

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

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CA 09-01944

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND GORSKI, JJ.

ANGELA N., AS PARENT AND NATURAL GUARDIAN
OF EMMANUEL N. AND SHAKEYA N., INFANTS
UNDER THE AGE OF 18, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SONJA SUHR, DEFENDANT,
THOMAS GERVASI AND ELAINE GERVASI,
DEFENDANTS-APPELLANTS.

BOUVIER PARTNERSHIP, LLP, BUFFALO (NORMAN E.S. GREENE OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

LIPSITZ & PONTERIO, LLC, BUFFALO (JOHN NED LIPSITZ OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Matthew A. Rosenbaum, J.), entered March 16, 2009. The order, insofar as appealed from, denied that part of the motion of defendants Thomas Gervasi and Elaine Gervasi seeking to compel plaintiff to provide authorizations for disclosure of certain records of Child Protective Services.

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

Memorandum: Plaintiff commenced this action seeking damages resulting from, inter alia, lead poisoning sustained by two of her children while residing at an apartment owned by Thomas Gervasi and Elaine Gervasi (defendants). Defendants appeal from that part of an order denying that part of their motion seeking to compel plaintiff to provide authorizations for certain records of Child Protective Services. Those records concerned an alleged incident of sexual abuse involving one of the children who allegedly sustained neurological and psychological injuries as a result of the lead poisoning. Contrary to the respective contentions of plaintiff and defendants, Social Services Law § 372 is inapplicable in this case inasmuch as the child in question was not subject to foster care during the relevant time period (see § 372; *Lamot v City of New York*, 297 AD2d 527). Rather, disclosure of reports of child abuse and maltreatment and the resulting investigation of such abuse is governed by Social Services Law § 422 (see § 422 [4] [A]; see also *Catherine C. v Albany County Dept. of Social Servs.*, 38 AD3d 959, 960). Here, Supreme Court properly refused to compel plaintiff to provide the authorizations

permitting disclosure of the requested records to defendants because defendants are not individuals to whom disclosure is permitted pursuant to section 422 (4) (A) (see *Catherine C.*, 38 AD3d at 960; *Matter of Sarah FF.*, 18 AD3d 1072, 1074).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court