NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
July 14 – 18, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Releaed by Our New York State Appellate Courts July 14 – 18, 2025, and Posted on the New York Appellate Digest Website on Monday June 21, 2025. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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CIVIL PROCEDURE, EVIDENCE, JUDGES, NEGLIGENCE.

HERE PLAINTIFF SUBMITTED A SUPPLEMENTAL BILL OF PARTICULARS, NOT AN AMENDED BILL OF PARTICULARS, MORE THAN 30 DAYS BEFORE TRIAL; DEFENDANTS SHOULD HAVE ACCEPTED IT; LEAVE OF COURT WAS NOT REQUIRED (SECOND DEPT).

The Second Department, reversing Supreme Court in this slip and fall case, determined plaintiff was entitled to compel defendants to accept a second supplemental bill of particulars after plaintiff had surgery on her injured shoulder:

"Pursuant to CPLR 3043(b), a plaintiff in a personal injury action may serve a supplemental bill of particulars containing 'continuing special damages and disabilities,' without leave of the court at any time, but not less than 30 days prior to trial, if it alleges 'no new cause of action' or claims no 'new injury'" (… quoting CPLR 3043[b]). Here, contrary to the defendants' contention, the plaintiff sought to allege continuing consequences of the injuries suffered to her left shoulder and described in the original bill of particulars, rather than new and unrelated injuries … . Since the contested bill of particulars is a supplemental bill of particulars, rather than an amended bill of particulars, and was served more than 30 days prior to trial, leave of court was not required … . Miller v Great Vegetable Farm, Inc., 2025 NY Slip Op 04170, Second Dept 7-16-25

Practice Point: Here plaintiff documented the results of surgery on her injured shoulder in a supplemental bill of particulars. Because the document addressed injuries already alleged to have been caused by the slip and fall, and not new injuries, the document was a supplemental bill of particulars, not an amended bill

of particulars. As long as a supplemental bill of particulars is served more than 30 days before trial, leave of court is not required and defendant must accept it.

July 16, 2025

CIVIL PROCEDURE, MUNICIPAL LAW, NEGLIGENCE.

ALTHOUGH THE NOTICE OF CLAIM IN THIS SLIP AND FALL ACTION AGAINST THE CITY WAS SERVED ONE DAY LATE, AND PLAINTIFF WAS SO NOTIFIED BY THE CITY, THE CITY ALSO INDICATED IN SEVERAL COMMUNICATIONS THAT IT WAS CONSIDERING THE CLAIM; THE CITY WAS THEREFORE EQUITABLY ESTOPPED FROM ASSERTING THE NOTICE OF CLAIM WAS NOT TIMELY SERVED (SECOND DEPT).

The Second Department, reversing Supreme Court in this slip and fall case against NYC, determined the city was equitably estopped from asserting the notice of claim was untimely served. Although the notice of claim was served one day after the 90-day deadline, and the city initially notified plaintiff that service was untimely, subsequent communication from the city indicated the claim was being considered:

The plaintiff's submissions established that although the Comptroller sent the plaintiff a letter dated March 6, 2020, indicating that a notice of claim was not timely filed within 90 days from the date of occurrence, the Comptroller sent the plaintiff another letter, also dated March 6, 2020, acknowledging receipt of the notice of claim, which was assigned a claim number, and stating that "[w]e will do our best to investigate and, if possible, settle your claim." That letter also stated that "if we are unable to resolve your claim, any lawsuit against the City must be started within one year and ninety days from the date of the occurrence," without any reference to the claim being untimely … . Further, the plaintiff's attorney averred that on March 21, 2021, the City sent a letter requesting certain documents from the plaintiff "to evaluate the claim for settlement purposes" and that the plaintiff's attorney emailed the requested documents the following day. The plaintiff also submitted an email dated March 25, 2021, from Millicent Nicholas-Richards, Negotiation and Settlement Supervisor for the New York City Law

Department, acknowledging receipt of the requested documents, and stating that "[w]e are reviewing" and that the plaintiff's attorney would be contacted if any additional documents were needed. Thus, the plaintiff demonstrated that the defendants made representations that the plaintiff's claim was under consideration for settlement and that the plaintiff did not need to take any action other than providing documents "for settlement purposes" or to commence an action against the City within one year and 90 days if a settlement was not possible. Under these circumstances, the plaintiff, who did not move to deem the notice of claim timely served or to extend the time to serve the notice of claim within the one year and 90 day limitations period, was "lulled . . . into sleeping on [his] rights to [his] detriment" … .Guo En Tan v City of New York, 2025 NY Slip Op 04161, Second Dept 7-16-25

Practice Point: The notice of claim in this slip and fall action against the city was served one day late. Communications from the city indicated the city was considering the claim. The deadline for making a motion for leave to serve and file a late notice of claim passed. At that point, the city was equitably estopped from asserting the notice of claim was not timely served as a defense to the action..

July 16, 2025

CRIMINAL LAW, CONSTITUTIONAL LAW, JUDGES, APPEALS.

EXCLUDING A SPECTATOR FROM THE TRIAL BECAUSE HE WAS SLEEPING DEPRIVED DEFENDANT OF HIS RIGHT TO A PUBLIC TRIAL; THE CONSTITUTIONAL ERROR IS NOT SUBJECT TO A HARMLESS ERROR ANALYSIS; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, ordering a new trial, determined the judge's excluding a spectator from defendant's trial violated the defendant's right to a public trial. The spectator, apparently a friend of the defendant, had been asleep during the trial. He was excluded solely on that ground:

While trial courts have "inherent discretionary power to exclude members of the public from the courtroom" … , that discretion "must be exercised only when unusual circumstances necessitate it" … . "In sum, 'an affirmative act by the trial

court excluding persons from the courtroom' without lawful justification constitutes a violation of the defendant's right to a public trial" … . "A violation of the right to an open trial is not subject to harmless error analysis and a per se rule of reversal irrespective of prejudice is the only realistic means to implement this important constitutional guarantee" … .

Here, after the first day of testimony had concluded and jurors had been dismissed for the day, the Supreme Court excluded a spectator from the courtroom for sleeping, which the court noted was "disrespectful" and "distracting to the jurors." The court told the spectator … he was "excluded from this courtroom for the rest of this trial" and was "not to return" to the courtroom. * * *

The record demonstrates that the Supreme Court did not sufficiently consider whether less drastic measures could have addressed the spectator's behavior, such as warning the spectator or requesting that the spectator alter his demeanor in the courtroom … . The court's statement the next day that the spectator was no longer excluded from the courtroom was insufficient to remedy the court's error. People v White, 2025 NY Slip Op 04193, Second Dept 7-16-25

Practice Point: A judge has to have a good reason for excluding a spectator from a trial. The fact that the spectator had slept during the trial was not enough. Exclusion of spectators deprives a defendant of the constitutional right to a public trial.

July 16, 2025

EDUCATION-SCHOOL LAW.

THE INDIVIDUALS WITH DISABILITIES EDUCATION LAW REQUIRES SCHOOL DISTRICTS TO PROVIDE FREE EDUCATION TO INDIVIDUALS WITH DISABILITIES UNTIL THE DAY BEFORE THEY TURN 22 (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Reynolds Fitzgerald, reversing Supreme Court, determined that the New York State Education Department (SED) properly held that school districts, pursuant to the Individuals

with Disabilities Education Law, are required to provide free education to individuals with disabilities until the day before they turn 22. The opinion resolved a conflict between applicable laws and is too complex to fairly summarize here. Matter of Mahopac Cent. Sch. Dist. v New York State Educ. Dept., 2025 NY Slip Op 04214, Third Dept 7-17-25

Same issues and result in Matter of Katonah-Lewisboro Union Free Sch. Dist. v New York State Educ. Dept., 2025 NY Slip Op 04211, Third Dept 7-17-25

July 17, 2025

FAMILY LAW, EVIDENCE.

THE RECORD DID NOT SUPPORT PLACEMENT OF THE AUTISTIC CHILD IN A "QUALIFIED RESIDENTIAL TREATMENT PROGRAM" (QRTP) AS OPPOSED TO FOSTER CARE; CRITERIA EXPLAINED (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Ventura, reversing Family Court, determined the record did not support placement of the child, who is on the autism spectrum, in a "qualified residential treatment program" (QRTP) pursuant to the New York State Family First Prevention Service Act. The case gave the court the opportunity to decide an issue of first impression, i.e., which factors a court must consider in approving a child's placement in a QRTP:

Here, since the qualified individual assessed the child and determined that placement in a QRTP would not be appropriate, the Family Court could approve the child's placement in the QRTP only if it complied with the requirements set forth in Family Court Act § 1055-c(2)(c). Although the court found that QRTP placement was inconsistent with the child's long-term permanency goal of adoption and that the child's needs could be met in a less restrictive environment, the court nevertheless approved the child's placement in a QRTP. The court, in essence, based this determination on a finding that there was not an alternative setting available that could meet the child's needs in a less restrictive environment.
* * *

However, the Family Court's findings in this regard were not supported by the record. The court's finding that there was not an alternative setting available was based on Loehr's [the foster care supervisor's] testimony that SCO [a foster-care agency] did not have any foster family homes available that could meet the child's needs but that SCO was working to place the child in a foster family home for developmentally disabled children and was actively exploring families to adopt the child. On cross-examination, Loehr testified that SCO had not yet placed the child in a foster family home for children with developmental disabilities or a therapeutic foster family home through another agency because this would require a "step-up" conference, yet Loehr failed to explain why a "step-up" conference had not been held during the two months in which the child had been placed in the QRTP. This testimony was insufficient to support the court's finding that there was not an alternative setting available that could meet the child's needs in a less restrictive environment. Furthermore, Loehr's testimony that the child had continuously lived in a foster family home setting from 2019 until January 2024, during which time his needs consistently had been met, calls into question the purported unavailability of any alternative, less restrictive settings. Matter of Joseph D.L. (Keisha T.M.), 2025 NY Slip Op 04178, Second Dept 7-16-25

Practice Point: Consult this opinion for the criteria for placement of a child in a "qualified residential treatment program" (QRTP) as opposed to foster care. The criteria were not met here.

July 16, 2025

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF STEPPED IN A HOLE WHEN DELIVERING TILES TO THE WORK SITE; HE WAS PERFORMING WORK "NECESSARY AND INCIDENTAL" TO THE INSTALLATION OF THE TILES AND THEREFORE WAS PROTECTED BY LABOR LAW 240(1); A SUBCONTRACTOR WILL NOT BE LIABLE UNDER THE LABOR LAW AS A STATUTORY AGENT OF THE OWNER OR GENERAL CONTRACTOR UNLESS THE SUBCONTRACTOR HAS AUTHORITY OVER THE AREA WHERE PLAINTIFF WAS INJURED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff was delivering tiles to the construction site when he stepped into a hole near the loading ramp. Although plaintiff was not himself engaged in work covered by Labor Law 240(1), he was performing work "necessary and incidental" to the installation of the tiles. The court noted that the action against a subcontractor was properly dismissed because the subcontractor did not exercise any authority over the area where plaintiff was injured and therefore could not be considered a "statutory agent" under the Labor Law:

Labor Law § 240(1) protects persons engaged "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." The task that a plaintiff is performing at the exact moment of their accident is not dispositive of whether they were engaged in a protected activity for purposes of liability under this statute … . Rather, the inquiry includes whether the plaintiff's employer was contracted to perform the kind of work enumerated in the statutes … and whether the plaintiff was performing work "necessary and incidental to" a protected activity … . Because plaintiff's work in delivering and unloading tiles to be used in the activity covered by Labor Law § 240(1) was "necessary and incidental" to the protected activity, he was within the class of workers protected by those statues, notwithstanding that he was not assigned to participate in the installation of the tiles … .

… Labor Law §§ 200, 240(1), and 241(6) only apply to owners, general contractors, and their statutory agents … . "To be treated as a statutory agent, the subcontractor must have been delegated the supervision and control either over the specific work area involved or the work which [gave] rise to the injury. If the subcontractor's area of authority is over a different portion of the work or a different area than the one in which the plaintiff was injured, there can be no liability under this theory" … . Here, [the subcontractor's] work as the electrical contractor was limited to providing electrical installation and temporary lighting, and did not encompass either tile work or maintaining the temporary ramp or surrounding areas. Rodriguez v Riverside Ctr. Site 5 Owner LLC, 2025 NY Slip Op 04221, First Dept 7-17-25

Practice Point: Delivering materials to a work site is necessary and incidental to the construction work and is therefore a covered activity under Labor Law 240(1).

Practice Point: A subcontractor will not be liable to an injured worker as a statutory agent of the owner or general contractor unless the subcontractor exercises authority over the area where the injury occurred (not the case here).

July 17, 2025

NEGLIGENCE.

IN THIS REAR-END COLLISION CASE, THE DEFENDANT DRIVER ALLEGED PLAINTIFF DRIVER STOPPED IN THE MIDDLE LANE OF TRAFFIC FOR NO APPARENT REASON, THEREBY RAISING A QUESTION FACT ABOUT WHETHER PLAINTIFF DRIVER WAS SOLELY AT FAULT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiffs in this rear-end collision case were not entitled to summary judgment. Defendant raised a question of fact alleged plaintiff driver stopped suddenly in the middle lane of traffic for no apparent reason:

"A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing

conditions to avoid colliding with the other vehicle" … . Thus, "[a] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" … .

Here, the plaintiffs established their prima facie entitlement to judgment as a matter of law on the issue of liability by submitting an affidavit of the plaintiff driver, which demonstrated that the plaintiffs' vehicle was stopped for a traffic condition ahead when it was struck in the rear by the defendants' vehicle … . However, an affidavit of the defendant driver … raised triable issues of fact as to how the accident occurred and whether the defendants had a nonnegligent explanation for their vehicle striking the rear of the plaintiffs' vehicle. According to the defendant driver, the plaintiff driver was solely at fault in causing the accident by making a sudden stop for no apparent reason in the middle of their lane of traffic on the highway … . Correa v Cannon, 2025 NY Slip Op 04157, Second Dept 7-16-25

Practice Point: Unless the driver of the rear vehicle in a rear-end collision case raises a nonnegligent explanation for striking the car in front, summary judgment will be awarded to the front driver. Here the rear driver alleged the front driver stopped in the middle lane of traffic for no apparent reason. That allegation raised a question of fact whether the front driver was solely at fault.

July 16, 2025