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Weekly Reversal Report
December 8 – 12, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released December 8 – 12, 2025, and Posted on the New York Appellate Digest Website on Monday, December 15, 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 SUPREME COURT CORRECTLY REFUSED TO VACATE THE DEFAULT JUDGMENT IN THIS PERSONAL INJURY CASE; BUT THE SECOND DEPARTMENT VACATED THE $385,000 INQUEST-JUDGMENT BECAUSE PLAINTIFF'S TESTIMONY DID NOT SUFFICIENTLY DEMONSTRATE THE EXTENT OF THE INJURIES (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined Supreme Court correctly denied defendant's motion to vacate a default judgment in a personal injury case because she failed to provide a reasonable excuse. Plaintiff alleged he stepped in a hole on defendant's property, twisted his foot and fell. But

the $385,000 damages judgment was vacated by the Second Department because plaintiff's testimony at the inquest was deemed insufficient to demonstrate the extent of the injuries. A new inquest was ordered:

… [A]lthough this Court is not relieving the defendant of her default, "[a]n unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount to granting the plaintiffs an open season at the expense of a defaulting defendant'" … . Here, the plaintiff's vague testimony at the inquest was insufficient to determine to what extent the plaintiff's injuries were attributable to the subject accident and, therefore, whether the amount awarded was warranted. Thus, under the circumstances of this case, the Supreme Court should have granted that branch of the defendant's motion which was to vacate the judgment, and we remit the matter to the Supreme Court, Nassau County, for a new inquest on the issue of damages, and for the entry of an appropriate amended judgment thereafter … . Albano v Roehrig, 2025 NY Slip Op 06839, Second Dept 12-10-25

Practice Point: Despite losing a motion to vacate a default judgment, a defendant may still successfully move to vacate a judgment awarded after an inquest on the ground the evidence offered at the inquest did not sufficiently demonstrate the extent of the plaintiff's injuries.

December 10, 2025

CIVIL PROCEDURE, JUDGES, NEGLIGENCE.

WHEN THE JUDGE'S LAW CLERK SPOKE TO THE JURORS ABOUT A JURY NOTE WHILE THE JURORS WERE DELIBERATING, THE CLERK DISCUSSED CONCEPTS OF NEGLIGENCE, FAULT AND CERTAIN FACTS OF THE CASE; PLAINTIFFS' MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court and ordering a new trial after a defense verdict, determined that the law clerk's discussion with the jurors while they were deliberating, during which concepts of negligence and fault and certain

facts were discussed, constituted interference with the deliberations and usurpation of the role of the court. The motion to set aside the verdict should have been granted:

Following the verdict, the plaintiffs moved pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the defendant on the issue of liability in the interest of justice and for a new trial. In an affirmation in support of the motion, the plaintiffs' counsel stated that he had learned, after the jury was discharged, that when the clerk went to speak to the jurors about writing the actual question on the form, the clerk improperly communicated with the jurors in a way that went beyond the Supreme Court's instructions. In further support of their motion, the plaintiffs submitted an affidavit from a former juror (hereinafter the first juror) who averred, among other things, that the clerk had discussed with the jurors the concepts of negligence and fault, as well as certain facts about the case. The first juror averred that the clerk was in the jury room with the jurors for approximately three to five minutes, and that following that discussion, the jurors "did not feel it [was] necessary to submit further questions to the Court." * * *

"A motion pursuant to CPLR 4404(a) to set aside a verdict and for a new trial in the interest of justice encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" … . "Litigants are entitled, as a matter of law, to a fair trial free from improper comments by counsel or the trial court" … . "The interest of justice thus requires a court to order a new trial where comments [have] deprived [a] party of a fair trial or unduly influenced a jury" … .

… [T]he clerk's conduct cannot be found to be harmless. By offering opinions and/or explanations on the meaning of the legal concepts at issue in the trial, the clerk impermissibly interfered in the jury's deliberations and usurped the role of the court to, in consultation with counsel, instruct the jurors on the law applicable to the facts. Saporito-Elliott v United Skates of Am., Inc., 2025 NY Slip Op 06886, Second Dept 12-10-25

Practice Point: The law clerk's discussion with the deliberating jurors about concepts of negligence, fault and certain facts of the case interfered with the deliberations and usurped the role of the court. The verdict, therefore, must be set aside.

December 10, 2025

CIVIL PROCEDURE.

HERE THE SUBPOENAS SEEKING DISCOVERY FROM A NONPARTY WERE DEFECTIVE IN THAT THEY DID NOT EXPLAIN THE CIRCUMSTANCES OR REASONS FOR THE REQUESTED DISCLOSURE; THEREFORE THE MOTION TO QUASH THE SUBPOENAS SHOULD HAVE BEEN GRANTED WITHOUT ANY NEED ON THE PART OF THE MOVANT TO DEMONSTRATE THE SOUGHT DISCLOSURE IS IRRELEVANT OR FUTILE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the subpoenas seeking discovery from a nonparty were defective, therefore the motion to quash the subpoenas should have been granted:

Pursuant to CPLR 3101(a)(4), a party may obtain discovery from a nonparty of "matter material and necessary in the prosecution or defense of an action" in possession of a nonparty, providing the nonparty is apprised of the "circumstances or reasons such disclosure is sought or required" … . "The notice requirement of CPLR 3101(a)(4) 'obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, the circumstances or reasons such disclosure is sought or required'" … . "Once that is satisfied, it is then the burden of the person moving to quash a subpoena to establish either that the requested disclosure 'is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious'" … .

Here, the subpoenas were defective, since neither the subpoenas nor any accompanying documents set forth "the circumstances or reasons [the] disclosure is sought or required" (CPLR 3101[a][4] … . Ruppert v Ruppert, 2025 NY Slip Op 06884, Second Dept 12-10-25

Practice Point: A subpoena seeking disclosure from a nonparty must meet the requirements of CPLR 3101(a)(4) by including an explanation of the

circumstances or reasons for the disclosure. If that information is not provided, the subpoena is defective and must be quashed on that ground.

December 10, 2025

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), JUDGES, ATTORNEYS, APPEALS, CONSTITUTIONAL LAW.

REMITTAL IS NECESSARY BECAUSE THE SORA RISK-LEVEL-ASSESSEMENT WAS NOT SUPPORTED IN THE RECORD BY FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY THE CORRECTION LAW; DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL IN THAT AN AVAILABLE GROUND FOR A DOWNWARD DEPARTURE WAS NOT RAISED (THIRD DEPT).

The Third Department, reversing County Court, determined (1) appellate review of the SORA risk-level assessment was precluded by the judge's failure to place on the record its findings of fact and conclusions of law as required by the Correction Law, and (2) defendant did not receive effective assistance of counsel in that there was a ground for a downward departure which was not raised. Defendant was assessed 30 points based on a prior conviction for endangering the welfare of a child. However there was no sexual offense involved in that conviction and a downward departure was therefore possible:

"The failure to include the necessary findings prevents this Court from conducting a meaningful appellate review of defendant's designation as a risk level two sex offender and would, alone, require remittal for County Court to comply with the statute" (… see Correction Law § 168-n [3] …). * * *

… County Court was required to assess 30 points under risk factor 9 based upon defendant's undisputed prior conviction of endangering the welfare of a child, "without regard to whether the underlying offense involved conduct that is sexual in nature" … . This is because "[t]he Board decided to treat endangering the welfare of a child as if it were a sex crime because it generally involves sexual misconduct, especially when it is part of a plea bargained disposition" … .

However, the risk assessment guidelines also provide that, "[w]here a review of the record indicates that there was no such [sexual] misconduct, a departure may be warranted" … . People v Pribble, 2025 NY Slip Op 06936, Third Dept 12-11-25

Practice Point: If a SORA risk-level-assessment is not supported by findings of fact and conclusions of law in the record appellate review is not possible and remittal is required.

Practice Point: If, as here, there is an available ground for a downward departure which is not raised, the defendant did not receive effective assistance of counsel.

December 11, 2025

CRIMINAL LAW, EVIDENCE.

DEFENDANT WAS CONVICTED OF SECOND DEGREE MURDER (DEPRAVED INDIFFERENCE) AND FIRST DEGREE MANSLAUGHTER (RECKLESS) FOR THE DEATH OF A SEVERELY ABUSED CHILD; THE EXTENSIVE DISCUSSIONS OF THE "DEPRAVED INDIFFERENCE" ELEMENT BY THE MAJORITY AND DISSENT ILLUSTRATE THE DIFFICULTY OF PROVING BOTH "DEPRAVITY" AND "INDIFFERENCE" (THIRD DEPT).

The Third Department, affirming defendant's second degree murder (depraved indifference) and first degree manslaughter (reckless) convictions for the death of a severely abused child, over an comprehensive dissent, determined the facts supported the "depraved indifference" element. The dissent disagreed:

Contrary to defendant's contentions, the fact that he began immediate life-saving measures on the victim and called his wife to summon medical aid does not dictate a different result. Rather "[t]he People were required to show that defendant had the necessary mens rea of callous indifference when the crime occurred, not at all times thereafter" … . Thus, where the defendant is the one who inflicted the fatal injuries, the sincerity and motivation behind post-injury rescue efforts distill to "implicated credibility questions for the jury to resolve" … . We find no reason to

disturb the jury's finding that defendant's "belated expressions of concern did not reflect any [genuine] interest in the victim's welfare" … .

From the dissent:

Ask 12 random people on the street to describe the mental state of someone who stomps on a young child's stomach so hard that it kills him. Each will say something like, "cruel," "brutal," [*9]"monstrous" — maybe even "depraved" … . The jurors here rationally arrived at the same conclusion — and, indeed, "the horrific nature of defendant's assault of the [victim] was clearly intended to be encompassed within the depraved indifference murder of a child statute" … .

But depravity is not enough. Depraved indifference to human life "is something even worse" … . To prove this rare state of mind, there must be evidence of "wanton cruelty, brutality, or callousness, combined with an utter indifference as to whether the victim lives or dies" … . That combination is not present here. Consequently, defendant's conviction of depraved indifference murder must be reversed, and that count of the indictment dismissed. People v Greene, 2025 NY Slip Op 06931, Third Dept 12-11-25

Practice Point: "Depraved indifference" is a troublesome concept. How do the People prove both "depravity" and "indifference?" Consult this decision for an in-depth discussion.

December 11, 2025

FAMILY LAW, CIVIL PROCEDURE, JUDGES.

FAMILY COURT ERRONEOUSLY DIRECTED SERVICE UPON MOTHER IN THIS MODIFICATION OF CUSTODY PROCEEDING "BY EMAIL" WHICH DOES NOT COMPLY WITH DOMESTIC RELATIONS LAW 75-G; ALLEGATIONS THAT MOTHER DESTROYED EVIDENCE OF SERVICE AND WAS AWARE OF THE PROCEEDINGS ARE IRRELEVANT; THE COURT NEVER ACQUIRED JURISDICTION OVER MOTHER (FIRST DEPT).

The First Department, reversing Family Court, determined the court never acquired jurisdiction over mother in this modification of custody proceeding. Father was directed to serve mother by email and by Initiating international service through the US Central Authority, a method not compliant with Domestic Relations Law 75-g:

That statute requires that notice be given by personal delivery or by any form of mail requesting a receipt and that the court may only direct an alternative form of service upon a finding that "service is impracticable" by personal delivery or by mail. However, the father's motion papers contained no indication that personal service or service by any form of mail requesting a receipt was "impracticable" (Domestic Relations Law § 75-g[1][c]). Therefore, the Family Court erred in directing service by email and the court never acquired personal jurisdiction over the mother by the email service that was effectuated.

The father claims that the mother was personally served … . However, the record contains no affidavit of service on the mother. The father's assertion in his brief that the mother destroyed evidence of service does not establish that lawful service was made, as it was his responsibility to prove that service was properly carried out in the first place … . Moreover, the fact that the mother became aware of the proceeding at some point … does not confer jurisdiction if there has not been compliance with the statutorily prescribed methods of service of process … . Matter of John F.B. v Maria U., 2025 NY Slip Op 06905, First Dept 12-11-25

Practice Point: Here father was directed by the court to serve mother by "email" which does not comply with Domestic Relations Law 75-g. The court never acquired jurisdiction over mother, despite her awareness of the proceedings.

December 11, 2025

FAMILY LAW, EVIDENCE, APPEALS.

TAKING THE APPEAL AS AN EXCEPTION TO THE MOOTNESS DOCTRINE, THE FIRST DEPARTMENT DETERMINED THE ADMINISTRATION FOR CHILDREN'S SERVICES (ACS) DID NOT DEMONSTRATE THE APPPELLANT JUVENILE WAS PROPERLY TRANSFERRED FROM A NONSECURE TO A SECURE FACILITY; THE JUVENILE'S MISBEHAVIOR WAS NOT THAT SERIOUS; ACS DID NOT DEMONSTRATE IT HAD EXHAUSTED LESS SEVERE ALTERNATIVES (FIRST DEPT).

The First Department, reversing Family Court, considering an otherwise moot appeal because the issue recurs and juveniles are only placed for a limited amount of time, determined the Administration for Children's Services (ACS) did not demonstrate the need to place the appellant (juvenile) in a secure facility:

Under Family Court Act § 355.1(2), Family Court can modify a dispositional order "upon a showing of a substantial change of circumstances" by the agency, to place a youth in a secure facility, if "the respondent has demonstrated by a pattern of behavior that he or she needs a more structured setting and the social services district has considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility" … . Notably, behaviors meriting a modification include "disruptions in facility programs; continuously and maliciously destroying property; or, repeatedly committing or inciting other youth to commit assaultive or destructive acts" … .

Here, ACS alleged that two incidents where appellant went absent without consent (AWOC) over the course of two months constituted a "pattern of behavior" warranting his placement in a secure facility. The record reflects that, during the

first AWOC incident …, appellant "darted out the front door and ran" from a non-secure facility. During the second incident …, appellant fled through a damaged door at a limited secure facility after other youths broke the door while trying to escape. While this behavior is problematic, it simply does not rise to the level of seriousness reflected in the examples provided in the statute, i.e. "continuously and maliciously destroying property" or "repeatedly committing or inciting other youth to commit assaultive or destructive acts" … .

ACS also failed to show that it first "considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility" before seeking modification as it was required to do … . According to ACS policies, "[m]odifications must be considered as an option only when all efforts to avoid the modification have been exhausted." … ACS did not present any affirmations or provide any witness testimony regarding the limited secure facility's ability to address appellant's behavior … . Matter of J.D., 2025 NY Slip Op 06807, First Dept 12-9-25

Practice Point: Consult this decision for insight into the level of a juvenile's misbehavior which will justify placement in a secure facility, as well as the less severe alternatives which must be tried or demonstrated ineffective first.

December 9, 2025

MUNICIPAL LAW, EVIDENCE, MEDICAL MALPRACTICE, NEGLIGENCE, PUBLIC HEALTH LAW, TRUSTS AND ESTATES.

HERE, IN SEEKING LEAVE TO FILE A LATE NOTICE OF CLAIM AGAINST A CITY HOSPITAL ALLEGING MEDICAL MALPRACTICE, THE PETITIONER DID NOT SUBMIT THE MEDICAL RECORDS; THEREFORE THE PETITIONER DID NOT SHOW THAT THE HOSPITAL HAD TIMELY KNOWLEDGE OF THE CLAIM; LEAVE TO FILE A LATE NOTICE SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court and dismissing the action, determined the petition for leave to file a late notice of claim, alleging medical malpractice, negligence and violation of the Public Health Law on behalf of decedent, should not have been granted. The petitioner did not establish that the city had timely knowledge of the claim, which is the most important criterium for allowing late notice:

"Merely having or creating hospital records, without more, does not establish actual knowledge of a potential injury where the records do not evince that the medical staff, by its acts or omissions, inflicted any injury on plaintiff" … . The petitioner's "failure to submit evidence of the contents of the alleged records is fatal to [her] argument that the [appellant] acquired actual knowledge from the existence of such records" … . Additionally, there is no suggestion in the record that the appellant refused to produce the medical records or that the petitioner sought to compel the appellant to produce any papers necessary to the determination of the petition pursuant to CPLR 409(a) … . Matter of Giustra v New York City Health & Hosps. Corp., 2025 NY Slip Op 06862, Second Dept 12-10-25

Practice Point: The most important criterium for leave to file a late notice of claim is evidence the city had timely knowledge of the claim. Medical records, depending on their contents, can (but do not necessarily) demonstrate timely knowledge of the claim. Here petitioner did not submit the medical records and therefore did not even attempt to demonstrate the city's timely knowledge of the

nature of the medical malpractice claim. The mere existence of medical records is not enough.

December 10, 2025