

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

E.M. v. Paulino

E.M., 2026 NY Slip Op 01730 (Supreme Court of the State of New York Appellate Division First Department
2026) · No. Case No. 2025-04260; Appeal No. 6181; Index No. 809824/21 · Decided March 24, 2026

OPINION

PER CURIAM.

E.M. v Paulino (2026 NY Slip Op 01730) E.M. v Paulino 2026 NY Slip Op 01730 Decided on March 24, 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: March 24, 2026 Before: Manzanet-Daniels, J.P., Shulman, Rodriguez, Higgitt, Rosado, JJ. Index No. 809824/21|Appeal No. 6181|Case No. 2025-04260| [*1]E.M., etc., Respondent, v Ynes Paulino et al., Appellants.

Scahill Law Group PC, Bethpage (Keri A. Wehrheim of counsel), for appellants. Law Office of Beth S. Gereg, Smithtown (Beth S. Gereg of counsel), for respondent. Order, Supreme Court, Bronx County (Paul L. Alpert, J.), entered June 24, 2025, which, to the extent appealed from as limited by the briefs, denied defendants' motion for summary judgment dismissing the cause of action for negligence, unanimously affirmed, without costs.

The record presents issues of fact as to when and whether defendants had notice of the bedbug condition that allegedly injured the infant plaintiff. Although some of plaintiff's mother's testimony indicated that her direct complaints to defendants, who co-owned the premises, occurred only after the bedbug bites began, other testimony showed that plaintiff continued to suffer from bites for a period of time throughout the summer of 2019 without any action from defendants (see *Martinez v Contreras*, 216 AD3d 532, 532 [1st Dept 2023]).

Moreover, Department of Housing Preservation and Development (HPD) records support plaintiff's mother's testimony that she made an HPD/311 complaint about bedbugs in her apartment more than a month before plaintiff was bitten, and one of the defendants testified that he did not remember whether he received notice of any 311 complaints. Defendants otherwise failed to establish entitlement to judgment as a matter of law, as a party "cannot obtain summary judgment by pointing to gaps in [its adversary's] proof" (*Miah v Pipe Dreams Realty V Corp.*, 214 AD3d 575, 576 [1st Dept 2023] [internal quotation marks omitted]; see *Mohammed v Silverstein Props., Inc.*, 74 AD3d 453, 454 [1st Dept 2010]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 24, 2026

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