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**DECISION AND JUDGMENT**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA  
Justice**

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**In the Matter of the Claim of  
COURTNEY WILLIAMS, an infant under the  
age of 18 years, by her mother and natural  
guardian, PHYLLIS A. WILLIAMS,**

**Motion Sequence #1  
Submitted January 2, 2008  
XXX**

**Petitioner,**

**-against-**

**INDEX NO: 21459/07**

**COUNTY OF NASSAU and NASSAU COUNTY  
POLICE DEPARTMENT,**

**Respondents.**

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**The following papers were read on this motion:**

<b>Notice of Motion/Order to Show Cause.....</b>	<b>1</b>
<b>COUNTY Affirmation in Opposition.....</b>	<b>2</b>
<b>Reply Affirmation.....</b>	<b>3</b>

**Requested Relief**

Petitioner, COURTNEY WILLIAMS, an infant under the age of 18 years, by her mother and natural guardian, PHYLLIS A. WILLIAMS, moves for an order, pursuant to General Municipal Law (GML)50-e, permitting service of a late Notice of Claim upon defendants, COUNTY OF NASSAU and NASSAU COUNTY POLICE DEPARTMENT (hereinafter referred to as "THE COUNTY"). The COUNTY opposes the motion, which is determined as follows:

## Background

This matter arises from an alleged accident that occurred on June 24, 2007, at approximately 1:00 A.M., when COURTNEY WILLIAMS was a passenger in a car owned by Regina Pardo-Davies, when it was struck by an unmarked COUNTY police vehicle driven by Officer Christopher T. McKeon at the intersection of Rosedale Road and Hungry Harbor Road, Valley Stream, New York. Counsel for petitioner states that, at the time of the accident, COURTNEY, age 16, who resides in Conyers, Georgia, was visiting New York with the daughter of Carolyn Pardo-Payne, another passenger in the vehicle, who was severely injured in the accident. It is alleged that the police car was traveling at a high rate of speed without lights or sirens and with reckless disregard for the safety of others.

The mother of COURTNEY states that as a result of the accident, COURTNEY was also injured, but that she did not know the seriousness of the injuries at that time. She claims that COURTNEY is still under the care of a physician for those injuries, although no specification of the injuries is made and no affidavit/affirmation from the treating doctor is provided. The mother claims, in essence, that she is not a resident of New York and was unaware of the time limits to file a claim against the COUNTY on behalf of her infant daughter. She requests that she be permitted to file a late Notice of Claim. Her attorney argues that the motion should be granted because 1) the COUNTY received actual notice of the essential facts constituting the claim within 90 days after the claim arose because it involved a COUNTY vehicle, and 2) because a Notice of Claim was filed on July 12, 2007, eighteen (18) days after the accident, on behalf of Carolyn Pardo-Payne, the other passenger in the car, for the injuries she sustained in the accident. Counsel asserts that the COUNTY has not been prejudiced in any way and a 50-h hearing has been held in the

Carolyn Pardo-Payne matter. Counsel points out that an action, entitled *Carolyn Pardo-Payne v. County of Nassau, Nassau County Police Department, Christopher T. McKeon and Regina Pardo Payne*, has been commenced in Nassau County under Index No. 018753/07, and that the COUNTY had timely notice of the accident from several sources. Counsel states that his firm was not retained until the 90 day period to file the Notice of Claim had expired, and that petitioner should not be penalized because the nature of her infirmity caused some delay in retaining counsel.

In opposition to the motion, the COUNTY states that the petitioner has provided no valid excuse to permit the filing of a late Notice of Claim. While it acknowledges that COURTNEY is a minor, that she was a passenger in the car, and that it received a prior Notice of Claim and had a 50-h hearing in the Carolyn Pardo-Payne matter, counsel for the COUNTY points out that there is a complete lack of evidence to establish the merits of petitioner's case and there is still no indication of what injuries COURTNEY allegedly sustained. It is the COUNTY's position that "unawareness" of the law is not a reasonable excuse for the delay in filing the Notice of Claim and counsel urges that the motion be denied.

### The Law

General Municipal Law (GML) § 50-e requires that before a plaintiff may sue a municipality, a Notice of Claim must be filed within ninety (90) days after the claim arises. Service of the Notice of Claim is a condition precedent to the commencement of an action or special proceeding. GML § 50-e. The statutory pre-condition serves "to enable municipalities to pass upon the merits of a claim before the initiation of a law suit and

thereby forestall unnecessary law suits". *Alford v City of New York*, 115 AD2d 420, 496 NYS2d 224 (1<sup>st</sup> Dept. 1985) *affd.* 67 NY2d 1019, 503 NYS2d 324, 494 NE2d 455 (C.A. 1986). A petitioner's failure to file a Notice of Claim within 90 days of accrual of the cause of action, and the failure to seek leave to file a late Notice of Claim prior to the expiration of the Statute of Limitations period to commence an action against the municipality requires that the Complaint be dismissed. See, *Hardie v New York City Health and Hospital Corp.*, 278 AD2d 453, 719 NYS2d 256 (2<sup>nd</sup> Dept. 2000); *Hall v City of New York*, AD3d 254, 768 NYS2d 2 (1<sup>st</sup> Dept. 2003); *Hall v Niagra Frontier Transportation Authority*, 206 AD2d 853, 615 NYS2d 205 (4<sup>th</sup> Dept. 1994). The Court has no discretion to extend the time once the Statute of Limitations has expired. See, *Hall v City of New York*, *supra*.

"It is well settled that in determining whether to permit service of a late notice under General Municipal Law §50-e, a court should consider all relevant facts and circumstances, including whether an infant is involved, whether there is a reasonable excuse for the delay, whether the public corporation acquired actual knowledge of the facts constituting the claim within 90 days or a reasonable time thereafter, and whether the public corporations defense would be substantially prejudiced by the delay". *Matarrese v New York City Health and Hospital Corporation*, 215 AD2d 7, 633 NYS2d 837 (2<sup>nd</sup> Dept. 1995); *Acosta v City of New York*, 283 AD2d 489, 725 NYS2d 208 (2<sup>nd</sup> Dept. 2001); GML §50 (e)(5). While all of the above noted factors are relevant, a petitioner is not required to demonstrate that all four factors weigh in petitioners favor. Even where there is no reasonable excuse for petitioners delay, that does not compel denial of the application where respondent fails to prove that the delay was prejudicial to its defense particularly when it had actual

knowledge of the facts within ninety (90) days of the incident. *Sloan v County of Westchester*, 175 AD2d 838, 573 NYS2d 310 (2<sup>nd</sup> Dept ).

**Conclusion**

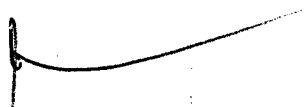
After a careful reading of the submissions and consideration of all the relevant facts and circumstances herein, it is the judgment of the Court that petitioner has not provided a reasonable excuse for the delay in filing the Notice of Claim. However, because an infant is involved, and because the COUNTY acquired actual knowledge of the facts constituting the accident approximately two (2) weeks after it occurred, the Court finds that the COUNTY will not be prejudiced in defending the action brought at this late date. The medical records of the treating doctors will be available to the COUNTY and the pleadings and bill of particulars to follow will enable the COUNTY to fashion its defense. Accordingly, as a matter of discretion, it is hereby

**ORDERED**, that the application to file a late Notice of Claim upon defendants, COUNTY OF NASSAU and NASSAU COUNTY POLICE DEPARTMENT, is granted and the Notice of Claim, annexed to the moving papers as Exhibit "E", is deemed timely filed, *nunc pro tunc*.

All further requested relief not specifically granted is denied.

This constitutes the decision and judgment of the Court.

Dated: April 3, 2008

  
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WILLIAM R. LaMARCA, J.S.C.

**ENTERED**

**APR 11 2008**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

TO: Levine & Grossman, Esqs.  
Attorneys for Petitioner  
114 Old Country Road, Suite 460  
Mineola, NY 11501

Lorna B. Goodman, Esq.  
Nassau County Attorney  
Attorney for Respondents  
One West Street  
Mineola, NY 11501

williams-nassau&policedepartment.#1/genmunicipal