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CasePrepPlus

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Summarizing recent significant
New York appellate cases

The Second Department recently used one of its cases to remind the bench and bar of the two different and legally distinct standards that apply when moving to set aside a verdict under CPLR 4404(a)—legal insufficiency and weight of the evidence. "Insufficiency looks at whether the jury could legally, logically, and objectively reach its verdict based on the evidence presented . . . By contrast, weight of the evidence is a more malleable, qualitative, fact-based review of the verdict," the Court explained. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

FAMILY LAW, SEALING OF RECORDS

***Leah W. v Keith W.*, 2025 NY Slip Op 05041 (1st Dept Sept. 23, 2025)**

Issue: **Are recorded forensic interviews of children, conducted by a Safe Horizon employee at the Manhattan Child Advocacy Center, which were observed by a multidisciplinary team from the police department, district attorney's office, and child protective services, records that are protected from disclosure under Criminal Procedure Law § 160.50?**

Facts: "On October 6, 2023, the children of respondent father were interviewed by a Safe Horizon employee at the Manhattan Child Advocacy Center (CAC). The videotaped interviews were observed by a multidisciplinary team comprised of a detective from the New York City Police Department's Special Victims Unit and representatives from the Manhattan District Attorney's Office and Child Protective Services in a separate room. On October 10, 2023, respondent father was arrested and charged with first-degree sex abuse and endangering the welfare of a child. On July 15, 2024, the criminal charges were dismissed due to a lack of witness cooperation.

On October 11, 2023, Administration for Children's Services (ACS) commenced a Family Court Act article 10 proceeding against the father, alleging that he sexually abused both of his daughters. ACS informed the father that it would seek to introduce the videotaped interviews at the fact-finding hearing. He subsequently moved to preclude ACS from introducing the videos or a transcript of the interviews." Supreme Court denied the father's motion to preclude introduction of the videos.

Holding: The Appellate Division, First Department affirmed, holding that "Criminal Procedure Law § 160.50 specifies that, where a criminal action or proceeding terminates in favor of the accused, 'all official records and papers . . . relating to the arrest or prosecution, including all duplicates and copes thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed.' The statute serves a laudable goal of insuring that one who is charged but not convicted of an offense suffers no stigma as a result of his or her having once been the object of an unsustained accusation. However, not all documents or records constitute 'official records' under CPL 160.50. Although the statute specifies judgments and orders of a court as items included in the category of official records and papers, the statute is otherwise silent on the nature of such official material."

The Court explained, the plain language of CPL § 160.50 "defines the records subject to sealing as being on file with the 'division of criminal justice services, any court, police agency, or prosecutor's office.' Neither ACS nor Safe Horizon are included in this list, and the father fails to explain why ACS, an agency with a different mission and a different burden of proof, cannot use the videotape. The videotaped interviews are thus not subject to sealing under the statute. The videos are not 'official records and papers' related to the father's arrest or prosecution. The Social Service Law permits CAC to conduct a forensic interview of a child by a trained professional that 'must be conducted in a manner which is neutral and fact-finding and coordinated to avoid duplicative interviewing' (*see* Social Services Law § 423-a[2][f]). These videotaped interviews are confidential, but 'shall' be disclosed for the purpose of investigation, prosecution and/or adjudication in any relevant court proceeding (*see* Social Services Law § 423-a[5][a]). The interviews were made in CAC's regular course of business and not in conjunction with law enforcement relating to the father's prosecution. Even so, the mere existence of a multidisciplinary task force involving multiple law enforcement and non-law enforcement actors is not dispositive." Thus, the Court concluded, "[t]he recorded interviews of the children, in which they gave their own accounts of the father's actions to an independent forensic interviewer, did not contain any information about the father's arrest or discontinued prosecution. Sealing the videotaped interviews would undermine the CAC and multidisciplinary model. Although we recognize that there is a delicate balance between the compelling need to protect the welfare of children and the right of criminal defendants to be free from the stigma of an unsustained prosecution, CPL 160.50 should not be used to override the truth-finding and child-protective missions of the Family Court."

SECOND DEPARTMENT

TORTS, PERSONAL INJURY

Krohn v Schultz Ford Lincoln, Inc., 2025 NY Slip Op 05072 (2d Dept Sept. 24, 2025)

Issue: Did the Supreme Court properly, in effect, grant the plaintiff's motion pursuant to CPLR 4404(a) to set aside so much of the jury verdict as, upon finding that the defendants were negligent, found that such negligence was not a substantial factor in causing injury to the plaintiff and for judgment as a matter of law on the issue of liability?

Facts: "In February 2014, the plaintiff brought his van, which he had purchased used a few days earlier, to the defendants' business for the defendants to perform service and repair work on it. The plaintiff supposedly told the defendants, among other things, that the steering and the alignment "felt off." He later authorized the repairs that the defendants suggested. In early March 2014, the plaintiff picked up the van from the defendants after the work was completed and paid them more than $4,000." Two months later, plaintiff, a musician, was driving the van to a performance when he heard a metal clank, "the van 'immediately . . . started veering off to the right, and it wasn't responding to any of my steering efforts.' He started to apply the brake 'but there really wasn't any time because the van just went crashing into the barrier on the right side of the Van Wyck.'" The van continued to crash into the barrier five times before it came to a stop. After the accident, the plaintiff had the van towed to the performance, and went on stage for his set.

Plaintiff a few years later sued defendants, alleging that "defendants' negligent performance of repairs resulted in the collision and injuries to the plaintiff. The matter proceeded to a bifurcated jury trial held in May 2022." At trial, plaintiff presented an expert who opined that "a part of the van's steering mechanism, the pitman arm, became detached from the steering box due to not being attached with the requisite force, causing the van's steering to fail to function. Serby opined, in part, that the pitman arm 'was never properly torqued onto the vehicle with the specified 200 foot pounds in the Ford shop manual.'"

At the end of the trial, defense counsel focused on the testimony that plaintiff did not offer, including the testimony from a passenger in the van, a friend who was at the performance, and the tow truck drivers, and "raised the issue of whether the accident happened with the query, 'Did the accident happen? That's for you to decide. I'm not even necessarily suggesting nothing happened. I can't tell you. I don't know.'" During the jury's deliberations, the jury sent a note to the court, asking: "'the second question presumes there was an accident. Are we to assume that there was an accident, or is that part of our deliberation?' After reading the note to and conferring with counsel, the court answered the question by . . . summarizing the plaintiff's testimony regarding the collision. The court instructed the jury, in part, 'if you believe that testimony, then you could reasonably conclude that there was an accident. If you don't believe that testimony, you can conclude that there is no accident. That's your determination. So you heard testimony, and you are to consider the weight, if any, to give to that.' Not long after, the jury returned its verdict, finding that the defendants were negligent but that the negligence was not a substantial factor in causing the collision."

Plaintiff moved to set aside the latter part of the verdict, and for judgment as a matter of law. Supreme Court, "in effect, set aside the jury's verdict that the accident did not proximately occur on the ground that there was insufficient evidence to sustain that verdict, ordered that a judgment be entered in favor of the plaintiff on the issue of liability, and directed the scheduling of a future trial on the issue of damages."

Holding: The Appellate Division, Second Department reversed. The Court explained, first, that "the legal insufficiency and weight of the evidence standards under CPLR 4404(a)" are different and not interchangeable. "CPLR 4404(a) permits the court to set aside the jury's verdict, upon motion of any party or at its own initiative, if . . . a party is entitled to judgment as a matter of law, or it may order a new trial if the jury's verdict is contrary to the weight of the evidence. The statutory reference to 'judgment as a matter of law' regards the insufficiency of the evidence. The bench and bar are reminded that insufficiency and weight are distinct concepts that should not be confused with one another. Insufficiency looks at whether the jury could legally, logically, and objectively reach its verdict based on the evidence presented. Its precise legal standard is whether there is a valid line of reasoning and permissible inferences by which a rational trier of fact could find in favor of the party . . . By contrast, weight of the evidence is a more malleable, qualitative, fact-based review of the verdict. The court looks at whether the evidence so preponderates in favor of a party that a contrary verdict could not have been reached on any fair interpretation of the evidence. If a verdict is set aside on the basis of the weight of the evidence, a new trial is held. The differences between insufficiency and weight are significant not only to the legal standards that are applied in deciding their respective applications but also to whether the court's determination is conclusive or subject to a new trial."

Turning to the merits, the Court faced "two issues—the concept of negligence and proximate cause being inextricably intertwined, and the nature of the jury's charge and verdict sheet on negligence and proximate cause." The Court explained, "[n]egligence and proximate cause are two necessary parts to any finding of liability. When there is a line of demarcation between negligence and proximate cause, a jury's verdict finding the first but not the second does not warrant the setting aside of a verdict under CPLR 4404(a). Conversely, where issues of negligence and proximate cause are inextricably intertwined, courts may set aside a verdict where negligence is found but proximate cause is not."

Examining the jury's verdict, the Court reasoned, "[i]f, as the Supreme Court concluded in this instance, the jury's deliberation involved an uncomplicated determination of whether the defendants had negligently installed the pitman arm of the plaintiff's van, which, in turn,

resulted in the plaintiff's loss of steering and the accident as described, then the jury's finding of negligence without a finding of proximate cause would be inconsistent. But the trial evidence was not so uncomplicated as to be subject to only one view of the events. Here, viewing the evidence in the light most favorable to the defendants, as we must in these instances, there was a valid line of reasoning and permissible inferences upon which the jury could parse the alleged negligent repair from the alleged proximate cause and determine that while the defendants were negligent, they were not a proximate cause of the plaintiff's claimed accident." In particular, although plaintiff's version of the events was supported by his testimony, plaintiff failed to present any other testimony to corroborate his, there was no police report, and the photographs introduced did not appear to show the kind of "heavy" damage as would have been expected. "Under the circumstances of this case, it was not irrational for the jury to conclude that although the defendants negligently performed work on the plaintiff's van, the negligent work was not a substantial factor in causing the alleged accident as claimed by the plaintiff. The jury all but said as much through its deliberative question to the Supreme Court and the verdict that followed. Its doing so was consistent with the jury's obligation to review the trial evidence, assess its credibility, draw reasonable inferences from the photographic and other evidence, apply the plaintiff's burden of proof, and render a verdict accordingly." Supreme Court therefore erred in setting aside the verdict.

Finally, the Court explained, "[w]here trial evidence raises the issue of whether negligence and proximate cause are inextricably intertwined, versus whether the negligent event may not have occurred as claimed, the jury verdict sheet should not be drafted or construed as to take away from the jury the determination of the latter issue." Here, the Court held, Supreme Court properly answered the jury's note by explaining that they could weigh the evidence and determine whether the accident occurred at all.

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