

SARAH OPPENHEIM

v.

DEREK HUTCHINSON

Submitted on Briefs September 14, 2006
Decided September 22, 2006

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,
LEVY, and SILVER, JJ.

MEMORANDUM OF DECISION

Sarah Oppenheim appeals from a judgment entered in Superior Court (Penobscot County, *Mead, J.*), which denied her motion for an enlargement of time within which to file return of service and granted the motion of Derek Hutchinson to dismiss the case for failure to timely file return of service. Contrary to Oppenheim's contention, the trial court applied the correct standard, excusable neglect. *See, e.g., Qualey v. Sec'y of State*, 628 A.2d 1035, 1037 (Me. 1993). Furthermore, the rationale offered by Oppenheim for her untimely filing, the failure of office procedure due to the press of other business, is insufficient to

support a finding of excusable neglect. *See State v. One 1977 Blue Ford Pick-Up Truck*, 447 A.2d 1226, 1231 (Me. 1982); *Begin v. Jerry's Sunoco, Inc.*, 435 A.2d 1079, 1083 (Me. 1981). We similarly find unpersuasive the equitable argument that the case should not be dismissed because Oppenheim may never be heard on the merits due to the statute of limitations having run. *See Dalot v. Smith*, 551 A.2d 448 (Me. 1988).

The entry is:

Judgment affirmed.

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