

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

1319

CA 14-01042

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF ALBERTA MACIEJEWSKI AND HENRY
MACIEJEWSKI, AS PARENTS AND NATURAL GUARDIANS
OF SELENA MACIEJEWSKI, AN INFANT UNDER THE AGE
OF 14 YEARS, CLAIMANTS-RESPONDENTS,

V

MEMORANDUM AND ORDER

NORTH COLLINS CENTRAL SCHOOL DISTRICT,
RESPONDENT-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO, CONGDON, FLAHERTY, O'CALLAGHAN, REID,
DONLON, TRAVIS & FISHLINGER, UNIONDALE (CHRISTINE GASSER OF COUNSEL),
FOR RESPONDENT-APPELLANT.

FARRELL & FARRELL, HAMBURG (KENNETH J. FARRELL OF COUNSEL), FOR
CLAIMANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (James H. Dillon, J.), entered February 24, 2014. The order granted the application of claimants 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: Supreme Court did not abuse its discretion in granting claimants' application for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e (5). "[C]laimant[s] made a persuasive showing that [respondent] . . . acquired actual knowledge of the essential facts constituting the claim . . . [and respondent has] made no particularized or persuasive showing that the delay caused [it] substantial prejudice" (*Matter of Hall v Madison-Oneida County Bd. of Coop. Educ. Servs.*, 66 AD3d 1434, 1435 [internal quotation marks omitted]). Further, inasmuch as "actual notice was had and there is no compelling showing of prejudice to respondent[]," claimants' failure to offer a reasonable excuse for the delay is not fatal to their application (*Matter of Drozdal v Rensselaer City Sch. Dist.*, 277 AD2d 645, 646; see *Hall*, 66 AD3d at 1435).

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court