VERMONT SUPREME COURT

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Case No. 2021-135

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

NOVEMBER TERM, 2021

Clinton Bedell* v. Attorney General et al. } APPEALED FROM: } Superior Court, Addison Unit,

} Civil Division

} CASE NO. 20-CV-00859

Trial Judge: Mary Miles Teachout

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

Plaintiff appeals pro se from the dismissal of his complaint for lack of proof of service under Vermont Rule of Civil Procedure 41(b)(1)(ii). We affirm.

Plaintiff filed a complaint against various defendants with the trial court on December 4, 2020. The court ordered plaintiff to attempt service by waiver before it would authorize service by sheriff at public expense. See generally V.R.C.P. 4(*l*) (describing requirements for waiver of service). On May 25, 2021, the court warned plaintiff that his complaint might be dismissed because he had not submitted proof that defendants had been served with a copy of the complaint. Plaintiff filed a handwritten letter in response. On June 10, 2021, the court dismissed the complaint without prejudice due to the failure to provide proof of service. The court explained that, while plaintiff had filed materials following its May 25 dismissal warning, those materials did not show that the service requirements of the Vermont Rules of Civil Procedure had been satisfied. This appeal followed.

Plaintiff's brief does not address the proof of service issue. Instead, it appears to be a copy of his complaint and assertions related to the merits of that complaint. He fails to show that the court erred in dismissing his complaint. As set forth above, the court warned plaintiff that the complaint could be dismissed due to lack of service, and it then dismissed the complaint when plaintiff failed to remedy this deficiency. See V.R.C.P. 41(b)(1)(ii) (providing, as relevant here, that trial court may dismiss any action on its own motion, after reasonable notice to all parties, when "plaintiff has not filed proof of service on the defendant[s] against whom the claim is asserted within 90 days of the filing of the action"); see also V.R.C.P. 3 (requiring that 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 "[if] service is not timely made . . . , the action may be dismissed" under Rule 41(b)(1)); V.R.C.P. 4 (describing how summons and complaint must be served).

BY THE COURT:
Harold E. Eaton, Jr., Associate Justice
Karen R. Carroll, Associate Justice
William D. Cohen. Associate Justice