

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Procopio v. Eichle

2026 NY Slip Op 02682 · No. 2022-00757 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order granting Kim Eichle summary judgment in a personal-injury action arising from an assault outside a New Year's Eve party at her home. The court held that Eichle established she did not furnish or procure alcohol for the minors and that the injured plaintiff could not identify whether an icy sidewalk contributed to his fall without speculation. The court also affirmed dismissal of the relevant claims against Eichle arising under New York's Dram Shop Act and premises-liability theories.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Deborah A. Dowling, J.; Elena Goldberg Velazquez, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 29, 2026
DOCKET	2022-00757
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting Kim Eichle summary judgment dismissing the amended complaint against her and granting Joseph Russo summary judgment on the first and second causes of action insofar as asserted against Eichle.
STANDARD OF REVIEW	Summary judgment is warranted where the movant establishes entitlement to judgment as a matter of law; the nonmoving party must then raise a triable issue of fact. In a premises-liability trip-and-fall case, the defendant may establish prima facie entitlement by showing that the plaintiff cannot identify the cause of the fall without speculation.
PRECEDENTIAL VALUE	Published intermediate appellate decision; the opinion states that it was published by the New York State Law Reporting Bureau, but is

uncorrected and subject to revision before publication in the Official Reports.

PARTIES

Joseph Procopio, as parent and natural guardian of the infant, and individually v. Kim Eichle, Joseph Russo, third-party defendant

TOPICS

dram shop liability

premises liability

summary judgment

personal injury

appellate procedure

PRACTICE AREAS

torts

premises liability

dram shop liability

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Eichle was entitled to summary judgment on the causes of action alleging violations of New York General Obligations Law §§ 11-100 and 11-101.
2. Whether Eichle was entitled to summary judgment on the premises-liability cause of action because the infant could not identify the cause of his fall without speculation.
3. Whether the branches of Russo's motion seeking summary judgment dismissing the first and second causes of action insofar as asserted against Eichle were properly granted.

HOLDINGS

1. Eichle established prima facie entitlement to judgment as a matter of law by demonstrating that she did not serve alcohol to any visibly intoxicated individual and did not procure or furnish alcohol to any minor at her home, including Russo. Plaintiff failed to raise a triable issue of fact.
2. Eichle established prima facie entitlement to summary judgment because the infant could not identify whether the allegedly icy sidewalk caused or contributed to his fall without engaging in speculation. Plaintiff failed to raise a triable issue of fact.
3. The Supreme Court properly granted the branches of Russo's motion seeking dismissal of the first and second causes of action insofar as asserted against Eichle, and the order was affirmed insofar as appealed from.

KEY QUOTATIONS

"[A] plaintiff's inability to identify the cause of the fall is fatal to the cause of action, because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation"
([*2])

FACTUAL BACKGROUND

In the early morning of January 1, 2018, the infant plaintiff was injured outside a New Year's Eve party hosted at Kim Eichle's home. After exchanging words outside the home, Joseph Russo punched the infant, causing him to fall onto a concrete sidewalk and strike his head. The plaintiff alleged that Eichle violated New York's Dram

Shop Act and was liable under a premises-liability theory. The infant's deposition testimony did not identify whether an allegedly icy sidewalk contributed to the fall except through speculation.

PROCEDURAL HISTORY

Plaintiff commenced a personal-injury action alleging violations of New York General Obligations Law §§ 11-100 and 11-101. After depositions, plaintiff amended the complaint to add a premises-liability cause of action. Eichle commenced a third-party action against Russo, and both defendants moved for summary judgment. The Supreme Court, Suffolk County, granted the relevant motions, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Ferber v. Olde Erie Brew Pub & Grill, LLC, 161 A.D.3d 1142, 1143
- Sherman v. Robinson, 80 N.Y.2d 483, 487-488
- Filc v. 221 Someplace Else, Ltd., 219 A.D.3d 1487, 1488
- Heins v. Vanbourgondien, 180 A.D.3d 1019, 1025
- Simmons v. Vecchiano, 233 A.D.3d 724, 725
- Flynn v. Bulldogs Run Corp., 171 A.D.3d 1136, 1137
- Franco v. Half Moon Riv. Club, LLC, 214 A.D.3d 956, 957
- Soler v. Jaccarino, 189 A.D.3d 1106, 1107
- Fantuzzo v. Attridge, 291 A.D.2d 871, 872
- Grande v. Won Hee Lee, 171 A.D.3d 877, 878
- Mitgang v. PJ Venture HG, LLC, 126 A.D.3d 863, 863-864
- Lucas v. Genting N.Y., LLC, 227 A.D.3d 795, 795
- Osmolska v. Giuseppa Morreale Family Trust, 230 A.D.3d 594, 595