

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

588

CA 17-01120

PRESENT: SMITH, J.P., NEMOYER, CURRAN, AND WINSLOW, JJ.

LIZZIE CYRUS AND ABRAHAM CYRUS,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

WAL-MART STORES EAST, LP, DEFENDANT-RESPONDENT.

POWERS & SANTOLA, LLP, ALBANY (MICHAEL J. HUTTER OF COUNSEL), FOR
PLAINTIFFS-APPELLANTS.

BROWN HUTCHINSON LLP, ROCHESTER (T. ANDREW BROWN OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (William K. Taylor, J.), entered February 24, 2017. The judgment awarded defendant costs and disbursements upon a jury verdict finding no liability.

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

Memorandum: Plaintiffs commenced this action seeking damages for injuries that were sustained by plaintiff Lizzie Cyrus when she slipped and fell in one of defendant's stores. On appeal from a judgment entered upon a jury verdict in favor of defendant, plaintiffs correctly concede that they failed to preserve for our review their contention that the verdict is against the weight of the evidence inasmuch as "there is no indication in the record that [they] made a posttrial motion to set aside the verdict pursuant to CPLR 4404 (a)" (*Likos v Niagara Frontier Tr. Metro Sys., Inc.*, 149 AD3d 1474, 1476 [4th Dept 2017]). We decline plaintiffs' request to exercise our power to address that contention in the interest of justice (see generally *Merrill v Albany Med. Ctr. Hosp.*, 71 NY2d 990, 991 [1988]).

Entered: April 27, 2018

Mark W. Bennett
Clerk of the Court