

VERMONT SUPERIOR COURT
Chittenden Unit
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CIVIL DIVISION
Case No. 25-CV-2631

JESSICA DEARDEN, Plaintiff v. SOUTH BURLINGTON OPCO, LLC, THE RESIDENCE AT QUARRY HILL, MELEA HOLLIMAN, and TLC NURSING, Defendants	DECISION ON MOTIONS
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RULING ON DEFENDANTS' MOTIONS TO DISMISS AND OTHER PENDING MOTIONS

This negligence action arises from an injury sustained by Plaintiff Jessica Dearden, a visiting nurse, while lifting a patient at a nursing home in South Burlington. Since the case was filed in June 2025, this Court has issued several decisions on Defendants' motions to dismiss and Plaintiff's motions to amend the complaint. In its April 7, 2026 ruling, the Court denied Defendant TLC Nursing's motion to dismiss but held that "Plaintiff must amend her complaint to allege that TLC Nursing is Melea Holliman's employer and to name the correct business entities (South Burlington OPCO, LLC and The Residence at Quarry Hill) within 30 days, or the claims will be dismissed." Decision and Order on TLC's Mot. to Dismiss, 2026 WL 1126584, at *3; *see also id.* n.2. In that same ruling, the Court ordered that Plaintiff must "file proof of service on Defendant Holliman no later than May 4, 2026," and noted that no further extensions of the time to serve Holliman would be allowed. *Id.* at *4. Plaintiff did none of the above within the specified deadlines and, accordingly, Defendants moved to dismiss on May 11, 2026.

The very next day, May 12, Plaintiff filed a proposed third amended complaint and a motion for extension of time to file the amended complaint. Plaintiff acknowledges that she "missed that deadline," but curiously, provides no explanation. Mot. to Extend Time at 1. She further states that she has not been able to serve Holliman and "understands that the claim against [Holliman] will be dismissed." *Id.*

Discussion

Rule 6(b) of the Vermont Rules of Civil Procedure provides that where, as here, a request to extend a deadline comes after it has expired, the moving party must establish excusable neglect. V.R.C.P. 6(b)(1)(B). In this context, "excusable neglect" is "an equitable determination, 'taking account of all relevant circumstances surrounding the party's omission.'" *Ying Ji v. Heide*, 2013 VT 81, ¶ 11, 194 Vt. 546 (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*

P'ship, 507 U.S. 380, 395 (1993)).¹ Excusable neglect is a strict standard. *In re Town of Killington*, 2003 VT 87A, ¶ 17, 176 Vt. 60, 69. It is “intended to encompass acts of negligence, but does not reach every instance of an inadvertent or negligent omission.” *Ying Ji*, 2013 VT 81, ¶ 11 (quotation omitted). Accordingly, courts should take an “appropriately hard line when it comes to determining when neglect that stems from factors totally within the control of a party or its attorney is ‘excusable.’” *In re Town of Killington*, 2003 VT 87A, ¶ 17, 176 Vt. 60 (citation omitted). “Of the factors courts must consider in identifying ‘excusable neglect,’ the most important is the reason for the failure.” *Ying Ji*, 2013 VT 81, ¶ 19; *see also Doe v. Camacho*, 2024 VT 72, ¶ 25, 220 Vt. 226 (“[T]he ‘appropriate focus’ of the excusable-neglect analysis is ‘the reason for the delay, including whether it was in the reasonable control of the movant.’” (quoting *In re Town of Killington*, 2003 VT 87A, ¶¶ 16, 19)).

In this case, like so many others, several of the factors appear to favor Plaintiff. As to the most important factor, however, the Court finds that Plaintiff has failed to demonstrate that the missed deadline was beyond her control and therefore constitutes excusable neglect. Indeed, Plaintiff has offered absolutely no reason whatsoever for failing to file the amended complaint within 30 days as ordered by the Court. In her brief reply in further support of her motion for extension of time, she asserts in a conclusory manner that neither Defendant argues it would be prejudiced by an extension (which Defendants contest). Notably, even in her reply, however, she continues to identify no reason for missing the deadline and cites no authority to support her request.² Therefore, the Court concludes that Plaintiff has not satisfied the high standard of excusable neglect, and the motions to dismiss must be granted.

Order

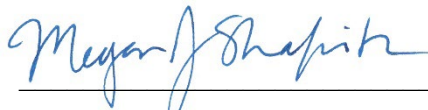
For the foregoing reasons, Plaintiff’s motion for an extension of time (Mot. # 18) is DENIED and Defendants’ motions to dismiss (Mot. # 16 and 17) are GRANTED. Defendant’s motion for permission to file a sur-reply (Mot. # 19) is GRANTED.

¹ Such circumstances may include: “the danger of prejudice to the responding party, 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.” *Id.* ¶ 11 (quoting *Pioneer Inv. Servs. Co.*, 507 U.S. at 395).

² The facts of this case distinguish it from *Ying Ji*, 2013 VT 81, ¶¶ 69. In that case, “in concluding that the trial court acted outside of its discretion,” our Supreme Court “relied in great part on the fact that the underlying dismissal was a disproportionate sanction, amounting to a default judgment with no notice or opportunity to be heard before the dismissal.” *Taft-Blakely v. Reinhart Foodservice, LLC*, Case No. 2015-314, 2016 WL 3248841, at *3 (Vt. June 2016) (unpub. mem.) (cited for its persuasive value pursuant to V.R.A.P. 33.1(d)) (distinguishing *Ying Ji* where the same “factual considerations [we]re not present in th[e] case, which instead involve[d] plaintiff’s failure to timely complete service due to counsel’s oversight”). Here, Plaintiff’s counsel was on clear notice that the failure to file the amended complaint within 30 days, as necessary to allege a basic jurisdictional fact and make long overdue corrections to the parties’ names, would result in dismissal of the action.

All remaining claims in this action are dismissed. Defendants shall file a proposed judgment order within seven days. *See* V.R.C.P. 58.

Electronically signed on August 11, 2026 at 1:44 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge