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Rosario v. New York City Health & Hospitals Corp.

Supreme Court, Appellate Division, First Department, New York - July 31, 2014 - N.Y.S.2d - 119 A.D.3d 490 - 2014 N.Y. Slip Op. 05603

Patients brought medical malpractice action against operator of municipal hospital. The Supreme Court, Bronx County, granted patients' motion for leave to file a late notice of claim as to infant plaintiff alone, and denied operator's cross-motion to dismiss the complaint. Operator appealed.

The Supreme Court, Appellate Division, held that:

- Patients' failure to demonstrate a reasonable excuse for their delay was not alone fatal to their motion, and
- Operator was not substantially prejudiced by patients' delay in filing late notice.

Patients' failure to demonstrate a reasonable excuse for their delay was not alone fatal to their motion for leave to file late notice of claim as to infant plaintiff alone, in medical malpractice action against operator of municipal hospital, where medical records provided operator actual knowledge of facts underlying patients' theory of a departure from accepted standard of pediatric care with regard to diagnosis and treatment of mother's placental infection and her fetal distress and subsequent self-extubation, and additional injuries to already compromised infant, who was born at 26 weeks' gestation.

Operator of municipal hospital was not substantially prejudiced by patients' delay in filing late notice of medical malpractice claim, since operative facts of the claim were contained in the medical records, and the case would turn primarily on those records, rather than on witnesses' memories.