

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

Matter of Fox v. New York City Dept. of Educ.

124 A.D.3d 887 (2d Dep't 2015) · No. 2014-07183 · Decided January 28, 2015

SUMMARY

The Appellate Division, Second Department, held that the petitioner’s individual claim was time-barred, but that infancy tolled the limitations period for her child’s claims. The court concluded that the New York City Department of Education had actual knowledge of the essential facts and failed to demonstrate prejudice from the delay. It therefore granted leave to serve a late notice of claim on behalf of the child and otherwise affirmed the lower court’s order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; L. Priscilla Hall, J.; Leonard B. Austin, J.; Jeffrey A. Cohen, J.
JURISDICTION	New York
DECIDED	January 28, 2015
DOCKET	2014-07183
DISPOSITION	other
PROCEDURAL POSTURE	Proceeding under General Municipal Law § 50-e(5) seeking leave to serve a late notice of claim against the New York City Department of Education. The petitioner appealed from an order denying the petition and dismissing the proceeding.
STANDARD OF REVIEW	Whether the Supreme Court improvidently exercised its discretion in determining the application for leave to serve a late notice of claim; legal issues were reviewed on the law.
PRECEDENTIAL VALUE	published
PARTIES	Jeanette Fox, individually and as mother and natural guardian of Jazmeene Fox v. New York City Department of Education

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QUESTIONS PRESENTED

1. Whether Jeanette Fox could obtain leave to serve a late notice of claim in her individual capacity more than one year and 90 days after the cause of action accrued.
2. Whether infancy tolled the limitations period for Jazmeene Fox's claims and whether leave to serve a late notice of claim on her behalf should be granted under General Municipal Law § 50-e(5) and Education Law § 3813(2-a).
3. Whether the absence of a reasonable excuse for the late filing was fatal when the school district had actual knowledge of the essential facts and suffered no prejudice.

HOLDINGS

1. Leave to serve a late notice of claim was properly denied as to Jeanette Fox individually because the application was made more than one year and 90 days after the cause of action accrued.
2. Leave to serve a late notice of claim on behalf of Jazmeene Fox should be granted because her infancy tolled the limitations period, the Department of Education acquired actual knowledge of the essential facts within the statutory period, and the Department failed to demonstrate substantial prejudice.

KEY QUOTATIONS

“While the petitioner failed to provide a reasonable excuse for the failure to timely comply with the provisions of General Municipal Law § 50-e, the absence of an excuse is not fatal where the DOE had actual knowledge of the essential facts constituting the claim, and there was an absence of prejudice” ([*2])

FACTUAL BACKGROUND

Jeanette Fox sought permission to serve a late notice of claim against the New York City Department of Education arising from an accident involving her daughter, Jazmeene Fox. A notice of claim dated February 16, 2011, was served on the City of New York within 90 days after the accident. The same attorney from the New York City Corporation Counsel's office represented the Department of Education in defending identical claims against the City, giving the Department actual knowledge of the essential facts. The Department did not demonstrate prejudice from the delay.

PROCEDURAL HISTORY

The Supreme Court, Queens County, denied the petition in both Jeanette Fox's individual capacity and her representative capacity for Jazmeene Fox and dismissed the proceeding. The Appellate Division affirmed the denial as to Jeanette individually but modified the order to grant leave to serve a late notice of claim on behalf of Jazmeene.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to grant the branch of the petition seeking leave to serve a late notice of claim on behalf of Jazmeene Fox; as modified, the order was affirmed, with costs to the petitioner.

CASES CITED

- Bazile v. City of New York, 94 A.D.3d 929, 930
- Cohen v. Pearl Riv. Union Free Sch. Dist., 51 N.Y.2d 256, 259
- Matter of Felice v. Eastport/South Manor Cent. Sch. Dist., 50 A.D.3d 138, 143
- Williams v. Nassau County Med. Ctr., 6 N.Y.3d 531, 535
- Matter of Billman v. Town of Deerpark, 73 A.D.3d 1039, 1039-1040
- Matter of Guminiak v. City of Mount Vernon Indus. Dev. Agency, 68 A.D.3d 1111
- Matter of Gobardhan v. City of New York, 64 A.D.3d 705, 706
- Matter of Bonaguro v. City of New York, 122 A.D.3d 731
- Matter of Viola v. Ronkonkoma Middle Sch., 107 A.D.3d 1009, 1010

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