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Weekly Reversal
Report
April 6 – 10, 2026

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APPEALS.

**THE APPENDIX SUBMITTED BY THE APPELLANT WAS INCOMPLETE;
APPEAL DISMISSED (SECOND DEPT).**

The Second Department, dismissing the appeal, determined the appendix submitted by the appellant was insufficient to allow consideration of the issues raised:

“[A]n appellant who perfects an appeal by using the appendix method must file an appendix that contains all relevant portions of the record to enable the court to render an informed decision on the merits of the appeal” “The appendix shall contain those portions of the record necessary to permit the court to fully consider the issues which will be raised by the appellant and the respondent, including material excerpts from transcripts of testimony[,] . . . papers in connection with a motion, and critical exhibits” Further, “[e]xcerpts from the transcripts ‘must not be misleading or unintelligible by reason of incompleteness or lack of surrounding context’” “An appellate court should not be subjected to the task of untangling and mastering the facts from an inadequate and incoherent appendix”

Here, the plaintiffs omitted from the appendix, among other things, material excerpts from transcripts of deposition testimony and each of the defendants’ papers in connection with the separate motions which were the subject of the order appealed from “These omissions inhibit the court’s ability to render an informed decision on the merits of the appeal” Accordingly, as the plaintiffs have failed to provide this Court with an adequate appendix, we dismiss the appeal

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... [.Kelly-Newhouse v Chase Meadows Farm, LLC, 2026 NY Slip Op 02108, Second Dept 4-8-26](#)

Practice Point: When an appeal is perfected by the appendix method, if the appendix does not include all of the record necessary for consideration of the issues raised in the appeal, the appeal will be dismissed.

April 8, 2026

CRIMINAL LAW, JUDGES, APPEALS.

THE JUDGE MADE NO FINDINGS TO SUPPORT EMPANELING AN ANONYMOUS JURY; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing defendant’s convictions, determined the judge committed reversible error by empaneling an anonymous jury without any apparent justification (juror safety for example). In addition, the Third Department noted that the judge never ruled on an oral renewal of a motion to suppress:

... [P]rospective jurors were identified only by numbers and the record is devoid of proof that their names were ever provided to defendant, which materially heightens the risk of prejudice Additionally, County Court withheld prospective jurors’ names without making any findings on the record or articulating a case-specific justification for departing from the procedure mandated by CPL 270.15, explaining only that prospective juror identities were withheld “because of confidentiality.” The record does not reflect any concern regarding juror safety, intimidation or interference, nor any circumstances that would otherwise warrant the use of an anonymous jury Additionally, we are not persuaded by any of the reasons suggested by the People at oral argument. We thus exercise our interest of justice jurisdiction, reverse and remit for a new trial. [People v Cassell, 2026 NY Slip Op 02173, Third Dept 4-9-26](#)

Practice Point: Here the trial judge’s failure to place on the record the reasons for empaneling an anonymous jury required reversal and a new trial in the interest of justice.

April 9, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS, APPEALS.

THE TRIAL JUDGE DID NOT FOLLOW THE REQUISITE PROCEDURE FOR A BATSON INQUIRY; MATTER REMITTED TO ALLOW THE JUDGE TO RULE ON WHETHER THE PROSECUTOR’S REASON FOR EXCLUDING A JUROR WAS PRETEXTUAL; THE APPEAL WAS CONSIDERED DESPITE A FAILURE TO PRESERVE THE ERROR (THIRD DEPT).

The Third Department, remitting the matter to allow the trial judge to make a “Batson” finding, determined that the judge did not follow the required “Batson” procedure. The issue was considered despite the failure to preserve the error:

It is uncontested that defendant triggered a Batson challenge when he objected to the People’s peremptory challenge of the only two jurors who were perceived by defendant to be of the same racial group — satisfying step one Although the prosecutor offered a race-neutral reason for each juror at step two, County Court merged the step two and three requirements by immediately denying the objection without first allowing defense counsel to make an argument that the reasons were pretextual, thereby “squeeze[ing] the process into a functional bypass of the key, final protocol [the Court of Appeals has] put in place” Such “practice falls short of a meaningful inquiry into the question of discrimination” . . . , particularly because the court’s consideration of pretext cannot be discerned from the record

While we are mindful of defense counsel’s failure to preserve this issue, given the magnitude of the error, we take corrective action in the interest of justice because the process here was woefully inadequate to satisfy the safeguards enshrined by Batson to every defendant (see CPL 470.15 [6] [a] . . .). Therefore, since the issue of pretext is a question of fact for the trial court to assess the prosecutor’s credibility against the challenged juror’s demeanor and language capabilities, which is an inquiry appellate courts are unable to address at step three, “we withhold decision and remit this case to [County] Court to enable the trial judge who presided over this matter to determine whether the race-neutral reason

proffered by the People was pretextual” [People v Duplessis, 2026 NY Slip Op 02170, Second Dept 4-9-26](#)

Practice Point: Here the trial judge did not follow the required steps for determining a Batson challenge to the elimination of a juror by the prosecutor.

April 9, 2026

MENTAL HYGIENE LAW, EVIDENCE.

THE GUARDIAN’S ILLNESS PRECIPITATED THE PETITION TO REMOVE HER; UPON HER RECOVERY THERE WAS NO JUST CAUSE FOR HER REMOVAL; PETITION DISMISSED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the evidence did not support the removal of the incapacitated person’s (Frank’s) wife, Zita, as the guardian of the person and property of Frank. The removal petition, brought by Frank’s daughter, Tara, was dismissed:

In December 2022, the wife was temporarily hospitalized, which precipitated the petition ... to remove her as guardian of the person and property of the incapacitated person. ...

The determination “to remove a guardian of the person and property of an incapacitated person pursuant to the Mental Hygiene Law is addressed to the sound discretion of the Supreme Court” The “overarching concern remains the best interest of the incapacitated person” “A guardian may be removed pursuant to Mental Hygiene Law § 81.35 when the guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the court shall appear just”

Here, the Supreme Court improvidently exercised its discretion in removing the wife as guardian of the person and property of the incapacitated person (see Mental Hygiene Law § 81.35). The wife’s temporary medical crisis that had precipitated the petition was resolved, and the petitioner failed to demonstrate that any of the wife’s actions regarding the incapacitated person’s care were a just cause for

removal [Matter of Frank M. \(Zita C.–Tara M. M.\), 2026 NY Slip Op 02116, Second Dept 4-8-26](#)

Practice Point: Other than the guardian’s illness, there was no support for her removal as guardian. Her recovery, therefore, warranted dismissal of the removal petition.

April 8, 2026

NEGLIGENCE CONTRACT LAW, MUNICIPAL LAW, EVIDENCE.

DEFENDANT’S CONTRACT WITH THE TOWN TO MAINTAIN STREET LIGHTS DID NOT CREATE A DUTY OWED BY THE CONTRACTOR TO THE PLAINTIFF, A PEDESTRIAN STRUCK BY A CAR WHO ALLEGED A STREET LIGHT WAS NOT WORKING; THE CONTRACTOR DID NOT “LAUNCH AN INSTRUMENT OF HARM;” IT MERELY FAILED “TO ACT AS AN INSTRUMENT OF GOOD” WHICH DOES NOT CREATE A DUTY TO A NONPARTY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff did not demonstrate the breach of a duty owed to him by defendant contractor. Defendant had entered a contract with defendant municipality to maintain street lights. Plaintiff, a pedestrian struck by a car, alleged the accident was in part caused by a street light which was not working. The complaint, however, did not allege defendant contractor had “launched an instrument of harm,” as opposed to merely a failure to act as an instrument of good:

... [T]he facts alleged do not establish that the defendant launched an instrument of harm, as the defendant is not alleged to have “created or increased the risk [to the plaintiff] beyond the risk which existed even before [the defendant] entered into [its] contractual undertaking” The defendant’s purported negligence in failing to restore illumination to a darkened intersection amounts to, at most, a failure to act as an “instrument for good, which is insufficient to impose a duty of care” upon the defendant in the absence of contractual privity with the plaintiff Moreover, the contract submitted by the defendant in support of its motion conclusively

demonstrated that the defendant’s contractual undertaking was “not the type of ‘comprehensive and exclusive’ property maintenance obligation” that would “entirely absorb” the Town’s duty “to maintain the premises safely” [Weiss v Fran Corp., 2026 NY Slip Op 02147, Second Dept 4-8-26](#)

Practice Point: Consult this decision for insight into what “launching an instrument of harm,” as opposed to “failing to act as an instrument of good,” means in the context of a duty owed by a party to a contract to an injured nonparty.

April 8, 2026

NEGLIGENCE, CIVIL PROCEDURE, CONSTITUTIONAL LAW, MUNICIPAL LAW.

THE COUNTY CHARTER, WHICH PURPORTED TO ELIMINATE THE CONSTRUCTIVE-NOTICE THEORY OF LIABILITY FOR INJURY TO A BICYCLIST BY A DANGEROUS CONDITION IN A COUNTY ROAD, DID NOT SUPERSEDE THE HIGHWAY LAW; TO STATE A PRIMA FACIE CASE IN SUPPORT OF SUMMARY JUDGMENT, THE COUNTY MUST DEMONSTRATE BOTH A LACK OF WRITTEN NOTICE AND A LACK OF CONSTRUCTIVE NOTICE OF THE DANGEROUS CONDITION (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Golia, determined the county charter, which allowed the county to “opt out” of the constructive-notice provisions in the Highway Law, did not supersede the Highway Law. Plaintiff, a bicyclist, was injured when his bicycle struck a pothole on a county road. Supreme Court denied the county’s summary judgment motion which argued the county charter eliminated the constructive-notice theory of liability. The Second Department affirmed the denial and further held that the county was required to show both a lack of written notice and a lack of constructive notice of the dangerous condition to warrant summary judgment:

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In an action to recover damages for personal injuries sustained in a bicycle accident, we are asked to determine whether the defendant, County of Suffolk, may enact legislation pursuant to the Municipal Home Rule Law that supersedes a New York State law. Specifically, the County contends that, through the enactment of Suffolk County Charter § C8-2(A)(2), it may supersede the provision of Highway Law § 139(2) that allows for an action to be maintained against a county, regardless of prior written notice, where the county had constructive notice of the alleged defective condition, pursuant to Municipal Home Rule Law § 10(1)(ii)(a)(5). We hold that Suffolk County Charter § C8-2(A)(2)(iii) contradicts Highway Law § 139(2) and, thus, the County may not, as it contends, “exercise [its] right to opt out” of the requirements of said statute. The County also contends that, in effect, even if constructive notice could be a theory of recovery in the instant action, the plaintiff bears the burden of establishing in the first instance that the County had constructive notice of the alleged defective condition. In other words, the County contends that its burden on this motion for summary judgment was only to show that it lacked prior written notice of the allegedly defective condition before the burden shifted to the plaintiff to demonstrate that the County had constructive notice of the condition. We hold, consistent with our precedent, that, when moving for summary judgment dismissing the complaint in cases invoking Highway Law § 139(2), the County must establish, prima facie, that it lacked both prior written notice and constructive notice of the alleged defective condition before the burden shifts to the plaintiff to raise a triable issue of fact in that regard or with regard to whether another exception applies. [Romas v County of Suffolk, 2026 NY Slip Op 02142, Second Dept 4-8-26](#)

Practice Point: A county charter provision which contradicts the New York State Highway Law does not supersede the provisions of the Highway Law.

April 8, 2026

NEGLIGENCE, EDUCATION-SCHOOL LAW, CIVIL
PROCEDURE, MUNICIPAL LAW.

IN A MATTER OF FIRST IMPRESSION, THE SECOND DEPARTMENT HELD THAT THE 90-DAY TIME-LIMIT FOR FILING A NOTICE OF CLAIM AGAINST A SCHOOL DISTRICT ALLEGING NEGLIGENT SUPERVISION CAN BE TOLLED UNDER THE “CONTINUING WRONG” DOCTRINE; HERE IT WAS ALLEGED PLAINTIFF-STUDENT WAS ABUSED BY OTHER STUDENTS BEGINNING IN OCTOBER 2017; THE NOTICE OF CLAIM WAS FILED IN FEBRUARY 2018 (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Voutsinas, reversing Supreme Court, determined the defendant NYC Department of Education (DOE) was not entitled to summary judgment in this negligent supervision action alleging a long pattern of abuse of plaintiff-student, J.A., by other students. Notably, the Second Department, as a matter of first impression, held that the 90-day time-limit for filing a Notice of Claim was tolled by the “continuing wrong” doctrine:

This Court holds that the notice of claim was timely because the continuing wrong doctrine applies As a general rule, the continuing wrong doctrine may be “employed where there is a series of continuing wrongs and serves to toll the running of the limitations period to the date of the commission of the last wrongful act” The continuing wrong doctrine allows a later accrual date of a cause of action “where the harm sustained by the complaining party is not exclusively traced to the day when the original wrong was committed” “The distinction is between a single wrong that has continuous effects and a series of independent wrongs”

This Court has not previously addressed the question of whether the period within which a notice of claim may be filed is tolled where there is a continuous pattern of harassment and/or unlawful conduct in a school setting and allegedly negligent supervision of a student by school administrators charged with a duty to properly supervise their students. [J.A. v City of New York, 2026 NY Slip Op 02084, Second Dept 4-8-26](#)

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Practice Point: Here in this negligent-supervision action it was alleged plaintiff-student was subjected to a pattern of abuse by other students for a period of months. In a matter of first impression, the Second Department held that incidents which occurred more than 90-days before the Notice of Claim was filed were not time-barred pursuant to the “continuing wrong” doctrine.

April 8, 2026

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