

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

Blackchief v. Prim

Blackchief, 2026 NY Slip Op 00734 (Supreme Court of the State of New York Appellate Division Fourth
Judicial Department 2026) · No. 949 CA 24-01935 · Decided February 11, 2026

SUMMARY

The New York Appellate Division, Fourth Department, reversed an order denying Timothy J. Herbst and Renee L. Herbst summary judgment in an action arising from injuries sustained by a police officer during a pursuit of their stolen vehicle. The court held that defendants established lack of permissive use and that Vehicle and Traffic Law § 1210(a) did not apply, while plaintiffs failed to raise a material issue of fact or show that further discovery was warranted. The complaint against the Herbst defendants was dismissed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	MONTOUR, J.P.; SMITH, J.; OGDEN, J.; GREENWOOD, J.; DELCONTE, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	February 11, 2026
DOCKET	949 CA 24-01935
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs commenced an action for personal injuries arising from a vehicle collision during a police pursuit. Defendants Timothy J. Herbst and Renee L. Herbst moved for summary judgment dismissing the complaint against them. Supreme Court, Erie County, denied the motion, and defendants appealed.
STANDARD OF REVIEW	Review of an order deciding a motion for summary judgment; the Appellate Division reviewed the record to determine whether defendants met their initial burden and whether plaintiffs raised a material issue of fact.
PRECEDENTIAL VALUE	Published appellate opinion

PARTIES

Timothy J. Herbst, Renee L. Herbst v. Troy Blackchief, Jennifer Blackchief

TOPICS

summary judgment

vicarious liability

statutory interpretation

personal injury

appellate procedure

PRACTICE AREAS

torts

civil procedure

automobile liability

QUESTIONS PRESENTED

1. Whether the vehicle owners established as a matter of law that the vehicle was being used without their permission, defeating the claim of permissive use.
2. Whether Vehicle and Traffic Law § 1210(a) applied to the vehicle because it had been left in a location covered by that statute.
3. Whether plaintiffs raised a material issue of fact or demonstrated that additional discovery might yield facts necessary to oppose summary judgment.

HOLDINGS

1. The vehicle owners established their entitlement to summary judgment on the claim of permissive use by demonstrating that the vehicle had been stolen and was being operated without their permission.
2. Vehicle and Traffic Law § 1210(a) was inapplicable because the defendants' vehicle had not been kept in a parking lot or another area to which the statute applies.
3. Plaintiffs failed both to raise a material issue of fact and to demonstrate that facts essential to oppose the motion existed and might be obtained through additional discovery.

FACTUAL BACKGROUND

Troy Blackchief, an on-duty police officer, was injured when he was struck by a vehicle owned by Timothy J. Herbst and Renee L. Herbst. At the time, Blackchief was assisting in a police pursuit involving the vehicle. The vehicle had been stolen from the defendants' residential driveway by Patrick J. Prim, III.

PROCEDURAL HISTORY

Supreme Court, Erie County denied defendants' motion for summary judgment. The Appellate Division, Fourth Department unanimously reversed, granted the motion, and dismissed the complaint against the appealing defendants.

DISPOSITION

reversed

CASES CITED

- Country-Wide Ins. Co. v. National R.R. Passenger Corp., 6 NY3d 172, 175-176, 180
- Calhoun v. Maclin, Sup. Ct., Erie County, Feb. 7, 2023, Chimes, J., index No. 801838/2022, affd for reasons stated below, 219 AD3d 1714 [4th Dept 2023]
- Stevens v. Calspan-Corp., 292 AD2d 809, 810 [4th Dept 2002]
- Bratge v. Simons, 173 AD3d 1623, 1624 [4th Dept 2019]

OPINION

Blackchief v. Prim 2026 NY Slip Op 00734

PER CURIAM.

Blackchief v Prim (2026 NY Slip Op 00734) Blackchief v Prim 2026 NY Slip Op 00734 Decided on February 11, 2026 Appellate Division, Fourth 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 February 11, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department PRESENT: MONTOUR, J.P., SMITH, OGDEN, GREENWOOD, AND DELCONTE, JJ. 949 CA 24-01935

[*1]TROY BLACKCHIEF AND JENNIFER BLACKCHIEF, PLAINTIFFS-RESPONDENTS, v PATRICK J. PRIM, III, DEFENDANT, TIMOTHY J. HERBST AND RENEE L. HERBST, DEFENDANTS-APPELLANTS. LAW OFFICE OF VICTOR M. WRIGHT, EDMESTON (RACHEL A. EMMINGER OF COUNSEL), FOR DEFENDANTS-APPELLANTS. JOHN J. FROMEN, ATTORNEYS AT LAW, P.C., SNYDER, MAGAVERN MAGAVERN GRIMM LLP, BUFFALO (EDWARD J. MARKARIAN OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS. CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (WILLIAM L. HARTFORD OF COUNSEL), FOR NONPARTY RESPONDENT TOWN OF CHEEKTOWAGA. Appeal from an order of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered November 26, 2024. The order denied the motion of defendants Timothy J. Herbst and Renee L. Herbst for summary judgment dismissing the complaint against them. It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion of defendants Timothy J. Herbst and Renee L. Herbst is granted, and the complaint against them is dismissed. Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Troy Blackchief (plaintiff), an on-duty police officer, who was struck by a vehicle owned by defendants Timothy J. Herbst and Renee L. Herbst (collectively, defendants). At the time of the accident, plaintiff was assisting in a police pursuit of defendants' vehicle, which had been stolen from defendants' residential driveway by defendant Patrick J. Prim, III. We agree with defendants that Supreme Court erred in denying their motion seeking summary judgment dismissing the complaint against them. Defendants met their initial burden on the claim of permissive use by submitting the police report regarding the theft, video and still images capturing the theft,

affirmations from defendants attesting to the theft, and documentation reflecting the undisputed nature of Prim's related criminal guilty plea (see *Country-Wide Ins. Co. v National R.R. Passenger Corp.* , 6 NY3d 172, 175-176, 180 [2006]; *Calhoun v Maclin* , Sup Ct, Erie County, Feb. 7, 2023, Chimes, J., index No. 801838/2022, *affd* for reasons stated below 219 AD3d 1714 [4th Dept 2023]; *Stevens v Calspan-Corp.* , 292 AD2d 809, 810 [4th Dept 2002]). Defendants further met their initial burden on the claim that they violated Vehicle and Traffic Law § 1210 (a) by establishing that the statute is inapplicable to the instant case. Defendants' vehicle "had not been kept in a parking lot" or any other area to which the statute applies (*Stevens* , 292 AD2d at 810 [internal quotation marks omitted]; see Vehicle and Traffic Law §§ 129-b, 1000 [a]). In opposition, plaintiffs failed to raise a material issue of fact as to either the lack of permissive use or the applicability of Vehicle and Traffic Law § 1210 (a), and they failed to demonstrate that facts essential to oppose the motion exist and might be obtained by additional discovery (see *Bratge v Simons* , 173 AD3d 1623 , 1624 [4th Dept 2019]; *Stevens* , 292 AD2d at 810). Entered: February 11, 2026 Ann Dillon Flynn Clerk of the Court