

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

F.E. v. Ebrahim

2026 N.Y. Slip Op. 00309 · No. Case No. 2025-03325; Appeal No. 5640; Index No. 22260/12 · Decided January 22, 2026

SUMMARY

The Appellate Division, First Department affirmed an order granting plaintiffs leave to file a late note of issue and denying defendants' motion to dismiss under CPLR 3216. The court held that service of the 90-day notice through NYSCEF was not invalidating and that plaintiffs demonstrated a justifiable excuse, a meritorious cause of action, and no intent to abandon the action or particular prejudice to defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Webber, J.; Friedman, J.; González, J.; Michael, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 22, 2026
DOCKET	Case No. 2025-03325; Appeal No. 5640; Index No. 22260/12
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiffs leave to file a late note of issue and denying defendants' motion under CPLR 3216(b) and (e) to dismiss the complaint for failure to file the note of issue.
STANDARD OF REVIEW	Abuse of discretion; the Appellate Division reviewed Supreme Court's exercise of discretion under CPLR 3216.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Dr. Carmen Santiago, Dr. Aparna Kulkarni, Dr. Yves Verna, Bronx Lebanon Hospital v. F.E., etc., et al.

TOPICS

- motions to dismiss
- default
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

civil procedure

appellate procedure

medical malpractice

QUESTIONS PRESENTED

1. Whether service of a CPLR 3216 90-day notice through NYSCEF, rather than by certified or registered mail, invalidated the notice.
2. Whether plaintiffs established a justifiable excuse for their short delay and a good and meritorious cause of action sufficient to avoid dismissal under CPLR 3216(e).
3. Whether Supreme Court providently exercised its discretion in granting plaintiffs leave to file a late note of issue and denying dismissal.

HOLDINGS

1. Service of a CPLR 3216 90-day notice through NYSCEF rather than by certified or registered mail did not invalidate the notice; at most, it was a procedural irregularity to be overlooked absent prejudice.
2. A defaulting plaintiff may avoid dismissal under CPLR 3216(e) by demonstrating a justifiable excuse for the delay and a good and meritorious cause of action.
3. CPLR 3216 is an extremely forgiving rule that authorizes, but does not require, dismissal for unreasonable neglect to proceed.

KEY QUOTATIONS

*“CPLR 3216 is an “extremely forgiving” rule which “never requires, but merely authorizes, the Supreme Court to dismiss a plaintiff’s action based on the plaintiff’s unreasonable neglect to proceed”” ([*1])*

FACTUAL BACKGROUND

Defendants served plaintiffs with a 90-day notice on January 11, 2024, warning that the action could be dismissed if plaintiffs failed to resume prosecution. Plaintiffs filed their motion for leave to file a late note of issue on April 13, 2024, approximately two or three days late, and supported their request with an excuse for the delay and an expert opinion addressing defendants’ alleged departure from the standard of care in their 2005 treatment of infant plaintiff F.E. The court found no intent to abandon the action, persistent neglect, or particular prejudice to defendants.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted plaintiffs’ motion for leave to file the note of issue and denied the motion to dismiss by the appealing defendants. The Appellate Division, First Department unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- *Balancio v. American Opt. Corp.*, 66 N.Y.2d 750, 751 (1985)
- *Espinoza v. 373-381 Park Ave. S., LLC*, 68 A.D.3d 532, 533 (1st Dep't 2009)
- *Davis v. Goodsell*, 6 A.D.3d 382, 383 (2d Dep't 2004)
- *Baczkowski v. D.A. Collins Constr. Co., Inc.*, 89 N.Y.2d 499, 503 (1997)
- *Gayle v. Body*, 157 A.D.3d 541, 541 (1st Dep't 2018)

OPINION

PER CURIAM.

F.E. v Ebrahim (2026 NY Slip Op 00309) F.E. v Ebrahim 2026 NY Slip Op 00309 Decided on January 22, 2026 Appellate Division, First 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 and Entered: January 22, 2026 Before: Manzanet-Daniels, J.P., Webber, Friedman, González, Michael, JJ. Index No. 22260/12|Appeal No. 5640|Case No. 2025-03325| [*1]F.E., etc., et al., Plaintiffs-Respondents, v Dr. Ebrahim et al., Defendants, Dr. Carmen Santiago et al., Defendants-Appellants.

Shaub, Ahmuty, Citrin & Spratt LLP, Lake Success (Timothy M. Gallagher of counsel), for appellants. Rawlins Law PLLC, Brewster (Gary N. Rawlins of counsel), for respondents. Order, Supreme Court, Bronx County (Alicia Gerez, J.), entered April 10, 2025, which, to the extent appeal from as limited by the briefs, granted plaintiffs' motion for leave to file the note of issue and denied the motion of defendants Dr. Carmen Santiago, Dr. Aparna Kulkarni, Dr. Yves Verna, and Bronx Lebanon Hospital pursuant to CPLR 3216(b) and (e) to dismiss the complaint for failure to file the note of issue, unanimously affirmed, without costs.

Defendants satisfied the requirements of CPLR 3216 by timely and properly serving plaintiffs with a 90-day notice on January 11, 2024, warning them about the potential for dismissal if they failed to resume prosecution of the action within 90 days (CPLR 3216[b]). Defendants' service of the 90-day notice through New York State Courts Electronic Filing System (NYSCEF) rather than by certified or registered mail did not invalidate the notice (see Uniform Rules for Trial Cts [22 NYCRR] § 202.5-b[d][1][i], [3][ii], [f][2][ii]).

Service through NYSCEF was at most a procedural irregularity that should be overlooked in the absence of prejudice (see *Balancio v American Opt. Corp.*, 66 NY2d 750, 751 [1985]). We find that Supreme Court properly granted plaintiffs' motion for leave to file a late note of issue. CPLR 3216 is an "extremely forgiving" rule which "never requires, but merely authorizes, the Supreme Court to dismiss a plaintiff's action based on the plaintiff's unreasonable neglect to proceed" (*Espinoza v 373-381 Park Ave. S., LLC*, 68 AD3d 532, 533 [1st Dept 2009] quoting *Davis v Goodsell*, 6 AD3d 382, 383 [2d Dept 2004]).

Plaintiffs' motion for leave to file a late note of issue made on April 13, 2024, was two or three days late. Although plaintiffs defaulted on the 90-day notice, a defaulting plaintiff who fails to act as required by the 90-day notice may avoid dismissal by showing a "justifiable excuse for the delay and a good and meritorious cause of action" (CPLR 3216[e]; see *Baczkowski v D.A.*

Collins Constr. Co., Inc., 89 NY2d 499, 503 [1997]). Plaintiffs' motion for leave to file the note of issue demonstrated a justifiable excuse, as there were circumstances which reasonably made it impossible for "[counsel] to certify... that this case [was] ready for trial." Plaintiffs also established a meritorious cause of action by submitting an expert opinion on defendants' departure from the standard of care in their 2005 treatment of then-infant plaintiff F.E.

Moreover, "the circumstances presented also do not suggest an intent to abandon prosecution, persistent neglect on the part of plaintiff, or particular prejudice to defendants" (*Gayle v Body*, 157 AD3d 541, 541 [1st Dept 2018]).

Accordingly, the Supreme Court providently exercised its discretion in granting plaintiffs' motion. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 22, 2026

PER CURIAM.

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