

APPENDIX

**APPENDIX A (Maine Supreme Judicial Court
Order Denying Motion to Reconsider)**

**MAINE SUPREME JUDICIAL COURT Sitting
as the Law Court**

Docket No. Yor-22-259
Decision No. Mem 23-42

Peter Chien et al.
v.
Scott E. Jarrett et al.

ORDER DENYING MOTION TO RECONSIDER

Peter Chien and Michael Donatelli have filed a motion to reconsider the Court's decision dated March 2, 2023. The motion has been reviewed by the panel that decided the original appeal.

The motion to reconsider is DENIED.

Dated: March 23, 2023

For the Court,

s/ Matthew Pollack

Matthew Pollack

Clerk of the Law Court

Pursuant to M.R. App. P. 12A(b)(4)

**APPENDIX B (Maine Supreme Judicial Court
Memorandum of Decision Affirming Lower
Court)**

MAINE SUPREME JUDICIAL COURT

**Reporter of Decisions
Decision No. Mem 23-42
Docket No. Yor-22-259**

**PETER CHIEN et al.
v.
SCOTT E. JARRETT et al.**

Submitted on Briefs February 22, 2023

Decided March 2, 2023

**Panel: MEAD, JABAR, HORTON, CONNORS,
and LAWRENCE, JJ.**

MEMORANDUM OF DECISION

Peter Chien and Michael Donatelli appeal from a judgment entered by the Superior Court (York County, *Mulhern, J.*) denying their motions for relief from judgment after the trial court dismissed their complaint against Scott E. Jarrett, Christopher Greenwood, Stephen Broy, Dana M. Kelley, Rod Belanger, and the Town of Old Orchard Beach, asserting various tort and civil rights claims. See

M.R. Civ. P. 60(b)(1)-(2). Chien and Donatelli make numerous arguments on appeal, most of which are based on a misapprehension of the Maine Rules of Civil Procedure. We find no merit in their arguments. The trial court properly exercised its considerable discretion in denying their motions for relief from judgment where Chien and Donatelli failed to demonstrate that their failure to monitor their case and comply with court orders was the result of excusable neglect. *See Moulton v. Brown*, 627 A.2d 521, 523 (Me. 1993); *McKeen & Assocs.v. Dep't of Transp.*, 1997 ME 73, ¶ 4, 692 A.2d 924; M.R. Civ. P. 6, 60(b)(1)-(2).

The entry is:

Judgment affirmed.

2

Peter Chien, appellant pro se
Michael Donatelli, appellant pro se
John J. Wall, III, Esq., Monaghan Leahy,
LLP, Portland, for appellees Scott E. Jarrett
et al.

York County Superior Court docket number
CV-2019-115

FOR CLERK REFERENCE ONLY

**APPENDIX C (York County Superior Court
Order Missing Triggering Deadline)**

**STATE OF MAINE YORK, ss.
SUPERIOR COURT Civil Action
Docket No. CV-19-115**

**MICHAEL DONATELLI et al
Plaintiffs,
v.
SCOTT E. JARRETT, et al,
Defendants.**

ORDER

**By Order of this Court dated October 31, 2020,
Plaintiffs were to either retain new counsel or
enter their pro se appearances within 30 days.
Neither event has happened. If that is not done
within 21 days, this matter will be dismissed.**

**The clerk may enter this Order on the docket
by reference pursuant to M.R. Civ. P. 79(a).**

**Dated: May 27, 2021
s/ Richard Mulhern
Hon. Richard Mulhern
Justice, Superior Court**

ENTERED ON THE DOCKET ON 5/27/2001

**6/17/21 Pursuant to order dated 5/27/21, case is
dismissed.**

**s/ Richard Mulhern
ENTERED ON THE DOCKET ON: 6/18/2021**

**APPENDIX D (York County Superior Court
Order Denying Plaintiffs' Motions for Relief
from Judgment)**

**STATE OF MAINE YORK, SS.
SUPERIOR COURT Civil Action
Docket No. CV-19-115**

**MICHAEL DONATELLI and PETER
CHIEN, Plaintiffs,**

v.

**SCOTT E. JARRETT, CHRISTOPHER
GREENWOOD, STEPHEN BROY, DANA M.
KELLEY, ROD BELANGER, and TOWN OF
OLD ORCHARD BEACH, Defendants.**

**ORDER ON PLAINTIFFS' MOTIONS FOR
RELIEF FROM JUDGMENT M. R. CIV. P. 60(b)
(2)**

Plaintiffs' case was dismissed with prejudice by this Court on June 18, 2021. Plaintiffs' counsel filed and the Court granted a Motion to Withdraw from the case on October 20, 2020. On October 26, 2020, due to the withdrawal, Defendants filed a Motion to Toll Deadlines. The Court granted that motion on November 4, 2020 and ordered Plaintiffs to either obtain new counsel or inform the Court within thirty (30) days that they are representing themselves. Over six months passed.

On May 27, 2021, the Court again ordered Plaintiffs to enter appearances either of counsel or pro se within twenty-one (21) days.

Plaintiffs failed to do so and the case was dismissed with prejudice on June 18, 2021, twenty-two days later. Plaintiffs have since filed numerous motions for reconsideration and unsuccessful appeals. Plaintiffs most recently move for relief from judgment pursuant to M.R. Civ. P. 60(b)(2)¹ For the reason set forth herein, the motions are denied.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)

M.R.Civ.P.60(b).

Plaintiffs argue, first, that the Court mistakenly entered judgment prematurely in this case. Plaintiffs posit that they were entitled to twenty-four days to comply with the Court's May 27th order pursuant to M.R. Civ. P.

¹ Plaintiffs first filed a Motion for Relief from Judgment pursuant to M.R. Civ. P. 60(b)(2) on May 20, 2022, and, prior to an order on the first motion, filed a second motion entitled "Motion for Relief from Judgment M.R. Civ. P. 60(b)(2) on Court Mistake for Premature Final Judgment in Violation of M.R. Civ. P. 6" on June 15, 2022. To the extent that the second motion is premised on an alleged "mistake" it is more precisely a motion pursuant to M.R. Civ. P. 60(b)(1) and the Court addresses it as such.

6. Plaintiffs are plainly incorrect. The May 27th Order — the second of its kind ordering Plaintiffs to enter appearances — explicitly required Plaintiffs to act within twenty-one days and responsiveness to the Order is governed by its explicit terms and not M.R. Civ.P. 6(c).

Plaintiffs further argue that they are entitled to relief from judgment because the Order was sent to an address which was not their address of record and because they were awaiting information from Defendants' attorney in order to "establish fault of this Trial Court to follow M.R. Civ. P. 5(b)[]" Pls.' Mot at 1. Plaintiffs argue that a response from Defendants' attorney is new evidence of the trial court's "fault".

The email exchange between Plaintiffs and Defense counsel is not "newly discovered evidence" and does not change the facts surrounding the disposition of this case. The decision in this case — dismissal with prejudice for failure to comply with court orders — was not based on evidence but on Plaintiffs' actions. Therefore, any evidence, whether newly discovered or not, does not afford Plaintiffs' relief pursuant to M.R. Civ. P. 60(b)(2). The Plaintiffs received the Court's May 27th order, at the latest, on June 1st and had ample time to comply with it but did not. Plaintiffs' argument based on the issuance of the November 4, 2020 Court Order and M.R.

Civ. P. 5(b)² is misplaced. Even were the Court to consider Plaintiffs' motion for relief under M.R. Civ. P. 60(b)(1), Plaintiffs have not made a showing of excusable neglect. When a party moves to enlarge the time to complete an act after the deadline to complete the act has passed, that party must show that the failure to act was the result of excusable neglect. *Gregory v. City of Calais*, 2001 ME 82, ¶6, 771 A.2d 383. (citation omitted). Here, Plaintiffs admit to being in possession of the Court's May 27th Order on June 1st and still let the deadline to enter appearances pass and have not made any attempt to justify their failure to comply except to blame the Court.

Accordingly, it is hereby ordered and the entry is: "Plaintiffs' motions for relief from judgment are DENIED."

The clerk may enter this Memorandum of Decision and Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED

Dated: 7/25/22 s/ Richard Mulhern
Hon. Richard Mulhern
Justice, Superior Court

ENTERED ON THE DOCKET ON: 7/26/22

² M.R. Civ. P. 5(b), like 6(c), is not applicable to court orders but to the parties' pleadings and other papers.

**APPENDIX E (Original Unopposed Motion and
Proposed Order)**

STATE OF MAINE YORK, SS.

**MICHAEL DONATELLI and
PETER CHIEN, Plaintiffs**

v.

SCOTT E. JARRETT, et al., Defendants

**SUPERIOR COURT
CIVIL ACTION
Docket No. CV-19-115**

**DEFENDANTS' UNOPPOSED MOTION TO
TOLL SCHEDULING ORDER DEADLINES**

**Pursuant to Maine Rules of Civil Procedure 6
and 7, Defendants Scott E. Jarrett, Stephen
Broy, Dana M. Kelley, Rod Belanger and Town
of Old Orchard Beach (collectively "the
Town Defendants"), by and through their
undersigned counsel, hereby move without
opposition for an order tolling the running of
all deadlines set forth in the Scheduling Order
(as amended) until the Plaintiffs have either
obtained new counsel or they have notified the
Court that they intend to represent themselves
based on the following:**

**1. Counsel for the Plaintiffs has advised
counsel for the Defendants that he intends to
file a motion to withdraw in the near future.**

2. In light of Plaintiffs' counsel's impending request to withdraw, the parties are not in a position to complete discovery, including the continued deposition of one of the Plaintiffs.

3. Upon the motion to withdraw, the Court will presumably enter an order affording the Plaintiffs a certain period of time to notify the Court whether they have retained new counsel or whether they intend to proceed by representing themselves.

4. Once the issue of the Plaintiffs' future representation is resolved, the parties can confer and present the Court with an agreed-upon motion to extend all pending deadlines.

5. In the meantime, and to prevent any prejudice to any party, the Defendants request that the Court toll the pending deadlines in the Scheduling Order (as amended) until the parties can submit an agreed-upon motion to extend all pending deadlines.

6. The undersigned counsel has conferred with the Plaintiffs' counsel concerning this Motion and has been authorized to represent that the Plaintiffs do not object to this Motion or to the requested relief.

WHEREFORE, Defendants Scott E. Jarrett, Stephen Broy, Dana M. Kelley, Rod Belanger and Town of Old Orchard Beach request an order from the Court tolling the

running of all pending deadlines set forth in the Scheduling Order (as amended) until the issue of the Plaintiffs' legal representation moving forward has been resolved.

Dated at Portland, Maine this 26th day of October, 2020.

Attorneys for Defendants
MONAGHAN LEAHY, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046
(207) 774-3906
jwall@monaghanleahy.com

By: s/ John J. Wall, III
John J. Wall III, Bar No. 7564

STATE OF MAINE YORK, SS.

**MICHAEL DONATELLI and PETER CHIEN,
Plaintiffs**

v.

SCOTT E. JARRETT, et al., Defendants

**SUPERIOR COURT
CIVIL ACTION
Docket No. CV-19-115**

**ORDER ON DEFENDANTS' UNOPPOSED
MOTION TO TOLL SCHEDULING ORDER
DEADLINES**

**Upon Defendants Scott E. Jarrett, Stephen
Broy, Dana M. Kelley, Rod Belanger and Town
of Old Orchard Beach's Unopposed Motion to
Toll Scheduling Order Deadlines, and
there being no objection, the Court finds
sufficient cause to grant the requested relief.**

**The Court hereby ORDERS that the Motion is
GRANTED and further ORDERS that all
deadlines set forth in the Scheduling Order (as
amended) are hereby tolled until the issue of
the Plaintiffs' legal representation moving
forward has been resolved and the parties have
submitted an agreed-upon motion to extend all
pending deadlines.**

Dated: _____

Justice, Superior Court

**APPENDIX F (Proposed Order with Court-
Amendment with Deadline)**

STATE OF MAINE YORK, SS.

**MICHAEL DONATELLI and PETER CHIEN,
Plaintiffs**

v.

SCOTT E. JARRETT, et al., Defendants

**SUPERIOR COURT
CIVIL ACTION
Docket No. CV-19-115**

**ORDER ON DEFENDANTS' UNOPPOSED
MOTION TO TOLL SCHEDULING ORDER
DEADLINES**

**Upon Defendants Scott E. Jarrett, Stephen
Broy, Dana M. Kelley, Rod Belanger and Town
of Old Orchard Beach's Unopposed Motion to
Toll Scheduling Order Deadlines, and
there being no objection, the Court finds
sufficient cause to grant the requested relief.**

**The Court hereby ORDERS that the Motion is
GRANTED and further ORDERS that all
deadlines set forth in the Scheduling Order (as
amended) are hereby tolled until the issue of
the Plaintiffs' legal representation moving
forward has been resolved and the parties have
submitted an agreed-upon motion to extend all
pending deadlines.**

It is further ordered that plaintiffs shall either secure new counsel or notify the court within 30 days of the entry of this order that they are representing themselves.

Dated: October 31, 2020
s/ Wayne Douglas
Justice, Superior Court

Clerk may incorporate reference on docket. M.
R. Civ. P. 79(a)

ENTERED ON THE DOCKET ON: 11/4/2020

**APPENDIX G (E-mail from Former Plaintiffs'
Attorney Attesting No Receipt of Court-
Amended Order Now with Deadline to Find
Replacement Attorney)**

**8/10/2021 Gmail - Donatelli & Chien v. Jarrett,
et al. - YCSC Docket No. CV-19-115**

**M Gmail oldorchardroadcottages
oldorchardbeachmaine
<lazygullcottages@gmail.com>**

**Donatelli & Chien v. Jarrett, et al. - YCSC
Docket No. CV-19-115**

**Stanley Tupper
<stupper@frederickquinlan.com>
Fri, Jul 30, 2021 at 7:25 AM**

**To: oldorchardroadcottages
oldorchardbeachmaine
<lazygullcottages@gmail.com>**

**The last document I ever received was the
order granting withdrawal. You'll perhaps
recall that at that time, we were all operating
under the good faith understanding that
Lauren had or intended to file an Entry of
Appearance.**

Best regards,

Stan

Stanley R. Tupper III, Esq.

**Frederick, Quinlan & Tupper LLC.
30 Chamberlain Ave.
Portland, Maine 04101
www.frederickquinlan.com**

**XXX-XXX-XXXX Personal Cell
Maine Bar #005507**

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contained in this communication may be
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**From: oldorchardroadcottages
oldorchardbeachmaine
<lazygullcottages@gmail.com>**

Sent: Thursday, July 29, 2021 2:57:10 PM

**To: Stanley Tupper
<stupper@frederickquinlan.com>**

**Subject: Re: Donatelli & Chien v. Jarrett, et al.
-YCSC Docket No. CV-19-115**

Hi Stan,

John is saying Lauren had not submitted an entry of appearance though. Not to represent us, but we are wondering if you could attest that as the exiting attorney you had not received the amended order either with the 30-day deadline. We could then invoke Rule 5b then and say that since the court never sent you a notice even as the exiting attorney, the court itself did not follow the Rule 5b process for exiting attorneys and therefore has not afforded us the utmost accommodation that would be expected for pro se plaintiffs.

-Peter and Michael

Rule 5

b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Except as otherwise provided in these rules, service of the documents desc

On Thu, Jul 29, 2021 at 1:36 PM Stanley Tupper
<stupper@frederickquinlan.com> wrote:

Good afternoon.

Gentlemen, when I filed a motion to withdraw, we had solidified Attorney Lauren Thomas as my replacement. She had agreed, we had had phone conferences, and so on. When the judge granted the motion to withdraw, I still understood that Lauren was teed up and ready to take the case. She absolutely represented to me and to you, and to John Wall for that matter that she would be your attorney. With that in mind, none of us, not the court or Wall or you had any expectation that I would participate at all in any procedural matters. I didn't. It appeared as I left that Lauren was appealing to a former colleague to take the case. She would have or should have properly shepherded you through the transition, particularly as she had come some distance with you and you had some expectation that she'd take care.

Best,

Stan

Best regards,

Stan

<https://mail.google.com/mail/u/5ik-895l a13f0c&view=pt&search=all&permmsgid=msg-f%3A1706708T77134131744&dsqt=1&simpl=msg-f%3A 1 70670S777134... 1/3>