

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

Boyd v. Village of Mamaroneck

2026 NY Slip Op 02239 (N.Y. Ct. App. 2026) · No. 2021-02568, 2021-04904 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, held that the plaintiff sufficiently alleged a special duty arising from government defendants’ response to a Family Court order directing the child’s mother to stay away and awarding the plaintiff temporary physical custody. The court concluded that the defendants had not conclusively established governmental function immunity or absolute immunity at the CPLR 3211(a)(7) stage. It reversed the orders dismissing the amended complaint and denying leave to file a second amended complaint and amend or serve a late notice of claim.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Janice A. Taylor; Paul Wooten, J.P.; Lillian Wan; James P. McCormack                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | April 15, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | 2021-02568, 2021-04904                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Plaintiff appealed from an amended order granting the government defendants' CPLR 3211(a)(7) motions to dismiss the amended complaint and from an order denying leave to file a second amended complaint and leave to serve a late notice of claim.                                                                                                                                                                                                                                                                           |
| STANDARD OF REVIEW    | On a CPLR 3211(a)(7) motion, the court accepts the complaint's factual allegations as true, accords the plaintiff every favorable inference, and determines whether the facts fit within a cognizable legal theory. When evidentiary material is considered without conversion to summary judgment, dismissal is proper only when the plaintiff has no cause of action and no significant dispute exists concerning a material fact. The denial of leave to serve a late notice of claim is reviewed for abuse of discretion. |
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| <b>PRECEDENTIAL VALUE</b> | published                                                                                                                                                                                                                                                |
| <b>PARTIES</b>            | Stephen A. Boyd v. Village of Mamaroneck, Village of Mamaroneck Police Department, Christopher Leahy, Anthony Colletti, Gary Galvao, Michael Bonacci, County of Westchester, Child Protective Services, Anthony A. Scarpino, Jr., Amit Parab, Mary Clark |

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## QUESTIONS PRESENTED

1. Whether the amended complaint adequately alleged a special relationship and special duty of care between Boyd or the child and the government defendants.
2. Whether the government defendants conclusively established governmental-function immunity or absolute prosecutorial immunity on the pleadings.
3. Whether the Village defendants' negligent hiring, retention, supervision, or training claims were duplicative of respondeat superior claims.
4. Whether plaintiff should have been granted leave to serve a late notice of claim.
5. Whether plaintiff should have been granted leave to serve and file a proposed second amended complaint.

## HOLDINGS

1. The amended complaint sufficiently alleged a special relationship and special duty of care between Boyd or the child and the government defendants. A Family Court order directing a person to stay away from a protected party and awarding temporary custody may qualify as a temporary order of protection, or its equivalent, for purposes of establishing the first two Cuffy factors.
2. The government defendants did not conclusively establish on their CPLR 3211(a)(7) motions that their conduct was wholly protected by governmental-function immunity. The Village defendants failed to establish that their response to the order was purely discretionary, and the County defendants failed to establish that their conduct was discretionary rather than ministerial or that any discretion was actually exercised in relation to the conduct alleged.
3. The Village defendants were entitled to dismissal of the nineteenth, twentieth, and twenty-first causes of action alleging negligent hiring, retention, supervision, or training.
4. The Supreme Court improvidently exercised its discretion in denying leave to serve a late notice of claim. Plaintiff established timely actual or imputed knowledge of the essential facts, and the defendants failed to make a particularized showing of substantial prejudice.

5. Plaintiff should have been granted leave to serve and file the proposed second amended complaint because it made no substantive changes to the amended complaint.

#### KEY QUOTATIONS

*“We hold that a municipality may be said to assume a special duty of care with respect to a protected party, or the parent of one, when responding to a request to enforce the “stay away” provisions of a court order like the one at issue in this case.” (\*1)*

*“In other words, in a negligence action where the municipality has raised the governmental function immunity defense, a plaintiff may only hold the municipality liable for actions taken in its governmental capacity where (1) a special duty exists and (2) the municipality's actions were ministerial in nature and not the result of discretionary decision-making” (\*2)*

*“Therefore, the Village defendants have not conclusively established that their actions were purely discretionary” (\*4)*

#### FACTUAL BACKGROUND

Stephen A. Boyd and Cynthia Arce shared custody of their young daughter. After Boyd obtained a Family Court order awarding him temporary physical custody and directing Arce to stay away from him and the child, Boyd went to the Village Police Department seeking assistance in serving and enforcing the order. Police officers served Arce at her residence, but after consulting with assistant district attorneys, they allegedly told Boyd that they could not enter the residence to remove the child or arrest Arce; the child was found dead at the residence the next day. Boyd alleged that the Village and County defendants negligently failed to enforce the order and that their conduct proximately caused the child's death.

#### PROCEDURAL HISTORY

The Supreme Court, Westchester County, granted separate motions by the Village and County defendants to dismiss the amended complaint for failure to state a cause of action. It also denied plaintiff's motion for leave to serve and file a proposed second amended complaint and for leave to serve a late notice of claim. The Appellate Division modified the dismissal order to deny the motions as to most claims, affirmed dismissal of the Village defendants' negligent hiring, retention, supervision, or training claims, and reversed the order denying leave to amend and serve a late notice of claim.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The amended order was modified to deny the County defendants' motion and to deny the Village defendants' motion as to the first through eighteenth and twenty-second through fifty-first causes of action, while affirming dismissal of the Village defendants' negligent hiring, retention, supervision, or training claims. The June 7, 2021

order was reversed; plaintiff was granted leave to serve and file the proposed second amended complaint and to serve a late notice of claim. Leave to amend the notice of claim was denied as academic.

#### CASES CITED

- People v. Arce, 196 A.D.3d 696 (2d Dep't 2021)
- Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994)
- Hershkovitz v. Brown, 234 A.D.3d 946, 947 (2d Dep't 2024)
- P.D. v. County of Suffolk, 231 A.D.3d 1, 5-10 (2d Dep't 2024)
- Howell v. City of New York, 39 N.Y.3d 1006, 1008-1009 (2022)
- Canberg v. County of Nassau, 214 A.D.3d 943, 946 (2d Dep't 2023)
- Trenholm-Owens v. City of Yonkers, 197 A.D.3d 521, 523 (2d Dep't 2021)
- Ferreira v. City of Binghamton, 38 N.Y.3d 298, 310-315 (2022)
- Walker-Rodriguez v. City of New York, 231 A.D.3d 1090, 1092-1093 (2d Dep't 2024)
- Maldovan v. County of Erie, 39 N.Y.3d 166, 171-172 (2022)
- Adams v. Suffolk County, 234 A.D.3d 1, 5-6, 17 (2d Dep't 2024)
- Garrett v. Holiday Inns, 58 N.Y.2d 253, 261 (1983)
- Florence v. Goldberg, 44 N.Y.2d 189, 196 (1978)
- Coleson v. City of New York, 24 N.Y.3d 476, 482-483 (2014)
- Kircher v. City of Jamestown, 74 N.Y.2d 251, 257-258 (1989)
- Velez v. City of New York, 730 F.3d 128, 136 (2d Cir. 2013)
- Valdez v. City of New York, 18 N.Y.3d 69, 81 (2011)
- Axt v. Hyde Park Police Dept., 162 A.D.3d 728, 729-730 (2d Dep't 2018)
- Sorichetti v. City of New York, 65 N.Y.2d 461, 463-471 (1985)
- Johnson v. City of New York, 15 N.Y.3d 676, 680-681 (2010)
- Tango v. Tulevech, 61 N.Y.2d 34, 40-41 (1983)
- Devlin v. City of New York, 193 A.D.3d 819, 821-822 (2d Dep't 2021)
- Owens v. City of New York, 183 A.D.3d 903, 906-907 (2d Dep't 2020)
- Keselman v. City of New York, 95 A.D.3d 1278, 1279-1280 (2d Dep't 2012)
- People v. Garvin, 30 N.Y.3d 174, 180-182 (2017)
- Haddock v. City of New York, 75 N.Y.2d 478, 485 (1990)
- Santaiti v. Town of Ramapo, 162 A.D.3d 921, 929 (2d Dep't 2018)
- Trimble v. City of Albany, 144 A.D.3d 1484, 1488 (3d Dep't 2016)
- Sculti v. Finley, 167 A.D.3d 796, 797 (2d Dep't 2018)
- Blake v. City of New York, 148 A.D.3d 1101, 1104 (2d Dep't 2017)
- Matter of Cooke v. Mamaroneck Union Free Sch. Dist., 238 A.D.3d 1034, 1035 (2d Dep't 2024)
- Doe v. City of New York, 185 A.D.3d 659, 661 (2d Dep't 2020)
- Lobos v. City of New York, 219 A.D.3d 720, 721 (2d Dep't 2023)

- Parker v. City of New York, 206 A.D.3d 936, 938 (2d Dep't 2022)
- Matter of Jaime v. City of New York, 41 N.Y.3d 531, 540 (2024)

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