

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

1298

CA 13-00767

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ.

DARRYL GAITER AND HELEN GAITER,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO BOARD OF EDUCATION AND
MARTIN LUTHER KING SCHOOL #39,
DEFENDANTS-APPELLANTS.

TIMOTHY A. BALL, CORPORATION COUNSEL, BUFFALO (DAVID M. LEE OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

LAW OFFICE OF ERIC B. GROSSMAN, WILLIAMSVILLE (ERIC B. GROSSMAN OF
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Drury, J.), entered February 4, 2013. The order awarded plaintiffs money damages after a nonjury trial.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: On appeal from an order awarding damages to plaintiffs in this personal injury action, defendants contend that the award of damages deviates materially from what would be reasonable compensation (see CPLR 5501 [c]). We must dismiss the appeal because defendants failed to include the "partial judgments," i.e., relevant and necessary documents of the record, in the record on appeal (see *Copp v Ramirez*, 62 AD3d 23, 28, lv denied 12 NY3d 711; *Desmarat v Basile*, 288 AD2d 336, 337; *Reiss v Reiss*, 280 AD2d 315, 315). In any event, defendants' contention is not preserved for our review (see *Homan v Herzig* [appeal No. 2], 55 AD3d 1413, 1413-1414; see also *Barnes v Dellapenta*, 111 AD3d 1287, 1288).

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court