

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

Copeland v. Suffolk County

2025 NY Slip Op 07277 · No. 2024-03977 · Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department affirmed an order dismissing the plaintiff's complaint against Suffolk County for failure to prosecute under CPLR 3216. The court held that, after receiving a 90-day demand, the plaintiff failed to file a note of issue or seek relief before the deadline and did not establish a justifiable excuse for the delay or a good and meritorious cause of action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Cheryl E. Chambers, J.; Lillian Wan, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 24, 2025
DOCKET	2024-03977
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting Suffolk County's motion under CPLR 3216 to dismiss the complaint against it for failure to prosecute.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Supreme Court properly dismissed the complaint under CPLR 3216 for failure to prosecute and whether the plaintiff demonstrated a justifiable excuse for the delay and a good and meritorious cause of action.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Don Leroy Copeland v. Suffolk County

TOPICS

- [civil procedure](#) [appellate procedure](#) [municipal law](#) [standard of review](#)

PRACTICE AREAS

civil procedure

municipal law

personal injury

QUESTIONS PRESENTED

1. Whether the Supreme Court properly dismissed the complaint against Suffolk County for failure to prosecute under CPLR 3216.
2. Whether, after failing to comply with the 90-day demand or timely move to vacate or extend it, the plaintiff demonstrated a justifiable excuse for the delay and a good and meritorious cause of action sufficient to avoid dismissal.

HOLDINGS

1. A court may dismiss an action for neglect to prosecute only after the statutory preconditions of CPLR 3216 are satisfied; once the plaintiff received the 90-day demand, the plaintiff was required either to file a note of issue or, before the default date, move to vacate the demand or extend the 90-day period.
2. A plaintiff seeking to avoid dismissal under CPLR 3216(e) after failing to comply with a 90-day demand must demonstrate both a justifiable excuse for the delay and a good and meritorious cause of action.

KEY QUOTATIONS

*“A court may not dismiss an action based on neglect to prosecute unless the CPLR 3216 statutory preconditions to dismissal are met” ([*1])*

*“Once the 90-day demand is received, the plaintiff [is] required to comply with it by filing a note of issue or move before the default date to vacate the demand or extend the 90-day period” ([*2])*

*“justifiable excuse for the delay and a good and meritorious cause of action” ([*2])*

FACTUAL BACKGROUND

Copeland alleged that Suffolk County negligently failed to prevent sexual abuse perpetrated against him while he was in the custody of the Commissioner of the Suffolk County Department of Social Services as a foster child. The alleged abuse occurred approximately from 1995 to 1996 and from 1999 to 2001. After the County served a 90-day demand requiring Copeland to resume prosecution and serve and file a note of issue, Copeland did not comply or timely seek relief from the demand.

PROCEDURAL HISTORY

Copeland commenced a personal-injury action in July 2021 under the Child Victims Act. Suffolk County answered in June 2022 and served a 90-day demand under CPLR 3216(b) on June 26, 2023. After Copeland neither filed a note of issue nor moved to vacate or extend the demand, the County moved to dismiss in October 2023. The Supreme Court, Suffolk County, granted the motion on March 8, 2024, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Delgado v. New York City Hous. Auth., 21 AD3d 522, 522
- Bank of Am., N.A. v. Ali, 202 AD3d 726, 727
- Bank of Am. v. Guillaume, 169 AD3d 625, 626
- Amos v. Southampton Hosp., 131 AD3d 906, 907
- Finizio v. Midwest Custom Case, Inc., 188 AD3d 1006, 1007
- Umeze v. Fidelis Care N.Y., 17 NY3d 751
- Turner v. Fuchs, Cooperstein & Greengold, LLC, 216 AD3d 1037, 1038

OPINION

PER CURIAM.

Copeland v Suffolk County (2025 NY Slip Op 07277) Copeland v Suffolk County 2025 NY Slip Op 07277 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

CHERYL E. CHAMBERS LILLIAN WAN SUSAN QUIRK, JJ. 2024-03977 (Index No. 612521/21) [*1]Don Leroy Copeland, appellant, v Suffolk County, respondent, et al., defendants. Herman Law, New York, NY (Jeffrey Herman, Stuart Mermelstein, Melissa Ferraro, and Vanessa Neal of counsel), for appellant. Christopher J. Clayton, County Attorney, Hauppauge, NY (Jacob S. Kutnicki of counsel), for respondent.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Leonard D. Steinman, J.), dated March 8, 2024. The order granted the motion of the defendant Suffolk County pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against it for failure to prosecute. ORDERED that the order is affirmed, with costs.

In July 2021, the plaintiff commenced this action pursuant to the Child Victims Act (see CPLR 214-g), alleging, inter alia, that the defendant Suffolk County negligently failed to prevent sexual abuse perpetrated upon the plaintiff from approximately 1995 to 1996 and 1999 to 2001 while he was in the custody of the Commissioner of the Suffolk County Department Social Services as a foster child.

The County joined issue by interposing an answer in June 2022. On June 26, 2023, the County served the plaintiff with a 90-day notice pursuant to CPLR 3216(b), demanding that the plaintiff resume prosecution of the action and serve and file a note of issue.

In October 2023, the County moved pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against it for failure to prosecute. In an order dated March 8, 2024, the Supreme Court granted the County's motion.

The plaintiff appeals. CPLR 3216(a) provides: "Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, on its own initiative or upon motion, with notice to the parties, may dismiss the party's pleading on terms."

"A court may not dismiss an action based on neglect to prosecute unless the CPLR 3216 statutory preconditions to dismissal are met" (*Delgado v New York City Hous. Auth.*, 21 AD3d 522, 522; see *Bank of Am., N.A. v Ali*, 202 AD3d 726, 727). "Once the 90-day demand is received, the plaintiff [is] required to comply with it by filing a note of issue or move before the default date to vacate the demand or extend the 90-day period" (*Bank of Am. v Guillaume*, 169 AD3d 625, 626 [internal [*2]quotation marks omitted]; see *Amos v Southampton Hosp.*, 131 AD3d 906, 907).

Here, having been served with the 90-day notice, the plaintiff was required to file a note of issue or move, before the default date, to vacate the 90-day demand or to extend the 90-day period (see *Finizio v Midwest Custom Case, Inc.*, 188 AD3d 1006, 1007).

The plaintiff failed to do so. Thus, in order to avoid dismissal of the action pursuant to CPLR 3216(e), the plaintiff was required to demonstrate "justifiable excuse for the delay and a good and meritorious cause of action" (*id.*; see *Finizio v Midwest Custom Case, Inc.*, 188 AD3d at 1007).

The Supreme Court properly determined that the plaintiff failed to demonstrate a justifiable excuse for the delay or establish a good and meritorious cause of action (see *Umeze v Fidelis Care N.Y.*, 17 NY3d 751; *Turner v Fuchs, Cooperstein & Greengold, LLC*, 216 AD3d 1037, 1038; *Finizio v Midwest Custom Case, Inc.*, 188 AD3d at 1007).

Accordingly, the Supreme Court properly granted the County's motion pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against it for failure to prosecute. BARROS, J.P., CHAMBERS, WAN and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court
PER CURIAM.

Copeland v Suffolk County (2025 NY Slip Op 07277) *Copeland v Suffolk County* 2025 NY Slip Op 07277 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is

uncorrected and subject to revision before publication in the Official Reports. Decided on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

CHERYL E. CHAMBERS LILLIAN WAN SUSAN QUIRK, JJ. 2024-03977 (Index No. 612521/21) [*1]Don Leroy Copeland, appellant, v Suffolk County, respondent, et al., defendants. Herman Law, New York, NY (Jeffrey Herman, Stuart Mermelstein, Melissa Ferraro, and Vanessa Neal of counsel), for appellant. Christopher J. Clayton, County Attorney, Hauppauge, NY (Jacob S. Kutnicki of counsel), for respondent.

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The County joined issue by interposing an answer in June 2022. On June 26, 2023, the County served the plaintiff with a 90-day notice pursuant to CPLR 3216(b), demanding that the plaintiff resume prosecution of the action and serve and file a note of issue.

In October 2023, the County moved pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against it for failure to prosecute. In an order dated March 8, 2024, the Supreme Court granted the County's motion.

The plaintiff appeals. CPLR 3216(a) provides: "Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, on its own initiative or upon motion, with notice to the parties, may dismiss the party's pleading on terms."

"A court may not dismiss an action based on neglect to prosecute unless the CPLR 3216 statutory preconditions to dismissal are met" (Delgado v New York City Hous. Auth., 21 AD3d 522, 522; see Bank of Am., N.A. v Ali, 202 AD3d 726, 727). "Once the 90-day demand is received, the plaintiff [is] required to comply with it by filing a note of issue or move before the default date to vacate the demand or extend the 90-day period" (Bank of Am. v Guillaume, 169 AD3d 625, 626 [internal [*2]quotation marks omitted]; see Amos v Southampton Hosp., 131 AD3d 906, 907).

Here, having been served with the 90-day notice, the plaintiff was required to file a note of issue or move, before the default date, to vacate the 90-day demand or to extend the 90-day period (see *Finizio v Midwest Custom Case, Inc.*, 188 AD3d 1006, 1007).

The plaintiff failed to do so. Thus, in order to avoid dismissal of the action pursuant to CPLR 3216(e), the plaintiff was required to demonstrate "justifiable excuse for the delay and a good and meritorious cause of action" (*id.*; see *Finizio v Midwest Custom Case, Inc.*, 188 AD3d at 1007).

The Supreme Court properly determined that the plaintiff failed to demonstrate a justifiable excuse for the delay or establish a good and meritorious cause of action (see *Umeze v Fidelis Care N.Y.*, 17 NY3d 751; *Turner v Fuchs, Cooperstein & Greengold, LLC*, 216 AD3d 1037, 1038; *Finizio v Midwest Custom Case, Inc.*, 188 AD3d at 1007).

Accordingly, the Supreme Court properly granted the County's motion pursuant to CPLR 3216 to dismiss the complaint insofar as asserted against it for failure to prosecute. BARROS, J.P., CHAMBERS, WAN and QUIRK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court