

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

**1010**

**CA 19-01787**

PRESENT: CARNI, J.P., LINDLEY, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

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JULIE WISNIEWSKI, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GERN JAEGER, DEFENDANT,  
JOSEPH MARRA AND STEVENS DRIVING SCHOOL, LLC,  
DEFENDANTS-RESPONDENTS.

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CAMPBELL & ASSOCIATES, EDEN (JASON M. TELAAK OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

GOLDBERG SEGALLA LLP, BUFFALO (MEGHAN M. BROWN OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Niagara County (Frank Caruso, J.), entered September 25, 2019. The order granted the motion of defendants Joseph Marra and Stevens Driving School, LLC for summary judgment dismissing the complaint and all cross claims against them.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries she allegedly sustained when the vehicle in which she was a passenger, which was operated by defendant Gern Jaeger, rear-ended a vehicle operated by defendant Joseph Marra and owned by defendant Stevens Driving School, LLC (collectively, defendants). Contrary to plaintiff's contention, we conclude that Supreme Court properly granted defendants' motion for summary judgment dismissing the complaint and all cross claims against them. Defendants established their entitlement to judgment as a matter of law by submitting evidence that Jaeger's vehicle rear-ended defendants' vehicle and that there was no explanation for the accident other than Jaeger's negligence (see *Barton v Youmans*, 13 AD3d 1151, 1152 [4th Dept 2004]; see generally *Ruzycki v Baker*, 301 AD2d 48, 50 [4th Dept 2002]). The burden thus shifted to plaintiff to raise an issue of fact, and she failed to do so.

Even if we assume, arguendo, that defendants' vehicle came to a " 'sudden and abrupt stop' " (*Johnson v Yarussi Constr., Inc.*, 74 AD3d 1772, 1773 [4th Dept 2010]), which in some circumstances is sufficient to raise an issue of fact with respect to the negligence of the driver of the lead vehicle in a rear-end collision, there is no dispute in this case that Marra stopped defendants' vehicle in the far right lane

in order to yield to an emergency vehicle (see Vehicle and Traffic Law § 1144 [a]; *Barton*, 13 AD3d at 1152; *DiPaola v Scherpich*, 239 AD2d 459, 460 [2d Dept 1997]; *Gladstone v Hachuel*, 225 AD2d 730, 730 [2d Dept 1996], *lv dismissed* 89 NY2d 982 [1997]). We thus conclude that plaintiff failed to raise an issue of fact whether Marra negligently operated defendants' vehicle.

Entered: December 23, 2020

Mark W. Bennett  
Clerk of the Court