

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-00255

PRESENT: WHALEN, P.J., BANNISTER, GREENWOOD, NOWAK, AND KEANE, JJ.

MARY C. MANN, CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

ERIE COUNTY MEDICAL CENTER CORPORATION,
ERIE COUNTY MEDICAL CENTER, RESPONDENTS-APPELLANTS,
ET AL., RESPONDENT.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (KAYLA A. HUGHES OF
COUNSEL), FOR RESPONDENTS-APPELLANTS.

LOTEMPPIO P.C. LAW GROUP, BUFFALO (CLAUDIA M. RODR OF COUNSEL), FOR
CLAIMANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Dennis E. Ward, J.), entered September 13, 2023. The order granted the application of claimant for leave to serve a late notice of claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Contrary to the contention of respondents-appellants (respondents), Supreme Court did not abuse its discretion in granting claimant's application for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e (5). Although claimant failed to demonstrate a reasonable excuse for failing to serve a timely notice of claim (*see Matter of Hampson v Connetquot Cent. Sch. Dist.*, 114 AD3d 790, 791 [2d Dept 2014]; *Brown v City of Buffalo*, 100 AD3d 1439, 1440 [4th Dept 2012]), that failure " 'is not fatal where . . . actual notice was had and there is no compelling showing of prejudice to [respondents]' " (*Matter of Mary Beth B. v West Genesee Cent. Sch. Dist.*, 186 AD3d 979, 980 [4th Dept 2020]; *see Shaul v Hamburg Cent. Sch. Dist.*, 128 AD3d 1389, 1389 [4th Dept 2015]). Here, claimant "made a persuasive showing that [respondents] acquired [timely] actual knowledge of the essential facts constituting the claim" (*Shaul*, 128 AD3d at 1389 [internal quotation marks omitted]; *see Matter of Hall v Madison-Oneida County Bd. of Coop. Educ. Servs.*, 66 AD3d 1434, 1435 [4th Dept 2009]). Claimant also "met her initial burden by presenting 'some evidence or plausible argument that supports a finding of no substantial prejudice' " (*Arnold v Town of Camillus*, 222 AD3d 1372, 1379 [4th Dept 2023], quoting *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466 [2016], *rearg denied* 29 NY3d 963 [2017]), and respondents failed to " 'respond with a particularized evidentiary showing that [they would] be

substantially prejudiced if the late notice [was] allowed' " (*Matter of Antoinette C. v County of Erie*, 202 AD3d 1464, 1468 [4th Dept 2022], quoting *Newcomb*, 28 NY3d at 467; see *Brege v Town of Tonawanda*, 148 AD3d 1792, 1793 [4th Dept 2017]).

Finally, we have reviewed respondents' remaining contention and conclude that it lacks merit.