

BILLY D. GROOM

v.

APRIL WALCH

Submitted on Briefs February 23, 2017  
Decided March 2, 2017

Panel: ALEXANDER, and MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

## MEMORANDUM OF DECISION

Billy D. Groom appeals from a judgment of the District Court (Springvale, *Cantara, J.*) denying his motion for relief from an order issued in April 2015 dismissing his complaint for divorce,<sup>1</sup> *see* M.R. Civ. P. 60(b), based on Groom's failure to file a return of service, *see* M.R. Civ. P. 3, 101(a); and he also appeals from the court's subsequent denial of his motion for reconsideration, *see* M.R. Civ. P. 59(e).<sup>2</sup> Contrary to Groom's apparent

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<sup>1</sup> The order of dismissal does not state whether it was with or without prejudice. In general, a dismissal based on insufficient proof of service of process is without prejudice because, absent proper service, the court lacks personal jurisdiction over the defendant and does not have the authority to rule on the merits of the complaint. *Cf. Jackson v. Johns*, 259 F. App'x 181, 182-83 (11th Cir. 2007) (concluding, based on Fed. R. Civ. P. 4(m), that it was "improper for the district court to have reached the merits [of the] case and to have issued a dismissal with prejudice," because the plaintiff failed to properly serve the defendants); *Fries v. Carpenter*, 567 A.2d 437, 439 (Me. 1989) (concluding that a dismissal "did not operate as an adjudication on the merits" of the plaintiffs' complaint because the plaintiffs failed to timely serve the defendants, and so personal jurisdiction over the defendants was never secured).

<sup>2</sup> To the extent Groom challenges the court's (*Janelle, J.*) order of dismissal itself, the appeal is not timely and we do not consider any such challenge. *See* M.R. App. P 2(b)(3); *Ezell v. Lawless*,

contention, the court acted within the bounds of its discretion by implicitly determining that Groom had failed to state grounds that would support any of the bases for relief enumerated in Rule 60(b). *See Ezell v. Lawless*, 2008 ME 139, ¶¶ 19, 22, 955 A.2d 202 (stating that “[w]e review the denial of a Rule 60(b) motion for abuse of discretion,” and that unrepresented parties are afforded “no special consideration” in determining whether Rule 60(b) relief is justified).

The entry is:

Judgment affirmed.

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Billy D. Groom, appellant pro se

April Walch did not file a brief

Springvale District Court docket number FM-2014-434  
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2008 ME 139, ¶ 18, 955 A.2d 202 (stating that Rule 60(b) is “not an alternative method of appeal or a procedural device to permit a late appeal”).