

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)

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