

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

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CA 13-01276

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ.

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PATRICIA DEJOY, PLAINTIFF-APPELLANT,

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MEMORANDUM AND ORDER

KEVIN M. EHMANN, DEFENDANT-RESPONDENT.

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FINUCANE & HARTZELL, LLP, PITTSFORD (DANIEL O'BRIEN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

LAW OFFICES OF KAREN L. LAWRENCE, PITTSFORD (BARNEY BILELLO OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Evelyn Frazee, J.), entered September 20, 2012. The order, among other things, granted defendant's motion to dismiss plaintiff's complaint.

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

Memorandum: Supreme Court properly granted defendant's motion to dismiss the complaint based upon plaintiff's failure to file a summons and complaint within the statute of limitations. Contrary to plaintiff's contention, we conclude that such nonfiling may not be corrected or disregarded pursuant to CPLR 2001 (see *Goldenberg v Westchester County Health Care Corp.*, 16 NY3d 323, 328). The court also properly denied plaintiff's motion seeking permission to file the summons and complaint nunc pro tunc (see generally *Mandel v Waltco Truck Equip. Co.*, 243 AD2d 542, 543-544, lv denied 91 NY2d 809), inasmuch as granting such relief would effectively extend the statute of limitations, a result proscribed by CPLR 201 (see *Bradley v St. Clare's Hosp.*, 232 AD2d 814, 815; *De Maria v Smith*, 197 AD2d 114, 116-117).

Entered: February 14, 2014

Frances E. Cafarell  
Clerk of the Court