

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

637

CA 08-02298

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND PINE, JJ.

AMY J. HALLQUIST, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CHAUTAUQUA COUNTY, EDWIN J. MINER, INDIVIDUALLY AND AS COMMISSIONER OF CHAUTAUQUA COUNTY DEPARTMENT OF SOCIAL SERVICES, CHAUTAUQUA COUNTY DEPARTMENT OF SOCIAL SERVICES, CAROL DANKERT, INDIVIDUALLY AND AS AN EMPLOYEE OR AGENT OF CHAUTAUQUA COUNTY DEPARTMENT OF SOCIAL SERVICES, DR. FREDERICK VERDONIK, AS AN EMPLOYEE AND/OR AGENT OF CHAUTAUQUA COUNTY DEPARTMENT OF SOCIAL SERVICES, DR. ISRAR ABBASI, INDIVIDUALLY, OR IN THE ALTERNATIVE, AS A "JOHN DOE" AND/OR AGENT OF CHAUTAUQUA COUNTY DEPARTMENT OF SOCIAL SERVICES, AND JOHN DOE AND/OR JANE DOE, INTENDED TO BE SOCIAL SERVICES DEPARTMENT EMPLOYEES OR AGENTS WHO SLANDERED PLAINTIFF, DEFENDANTS-RESPONDENTS.

GOODELL & GOODELL, JAMESTOWN (R. THOMAS RANKIN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

GOLDBERG SEGALLA, LLP, BUFFALO (JULIE PASQUARIELLO APTER OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order and judgment (one paper) of the Supreme Court, Chautauqua County (John T. Ward, A.J.), entered April 28, 2008. The order and judgment, among other things, granted defendants' cross motion for summary judgment dismissing the amended complaint.

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

Memorandum: Plaintiff commenced this action to recover damages for, inter alia, defamation and prima facie tort. We conclude that Supreme Court properly denied plaintiff's motion for leave to serve a second amended complaint and granted defendants' cross motion for summary judgment dismissing the amended complaint. We note at the outset that we need not consider plaintiff's contention that an order of the United States District Court concerning this matter is binding on Supreme Court, inasmuch as Supreme Court did not in fact rely upon that order; rather, it independently determined the merits of the issues raised herein. We further note that defendants contend as an

alternative ground for affirmance that Supreme Court was required to dismiss this matter based on the prior federal determination (see generally *Parochial Bus Sys. v Board of Educ. of City of N.Y.*, 60 NY2d 539, 545-546). In light of our determination that the court properly granted defendants' cross motion on the merits, we see no reason to address that contention. Indeed, we affirm the order and judgment for reasons stated in the decision at Supreme Court but write only to correct the court's mischaracterization of a prior order issued by this Court in this matter. The court erroneously stated that we previously affirmed an order granting plaintiff custody of the child. In fact, we affirmed an order appointing plaintiff as the guardian of the child (*Matter of Amy H. v Chautauqua County Dept. of Social Servs.*, 13 AD3d 1048), but we reversed a separate order granting plaintiff custody of the child, and we remitted the matter to Supreme Court for a hearing to determine the child's best interests (*Matter of Amy H. v Chautauqua County Dept. of Social Servs.*, 13 AD3d 1050).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court