

Redfield v County of Wayne
2023 NY Slip Op 34045(U)
November 15, 2023
Supreme Court, Wayne County
Docket Number: Index No. 90113
Judge: Daniel G. Barrett
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
25th day of October, 2023.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

RICHARD J. REDFIELD,

Petitioner

-vs-

COUNTY OF WAYNE,
WAYNE COUNTY SHERIFF'S OFFICE,
WAYNE COUNTY SHERIFF ROB MILBY,
Individually and in his capacity as the
Wayne County Sheriff,

Respondents

DECISION
Index No. 90113

The Petitioner, Richard J. Redfield, has filed an Order to Show Cause seeking permission to file a late notice of claim and an application for pre-trial discovery. The Respondents, County of Wayne, Wayne County Sheriff's Office, Wayne County Sheriff Rob Milby, individually and in his capacity as Wayne County Sheriff, oppose both of these applications.

LATE NOTICE OF CLAIM

On January 5, 2023, Petitioner, an inmate at the Wayne County Jail, slipped and fell on a slippery surface outside his prison cell (Cell 14 in Pod B). He fell directly in the presence and view of Corrections Officer Burlee. He asserts that CO Burlee as well as others observed him fall on a large accumulation of water. Petitioner indicated CO Burlee said something to the effect of "...are you okay" after he observed Petitioner fall and hobble back to his cell. Petitioner claims CO Burlee prepared an incident report.

Following this occurrence he was treated by the night nurse on the staff at the Wayne County Jail and he complained of neck and shoulder pain. On the next day, January 6, 2023, he was treated by a different person on staff and complained of neck and right shoulder pain. In addition, he was transported by jail deputies from the Wayne County Jail to Finger Lakes Bone and Joint to receive medical treatment for neck, back, right shoulder, and arm that he was experiencing from the incident which occurred on January 5, 2023. Additionally, he was transported by the Wayne County Sheriff's Deputies to Brownstone Physical Therapy for several appointments. He specifically remembers CO Dennie as one of the officers who escorted him to these offsite appointments. He filled out a "common form", regarding pain he was experiencing from the fall. Sometime after submitting this form, CO Burlee as well as possibly others provided him with a mattress for his cell to help alleviate the pain he was experiencing from the fall.

On April 3, 2023, he was released from confinement at the Wayne County Jail. His treatment was ongoing. He continued treating with medical providers for his neck and right shoulder. Subsequently, an MRI of his right shoulder was performed at Newark Wayne Hospital and an MRI of his neck was performed at Rochester General Hospital. These tests revealed injury to the disk of the neck and a rotator cuff tear. A shoulder arthroscopy procedure was performed on August 22, 2023.

In determining whether to grant leave to serve a late notice of claim against a municipality, this Court, in exercising its discretion, must consider all relevant facts, including, but not limited to, whether:

1. The Respondents acquired knowledge of the essential facts constituting the claim within ninety (90) days after the claim arose or a reasonable time thereafter;
2. Would the delay substantially prejudice the Respondents in their defense; and

3. Did the Petitioner demonstrate a reasonable excuse for the failure to serve a timely notice of claim. (NY General Municipal Law § 50-e(5))

The presence or absence of any one factor is not determinative on a motion for leave to serve a late notice of claim. The Petitioner has the initial burden of showing that the late notice will not substantially prejudice the Respondents (NY General Municipal Law § 50-e(5)).

The showing that late notice will not substantially prejudice the Respondents need not be extensive, but the Petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice. (N.F. v City of New York, 161 A.D. 3d 1046 [2nd Dep't 2018])

The Petitioner has met his initial burden by making a plausible argument that the Respondents will not be substantially prejudiced. Briefly summarizing the presentation of evidence, CO Burlee witnessed the event; he was treated in house that very evening and also the next day; he was transported to appointments by the Respondents.

As set forth in the Court of Appeals Decision Matter of Newcomb v Middle County Cent. Sch. Dist., 28 N.Y. 3d 455 once the Petitioner has shown that the Respondents will not be substantially prejudiced, the Respondents must respond with a particularized evidentiary showing that it will be substantially prejudiced if the late notice of claim is allowed. The Respondents are required to submit admissible evidence to meet its burden. (id at 467-468)

In this case the Respondents failed to make a showing of substantial prejudice.

Lieutenant Hendler submitted an affidavit in opposition indicating that, assuming it existed, surveillance video footage is only maintained for ninety (90) days. If not instructed to retain it, it is deleted. Although the video could be helpful the Petitioner demonstrated at least one officer witnessed the occurrence.

In addition Lieutenant Hendler indicates that he made a comprehensive review of the Petitioner's file and he asserts that the Petitioner never filed a grievance, complaint or an incident report relating to the January 5, 2023 slip and fall. However, Lieutenant Hendler does not assert that CO Burlee did not file an incident report. He does not contradict that the Petitioner was treated by the night nurse on the evening of the event, the day nurse on the following day nor the fact that Petitioner was transported to medical providers on various occasions. Thus Respondents failed to make the required "particularized evidentiary showing that (they) will be substantially prejudiced if the late notice of claim is allowed" (Newcomb, 28 N.Y. 3d 895.)

The final factor to be analyzed is the lack of a valid excuse for failure to file a timely notice of claim. The fact that the Petitioner did not provide an excuse for his delay in serving a notice of claim is not dispositive. (In the Matter of City of New York v County of Nassau, 146 A.D. 3d 948 [2nd Dep't 2017]). A lack of a valid excuse for the delay is not necessarily fatal to a Petition for leave to serve a notice of claim where other factors militate in favor of granting the Petition. (Catania v City of New York, 188 A.D. 3d 1041 [2nd Dep't 2020]). In this case the factors that the Respondents had actual notice of the event.

"One factor that should be accorded great weight is whether the [respondents] received actual knowledge of the facts constituting the claim in a timely manner" (In the Matter of Simaris Diaz v Rochester-General Regional Transportation, 175 A.D. 3d 1821, 1822 [4th Dep't 2019]). Clearly the Respondents had actual notice of the facts constituting the claim.

Based on the facts of this case, this Court is granting Petitioner permission to file a late notice of claim.

DISCOVERY

The second aspect of this application is the request for various forms of discovery. Many of these requested items of discovery do not pertain to potential defendants. Thus, they can be obtained through the typical discovery process during litigation. However, this Court orders the Respondents to preserve all matters they possess pertaining to the incident which occurred on January 5, 2023. In addition, the Respondents should preserve all records pertaining to the medical treatment received by the Petitioner from January 5, 2023 until his discharge from the jail as well as transport records. Finally, within thirty (30) days of entry of this Order Respondents are to provide counsel for Petitioner the following information:

1. The name of the owner of the jail;
2. If the jail is leased provide the name of the lessor and the lessee;
3. The name of the entity responsible for maintaining the floors of the jail in the area where the incident occurred on January 5, 2023;
4. The name of the entity responsible for overseeing the inmates on January 5, 2023 in the area where the incident occurred.

This constitutes the Decision on this application. Counsel for Petitioner to prepare and Order consistent with this Decision.

Dated: November 15, 2023
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice