

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Rennie v. The Valley Hospital No. A-1203-23

I love movies about a fun, fictional party. Whether it's *Can't Hardly Wait* or *Superbad*, a party is a great premise for three-act fictional storytelling: there is the prep and the build-up, the party and ensuing hijinks, then all the aftermath and winding down. The main characters learn about their hometowns, their classmates, but most importantly themselves—then cue the end credits. I guess now I should clandestinely segue to what this article is about: fictitious parties. They are quite different from fictional parties, but very, very real within the world of litigation. And that is especially true for this appeal.

This case, *Rennie v. The Valley Hospital*, begins with a fall. Douglas Rennie, an 88-year-old man, fell while under the supervision of a hospital technician at The Valley Hospital. After undergoing a diagnostic scan, Rennie was briefly left unattended. Rennie apparently tried to sit on an unlocked wheelchair, the wheelchair did what unlocked wheelchairs do (they move), and he broke his hip in the fall. Rennie died a year later from unrelated causes.

Following his death, his widow, Emily Rennie, filed a civil suit against the hospital, asserting claims of general negligence, medical malpractice, premises liability, and loss of consortium. The complaint also included a fictitious-party designation for the unnamed technician, later identified as David Martkovsky.

Three years after the incident — and three months after Martkovsky's identity was confirmed through discovery — the estate amended the complaint to name him directly. The hospital moved for summary judgment, arguing the two-year statute of limitations for personal injury had expired. The trial court granted the motion, concluding that the plaintiff knew or should have known Martkovsky's identity earlier and failed to act with the required diligence under New Jersey's fictitious-party pleading rule.

The appellate court upheld the dismissal of Martkovsky from the case. It found that the plaintiff had not met the standard of due diligence, given that evidence—including interrogatory responses and deposition testimony—demonstrated early awareness of the technician’s role. According to the panel, and based upon the undisputed record, the plaintiff had been aware of Martkovsky’s identity “when she brought the suit.”

But that’s not all, folks. The appellate panel continued its evaluation of other decisions reached by the trial court.

Separately, the trial court had dismissed the remainder of the estate’s claims for failure to produce expert testimony by a court-ordered deadline. The plaintiffs had not responded to the summary-judgment motion, citing a scheduling error. The trial judge dismissed the entire complaint with prejudice, including the claims of general negligence and premises liability.

On appeal, the Appellate Division reversed this part of the decision. It concluded that the trial court had misapplied its discretion by dismissing all claims, especially those that may not have required expert testimony to proceed. The court emphasized the lack of factual findings or legal explanation for treating all claims as dependent on expert reports, which violated Rule 1:7-4’s requirement for reasoned judicial decisions.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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