

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

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**CA 14-01938**

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

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AMY SHAUL, AS PARENT AND NATURAL GUARDIAN  
OF ADDISON HERNQUIST, AN INFANT,  
CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

HAMBURG CENTRAL SCHOOL DISTRICT,  
RESPONDENT-APPELLANT.

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HURWITZ & FINE, P.C., BUFFALO (KINSEY A. O'BRIEN OF COUNSEL), FOR  
RESPONDENT-APPELLANT.

VIOLA, CUMMINGS & LINDSAY, LLP, NIAGARA FALLS (MATTHEW T. MOSHER OF  
COUNSEL), FOR CLAIMANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Shirley Troutman, J.), entered July 14, 2014. The order granted the application of claimant 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: Contrary to respondent's contention, Supreme Court did not abuse its discretion in granting claimant's application for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e (5). Although claimant failed to demonstrate a reasonable excuse for failing to serve a timely notice of claim (*see Matter of Hampson v Connetquot Cent. Sch. Dist.*, 114 AD3d 790, 791; *Brown v City of Buffalo*, 100 AD3d 1439, 1440), that failure " 'is not fatal where . . . actual notice was had and there is no compelling showing of prejudice to [respondent]' " (*Casale v Liverpool Cent. Sch. Dist.*, 99 AD3d 1246, 1246-1247; *see Matter of Maciejewski v North Collins Cent. Sch. Dist.*, 124 AD3d 1347, 1348). Here, claimant "made a persuasive showing that [respondent] acquired [timely] 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]; *see* § 50-e [5]). In addition, contrary to respondent's contention, we cannot conclude at this stage of the action that the claim is "patently meritless" (*Matter of Catherine G. v County of Essex*, 3 NY3d 175, 179; *see generally Terrigino v Village of*

*Brockport*, 88 AD3d 1288, 1288-1289).

Entered: May 1, 2015

Frances E. Cafarell  
Clerk of the Court