complaint on defendant. Nevertheless, we see no error in this ruling. When a civil action is commenced by filing, like in this case, the defendant must be served with the complaint within sixty days. See V.R.C.P. 3 (requiring that

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plaintiff has never raised this issue, much less asserted that it prejudiced him. See DeLeonardis v. Page, 2010 VT 52, ¶ 31, 188 Vt. 94 (holding that where litigant fails to seek disqualification of trial judge in trial court, issue is not preserved for appeal); Farris v. Bryant Grinder Corp./Wausau Ins. Co., 2005 VT 5, ¶ 11, 177 Vt. 456 (“[A]ppellant bears the burden of demonstrating that a trial court error resulted in prejudice.”).

<sup>2</sup> Defendant never appeared in this matter.

<sup>3</sup> Plaintiff does not challenge the denial of his recusal motion as to the Bennington County Assistant Judges.

when action is commenced by filing complaint with court, “summons and complaint must be served upon the defendant within 60 days after the filing of the complaint,” and “[i]f service is not timely made . . . , the action may be dismissed” under Vermont Rule of Civil Procedure 41(b)(1)); V.R.C.P. 4 (describing how summons and complaint must be served). It is the plaintiff’s responsibility to complete service within the required time. Smith v. Brattleboro Reformer, Inc., 147 Vt. 303, 304 (1986). After reasonable notice, the court may dismiss an action when the plaintiff has not filed proof of service on a defendant within ninety days of filing the action. V.R.C.P. 41(b)(1)(ii). The trial court here provided clear notice to defendant that his complaint would be dismissed if he did not serve defendant and file proof of that service as required by Rule 4. Plaintiff plainly failed to comply with Rule 4 and dismissal was therefore proper.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice