

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

577

CA 08-01825

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, GREEN, AND PINE, JJ.

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DAVID C. DUFF, TAMARA A. DUFF AND PATRICIA A.  
COX, PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

ROBIN E. FOSTER, ET AL., DEFENDANTS,  
CHRIS M. KRUKOWSKI AND LAURA J. FULLER,  
DEFENDANTS-RESPONDENTS.

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MICHAEL A. CASTLE, HERKIMER, FOR PLAINTIFFS-APPELLANTS.

SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA KLUCSIK OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Herkimer County (Michael E. Daley, J.), entered May 29, 2008 in a personal injury action. The order granted the motion of defendants Chris M. Krukowski and Laura J. Fuller for summary judgment dismissing the amended complaint and cross claims against them.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking damages for injuries they sustained in a motor vehicle accident. Tamara A. Duff (plaintiff) was operating a vehicle in which the remaining plaintiffs were passengers, and a vehicle owned by defendant Laura J. Fuller and operated by defendant Chris M. Krukowski was traveling behind the vehicle operated by plaintiff. Krukowski's vehicle, in turn, was followed by a vehicle operated by defendant Stephanie L. Foster. As plaintiff signaled a left-hand turn and slowed down in order to complete that turn, Krukowski passed the vehicle operated by plaintiff on the right, driving partially onto the right shoulder of the road in order to do so. At that time, the vehicle operated by Foster rear-ended the vehicle operated by plaintiff as she was attempting to complete the left-hand turn. Supreme Court properly granted the motion of Krukowski and Fuller for summary judgment dismissing the amended complaint and all cross claims against them. Those defendants met their initial burden by establishing that Krukowski was able to maneuver his vehicle past the vehicle operated by plaintiff without striking that vehicle and that the injuries sustained by plaintiffs resulted from the rear-end collision with the vehicle operated by Foster. " 'Under the circumstances, any alleged negligence on the part of [Krukowski and Fuller] was not a proximate cause of

plaintiff[s'] injuries' " (*Princess v Pohl*, 38 AD3d 1323, 1323, lv  
denied 9 NY3d 802).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court