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CA 09-01055
PRESENT: SCUDDER, P.J., CENTRA, FAHEY, GREEN, AND GORSKI, JJ.

ISABELLA MENDOLA, INDIVIDUALLY AND AS
ADMINISTRATRIX OF ESTATE OF ARLENE E.
RUSSELL, DECEASED, FRANCIS INDELICATO AND
BARBARA IPPOLITO, PLAINTIFFS-RESPONDENTS,

V   MEMORANDUM AND ORDER

ERIE COUNTY MEDICAL CENTER CORPORATION, ET AL.,
DEFENDANTS,
AND DAVID P. HUGHES, M.D., DEFENDANT-APPELLANT.

RICOTTA & VISCO, BUFFALO (BETSY FINNERTY OF COUNSEL), FOR
DEFENDANT-APPELLANT.

VINAL & VINAL, BUFFALO (JEANNE M. VINAL OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Joseph D. Mintz, J.), entered January 27, 2009 in a medical malpractice action. The order denied the motion of defendant David P. Hughes, M.D. for summary judgment.

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

Memorandum: Plaintiffs commenced this medical malpractice action seeking damages for injuries sustained by Arlene E. Russell (decedent) when she fell while exiting her hospital room. Supreme Court properly denied the motion of David P. Hughes, M.D. (defendant) seeking summary judgment dismissing the complaint against him. We note at the outset that the action has been discontinued with respect to another defendant who moved along with defendant for summary judgment. Defendant met his initial burden on the motion by establishing that he was not negligent in treating decedent (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324-325). In opposition to the motion, however, plaintiffs raised an issue of fact by submitting evidence that defendant failed to determine whether decedent required protection against falling, inasmuch as she sought treatment for dehydration and had been prescribed medication with potential side effects, including dizziness and disorientation. Plaintiffs also submitted the affirmation of a physician and the affidavit of a registered nurse, each of whom stated that decedent was not properly

monitored.