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Summarizing recent significant New York appellate cases

In this issue, we are reprinting selected decision summaries from the past several months that offer important lessons for practitioners on statutory interpretation, duties of care, filing deadlines, expert disclosure, and plea safeguards. Regular issues will resume next week.

COURT OF APPEALS

CRIMINAL LAW, DWI, DWAI

People v Dondorfer, 2026 NY Slip Op 00823 (Ct App Feb. 17, 2026)

Issue: **Does the definition of impairment for purposes of driving while ability impaired by a combination of drugs and alcohol have the same meaning as the Court of Appeals has given it for the offense of driving while ability impaired solely by alcohol?**

Facts: "After the car he was driving with his fifteen-year-old daughter as a passenger was stopped by police, defendant admitted to drinking 'a couple of strong beers' and smoking marijuana. He failed several standard field sobriety tests, and an officer certified as a drug recognition expert determined, based on a 12-step evaluation, that defendant was impaired by the combination of alcohol and cannabis and was unable to safely operate a vehicle. The People presented an indictment to the grand jury charging defendant with aggravated driving while ability impaired by a combination of drugs and alcohol with a child in the vehicle." When defining the offense for the grand jury, the People defined "impairment" for DWAI by a combination of drugs and alcohol as "when that combination of alcohol and drugs has actually impaired, to any extent, the physical and mental abilities which such person is expected to possess in order to operate a motor vehicle as a reasonable and prudent driver," consistent with the Court of Appeals' definition of "impairment" for the alcohol-based offense (*see People v Cruz*, 48 NY2d 419, 427-428 [1979]).

At a pre-trial hearing, however, County Court granted the defendant's request to use a different charge on impairment derived from the Third Department's subsequent decision in *People v Caden N.*, in which "the Third Department held that Cruz's definition of impairment applied only 'in the limited context' of driving while ability impaired by alcohol and instead defined impairment for drug consumption in accordance with the *Cruz* standard for alcohol intoxication (189 AD3d 84, 90-91 [3d Dept 2020])." County Court held that the People's charge prevented the grand jury from determining whether legally sufficient evidence existed to support the offense, and thus dismissed that count of the indictment.

The Appellate Division, Fourth Department reversed, however, "declined to follow *Caden N.*" because it was "unsupported by the statutory text and was inconsistent with the *Cruz* decision," and held instead that "the term 'impaired' as used in Vehicle and Traffic Law § 1192 (4-a) should be defined consistently with the definition of that same term set out by the Court [of Appeals] in *Cruz* and concluded that the People properly instructed the grand jury in accordance with *Cruz*'s impairment standard."

Holding: The Court of Appeals affirmed, holding that "the subdivision at issue here, Vehicle and Traffic Law § 1192 (4-a), and the subdivision at issue in *Cruz*, Vehicle and Traffic Law § 1192 (1), use the term 'impaired.' Nothing in the statutory language itself indicates that a different meaning was intended for subdivision (4-a). We must therefore presume that the Legislature meant for these identical terms to be used in the same sense throughout the same statute. As the Appellate Division below explained, in light of the separate definitions given to the terms 'impaired' and 'intoxication,' by using the term 'impaired' in Vehicle and Traffic Law § 1192 (4-a), the legislature clearly did not intend for that term to be defined in accordance with the standard used for the term 'intoxication' . . . Accepting defendant's proposed construction of impairment would require the Court to interpret 'impaired' as having two definitions within the same statute: one applicable to consumption of alcohol alone, and one that essentially incorporates the standard for 'intoxication' by alcohol consumption, to be applied to the use of drugs or drugs and alcohol combined. This we cannot do."

TORTS, ASSUMPTION OF DUTY OF CARE

Beadell v Eros Mgt. Realty LLC, 2026 NY Slip Op 00962 (Ct App Feb. 19, 2026)

Issue: **Did the owner and operator of a hotel assume a duty of care to a suicidal hotel guest by agreeing to requests from family members, first, to check on him in his hotel room and, second, to immediately call for emergency assistance?**

Facts: While staying at a hotel in Manhattan, a hotel guest texted his wife that he intended to end his life. At 6:40 PM, the guest's sister called the hotel's front desk expressing concern that her brother might be suicidal after he sent a photo of himself looking down from a ledge, and requested that hotel staff check on him. Hotel staff went to the guest's 11th floor room, observed empty liquor bottles and pill

containers, but the guest told them he was "fine" and did not wish to be disturbed. The clerk called the sister back at 6:46 PM and reported that they checked on him and he was fine.

At 7:12 PM, after receiving what appeared to be a goodbye message, the sister called again, this time identifying herself as a mental health professional, stating the situation was escalating, and asking for police to be contacted immediately. Hotel staff agreed to contact police but called back to ask whether the family actually wanted the police involved, to which the sister responded that she did. The hotel staff ultimately did not call 911 until 7:37 PM, while the assistant manager simultaneously went to the adjacent police station. The guest was found on the window ledge appearing intoxicated and emotionally distraught, and despite a police officer's attempts to persuade him to come inside, he jumped to his death shortly before 8:00 PM.

The guest's family then commenced a negligence and wrongful death action against the hotel owner and operator, alleging that defendants assumed a duty to take preventive measures in response to warnings about the guest's suicidal ideation and failed to properly discharge that duty. "Defendants moved for summary judgment, asserting that they had not assumed any duty to decedent and that they were in no way responsible for his death . . . In opposition, plaintiffs argued that defendants assumed the duty to contact 911 immediately upon promising to do so in the 7:12 p.m. call, and that the negligent delay in obtaining police assistance resulted in the loss of opportunity to prevent decedent's suicide."

Supreme Court denied summary judgment, holding that the hotel "had assumed a duty to take reasonable steps to prevent decedent from harming himself and had met their prima facie burden of establishing that they fulfilled the assumed duty. The court also concluded that plaintiffs raised triable issues of fact in opposition to the motion as to whether defendants exercised due care in discharging that duty, particularly with respect to whether the police were contacted during a reasonable time and whether the 25-minute delay in calling for emergency assistance significantly contributed to decedent's suicide." The Appellate Division, First Department reversed, holding that the hotel "met their burden of establishing that they did not assume a duty to prevent decedent's suicide, observing that the hotel did not isolate or take control of decedent, or put him in a more vulnerable position than he would have been in had the hotel never attempted to help."

Holding: The Court of Appeals affirmed the grant of summary judgment, on slightly differing reasoning than the First Department, holding that the hotel had assumed a duty of care by agreeing to check on the guest, and satisfied that duty by doing so, but did not assume a duty to call for emergency assistance immediately after the guest responded to the welfare check that he was fine. The Court explained, "to be held liable under an assumed duty theory, it is not enough that defendants undertook to perform a service and did so negligently, but their conduct in undertaking the service must have somehow placed decedent in a more vulnerable position than he would have been in had defendants never taken any action at all. One way in which an undertaking may increase a party's vulnerability is by lulling them into a false sense of security; thus, the assumed duty analysis incorporates an aspect of reliance. Where a plaintiff alleges reliance on a defendant's undertaking, it must have been reasonably foreseeable that the plaintiff would tailor their own conduct in response to defendant's undertaking." "Whether an actor has a duty of reasonable care based on an undertaking thus depends on whether the actor's conduct increases the risk of harm, or another relies on the actor's exercising reasonable care."

Applying these principles, the Court held, "[a]ny duty defendants may have assumed in agreeing to check on decedent was satisfied. The hotel staff determined that he was not on the balcony, the roof or the ledge of his own room. They also spoke with decedent face-to-face, at which point he advised that he was fine and did not want to be disturbed. Any assumption of a duty in this regard did not include the obligation to provide a detailed report of observations of decedent's condition or the state of his room to his family members. Nor did it require hotel staff members, who had neither expertise in mental health nor information about decedent's mental health history, to make an independent assessment about the risk decedent may have posed to himself or to take further action against his wishes based on any such assessment."

With respect to the plaintiffs' argument that the hotel had a duty to immediately summon emergency assistance after the 7:12 p.m. call, the Court held, "Decedent's mere presence in the hotel did not give defendants control over his person, nor did their actions affirmatively place him in a more vulnerable position than he was when they undertook to act. Under the circumstances, plaintiffs failed to raise a material question of fact as to whether it was reasonably foreseeable that they would forgo other efforts to summon aid in reliance on defendants' promise to call 911. Even if plaintiffs could rely on the hotel's representations that there would be a call to 911, it was not reasonable for the family to expect that any such call would be made with the desired immediacy. This became evident when the manager called decedent's sister back and expressed reluctance to involve the police, a circumstance that still did not induce the family members to act on their own behalf. Significantly, defendants' promise to call 911 did not prevent decedent's family members from undertaking their own efforts to secure professional assistance nor otherwise obstruct such efforts, for example, by refusing to confirm decedent's presence in the hotel. Indeed, an emergency call to 911 from a trained mental health worker, like decedent's sister, might be expected to enhance response time to the hotel."

Finally, the Court explained, "we would be reluctant to recognize a legal duty in this type of case on policy grounds . . . Recognizing an assumed duty in these circumstances would create a specter of liability that discourages rather than encourages hotels from offering assistance to guests contemplating suicide. Because hotels owe no inherent duty to provide such aid, the most rational and likely way for them to avoid liability would be to implement formal policies against their employees involving themselves in efforts to render potentially life-saving aid to guests. In keeping with the State's interest in preserving life and preventing suicide, the better rule is one that incentivizes both hotels and concerned parties to do all they reasonably can in these difficult and emotionally charged situations."

SECOND DEPARTMENT

CIVIL PROCEDURE, CHILD VICTIMS ACT, TOLLS OF STATUTE OF LIMITATIONS

***Finley v Diocese of Brooklyn*, 2026 NY Slip Op 01183 (2d Dept Mar. 4, 2026)**

Issue: **For how long did Governor Cuomo's COVID-era executive orders toll the closing of the Child Victims Act revival window?**

Facts: "On March 24, 2022, the plaintiff commenced this action pursuant to the CVA against the defendants Diocese of Brooklyn and Mary Queen of Heaven Catholic Academy," alleging that his choir teacher abused him while at the school. The Academy moved to dismiss the complaint as time-barred.

After the plaintiff filed an amended complaint, the Academy again moved to dismiss the amended complaint as time-barred, arguing that "the revival window of CPLR 214-g closed on August 16, 2021 (since August 14, 2021, was a Saturday), and as such, the action, commenced on March 24, 2022, was time-barred. The Academy contended that the August 3, 2020 legislative amendment that expanded the revival window to August 14, 2021, meant that the Legislature intended for all CVA actions to be commenced by August 14, 2021." Plaintiff opposed, arguing that "the action was timely because the pandemic-era executive orders served to toll the closing of the CVA revival window."

Supreme Court denied the Academy's motion to dismiss, holding that "the executive orders created a 228-day toll on the closing of the revival window, extending the plaintiff's time to commence the action."

Holding: The Appellate Division, Second Department affirmed, holding that "the executive orders apply to all CVA actions, enlarging the revival window by 228 total days." The court noted that during the initial CVA revival period, survivors faced an initial obstacle to filing renewed CVA claims with the onset of COVID in March 2020. Following the COVID shutdown, Governor Cuomo issued a series of executive orders that "tolled the limitations period for all civil actions in New York" and eventually signed an amendment to the CVA, which extended the CVA revival period to August 14, 2021.

The Court explained, "[i]n assessing whether the CVA amendment abrogated the effect of the preexisting toll, it should be noted that the plain language of the CVA amendment does not mention any toll that the Legislature knew to be in effect . . . In light of the absence of any provision mentioning tolls, this Court cannot supply one. As such, this Court holds that the CVA amendment extended the time by which survivors can come forward, enlarging the revival window created by the statute without changing the toll in existence."

Therefore, the court concluded, "the executive orders issued by the Governor and the Legislature's amendment of the CVA all functioned together to enlarge and enhance the period of time for survivors to commence CVA actions . . . The CVA amendment and the executive orders work in tandem to accommodate the peculiar difficulties precluding survivors of child sex abuse to come forward in pursuit of justice. The extended revival window provided survivors an opportunity to avail themselves of the CVA revival window despite restrictions by the pandemic or personal trauma. To hold otherwise would belie the very intent of the CVA, which was to permit victims additional time to bring their offenders to justice . . .

In conjunction with the executive orders issued subsequent to the CVA amendment's enactment, which this Court has recently held to be applicable, all of these executive orders impose an aggregate 228-day toll on the closing of the CVA revival window, making March 30, 2022, the latest date by which to commence a CVA action."

TORTS, NOTICE OF CLAIM, CONTINUING WRONG TOLL

***J.A. v City of New York*, 2026 NY Slip Op 02084 (2d Dept Apr. 8, 2026)**

Issue: **Is the period within which a notice of claim may be filed tolled where there is a continuous pattern of harassment 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?**

Facts: "J.A. allegedly was bullied by his fellow students throughout the 2017-2018 school year, while a student at a public middle school located in Queens. The incidents began in October 2017 and continued through May 2018," and including not only verbal harassment but also multiple physical assaults both on and off school grounds. Four days after the last incident in May 2018, J.A., through his mother, filed a "notice of claim encompassing all of these incidents, alleging that the defendants provided negligent supervision of J.A."

Plaintiff, through his mother, sued defendants alleging negligent supervision. Following discovery, during which plaintiff, his mother, and school district officials were deposed regarding the incidents and the school's response, defendants moved for summary judgment dismissing the complaint, arguing that "the plaintiffs' claims concerning any incidents prior to February 23, 2018, should be dismissed as time-barred because the plaintiff failed to comply with General Municipal Law § 50-e and that the plaintiffs' claims concerning the remaining incidents, sounding in negligent supervision, should be dismissed, because the DOE defendants provided adequate supervision."

Supreme Court granted defendants' summary judgment motion, concluding that "the claims concerning incidents that occurred prior to February 24, 2018 (90 days before the notice of claim was filed), were barred by General Municipal Law § 50-e for failure to serve a timely notice of claim. With respect to the plaintiffs' claims premised upon the incident on March 6, 2018, which happened at a store near the

school, the court determined that the DOE defendants were not responsible for protecting the plaintiff from incidents that occurred off school grounds. As to the remaining incidents, the court determined that J.A.'s alleged injuries were not a result of lack of supervision."

Holding: The Appellate Division, Second Department reversed, holding that plaintiff's notice of claim was timely filed under the continuing wrong doctrine. The court explained, "[a] plaintiff commencing an action against a school district must, as a condition precedent, serve a notice of claim upon the school district within 90 days of a cause of action accruing." Under the continuing wrong doctrine, however, the court noted, the running of a limitations period may be tolled until the date of the last wrongful act where "there is a series of continuing wrongs." "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."

Here, the court held, the continuing wrong doctrine may apply to toll the 90-day period to file a notice of claim where, as here, "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." This holding, the court noted, agreed with a similar holding of the Appellate Division, Third Department, where that court held "that given the continuing nature of the alleged bullying and negligent supervision and the fact that the defendant had actual notice of the claim in time to properly investigate and obtain evidence, the notice of claim was timely with respect to all of the alleged incidents" that pre-dated the 90 days prior to filing of the notice of claim. Thus, the court concluded, "[t]he time period for the plaintiffs to file their notice of claim regarding all of the incidents began to run when the last incident occurred in May 2018," especially considering that defendants had ample time to investigate the claims.

Furthermore, the court held, questions of fact existed whether defendants provided adequate supervision for the plaintiff, given their knowledge and notice of the ongoing in-school assaults. In fact, the court noted, "the dean testified that she did not believe that J.A.'s safety was at risk or that there was a safety issue, describing J.A.'s experiences as incidents that 'happen in middle school constantly.' There is no indication in the record that any plan was devised for J.A.'s safety . . . Moreover, there is no evidence in the record demonstrating that the DOE defendants consequated the students allegedly harassing J.A. in an effort to stop their pattern of harassing and assaultive behavior, other than Cineus stating that she spoke to all of the students in J.A.'s classes and asked them to be kind to one another." Thus, the court held, plaintiff's failure to provide adequate supervision claim should not have been dismissed.

THIRD DEPARTMENT

CIVIL PROCEDURE, EXPERT DISCLOSURE

Dewan-Zemko v Hunter Mtn. Ski Bowl, Inc., 2026 NY Slip Op 00413 (3d Dept Jan. 29, 2026)

Issue: **What is the scope of a party's duty to disclose a treating physician as an expert witness under CPLR 3101(d)(1)(i)?**

Facts: Following the denial of defendant's summary judgment motion, plaintiffs served an expert witness disclosure notifying of their intent to use plaintiff's treating physician as their medical expert at trial on the issue of causation. Defendant moved to preclude this witness testimony based on plaintiffs' failure to comply with timing requirements for disclosure established by the Third Judicial District's practice rules. Supreme Court granted the motion, and precluded plaintiff's expert witness, holding that plaintiffs had failed to comply with applicable disclosure rules and that their explanations were inadequate, particularly considering the litigation history, which included repeated requests for expert disclosure from defendant, prior court direction to comply with disclosure requirements, and a previous lesser sanction for a prior CPLR 3101(d)(1)(i) violation.

Holding: The Appellate Division, Third Department affirmed, maintaining its prior interpretation of CPLR 3101(d)(1)(i) as requiring formal expert disclosure for all medical professionals, including treating physicians, who will provide expert testimony, and rejected the First, Second, and Fourth Departments' more lenient approaches to such expert disclosure. The court noted that the Second Department has held that "[a] treating physician is permitted to testify at trial regarding causation, notwithstanding the failure to provide notice pursuant to CPLR 3101 (d) (1)"; and the First and Fourth Departments have concluded that "if the failure to comply with the notice requirements of CPLR 3101 (d) (1) relates to 'a treating physician whose records and reports have been fully disclosed,' then that failure 'does not warrant preclusion of that expert's testimony' because 'the defendant has sufficient notice of the proposed testimony to negate any claim of surprise or prejudice.'"

The Third Department rejected the plaintiffs' invitation to join its Sister Departments' interpretations of CPLR 3101(d)(1)(i). Rather, the court reaffirmed its own interpretation that "CPLR 3101 (d) (1) (i) requires disclosure of any medical professional, even a treating physician or nurse, who is expected to give expert testimony. This interpretation is not only consistent with the plain language of the statute but, also, that the burden of providing expert witness disclosure and setting forth the particular details required by the statute lies with the party seeking to utilize the expert. As such, it is not opposing counsel's responsibility to cull through copious medical records to ferret out the qualifications of the subject expert, the facts or opinions that will form the basis for his or her testimony at trial and/or the grounds upon which the resulting opinion will be based. This is especially true here as plaintiffs had provided the necessary authorizations for

defendant to access medical records from over 15 separate medical professionals, not including those executed for medical offices and pharmacies. Defendant could not be expected to guess which of those individuals may provide expert testimony at trial."

CRIMINAL LAW, KNOWING AND INTELLIGENT PLEA

***People v Oldorff*, 2026 NY Slip Op 02004 (3d Dept Apr. 2, 2026)**

Issue: **Did defendant, who was twice adjudged mentally unfit to stand trial before being deemed competent, validly enter a guilty plea to the charges against him, even though his intellectual and developmental disabilities rendered him incapable of understanding the proceedings?**

Facts: After defendant shot and killed his father, he was charged with second-degree murder and manslaughter. Defendant was remanded to an adolescent psychiatric unit and evaluated for his competence to stand trial. Two psychiatrists diagnosed defendant with "a plethora of mental health conditions including fetal alcohol syndrome, Attention Deficit/Hyperactivity Disorder, pervasive developmental disorder, mood disorder, reactive attachment disorder, intermittent explosive disorder and moderate intellectual disability." Based on those findings, defendant was adjudged unfit to stand trial and was committed. A year and a half later, defendant was evaluated again and again found unfit, because he was not capable of assisting in the preparation of a defense. After another year, defendant was eventually found fit to stand trial.

"In June 2022, defendant pleaded guilty in County Court to manslaughter in the first degree. Subsequently, Supreme Court granted defendant's motion to vacate his plea. No additional competency examinations were requested or administered, and, in June 2023, defendant entered an *Alford* plea to manslaughter in the first degree. County Court accepted defendant's plea, finding it knowing, voluntary and intelligent, and thereafter sentenced defendant to a prison term of 20 years, to be followed by five years of postrelease supervision."

Holding: The Appellate Division, Third Department reversed defendant's conviction because it was not clear that defendant knowingly and intelligently pled guilty. The court explained, "[p]eople with intellectual disabilities possess diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. . . . These traits render people with intellectual disabilities uniquely vulnerable to injustice within criminal proceedings. . . . Therefore, a court must account for a defendant's diminished mental capacity in ensuring that any waiver of constitutional rights is knowing, intelligent and voluntary."

Although the third evaluation had found defendant competent, its findings cast doubt on that conclusion, the court held. In particular, the psychiatrist found that defendant was mildly intellectually disabled, and "was rather immature in his understanding of the severity of his charges and the chances that he could have significant consequences — such as jail time. More importantly, during the evaluation, defendant repeatedly alleged that his counsel had reassured him that he will not be going to jail and, in fact, expressed strongly held beliefs that he will not be sent to jail due to his personal circumstances of having a disability and being young when the offenses were allegedly committed." Under these circumstances, the court held, a more exacting inquiry was required of the trial court "to ensure that defendant understood the constitutional rights he was waiving, given his significant intellectual disability."

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