

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

1045

CA 19-00120

PRESENT: CENTRA, J.P., CARNI, CURRAN, TROUTMAN, AND WINSLOW, JJ.

NANCY J. BRADY AND PATRICK J. BRADY,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

TIMOTHY J. CONTANGELO, DEFENDANT-RESPONDENT.

LAW OFFICE OF FRANCIS LETRO, BUFFALO (CAREY C. BEYER OF COUNSEL), FOR
PLAINTIFFS-APPELLANTS.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (DANIEL J. CERCONE OF
COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an amended order of the Supreme Court, Niagara County (Ralph A. Boniello, III, J.), entered July 17, 2018. The amended order denied plaintiffs' motion to set aside the jury verdict and for a new trial.

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

Memorandum: Plaintiffs appeal from an amended order that denied their posttrial motion pursuant to CPLR 4404 (a) seeking to set aside the jury verdict and grant a new trial. Plaintiffs contend that Supreme Court's supplemental jury charge on negligence was erroneous. Initially, plaintiffs preserved their contention for our review only in part, because only some of the specific grounds now raised on appeal were raised before the jury began deliberations (see CPLR 4110-b; *McFadden v Oneida, Ltd.*, 93 AD3d 1309, 1310 [4th Dept 2012]). In any event, " 'the charge as a whole adequately conveyed the proper legal principles' " (*Garris v K-Mart, Inc.*, 37 AD3d 1065, 1066 [4th Dept 2007]; see generally *Brady v Contangelo*, 148 AD3d 1544, 1545 [4th Dept 2017]).

Entered: November 15, 2019

Mark W. Bennett
Clerk of the Court