

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

1140

CA 10-00408

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND PINE, JJ.

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CAROL A. TONZI, PLAINTIFF-RESPONDENT,

V

ORDER

RICHARD H. NICHOLS, INDIVIDUALLY AND DOING  
BUSINESS AS NICHOLS FINANCIAL SERVICES,  
DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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UNDERBERG & KESSLER LLP, ROCHESTER (COLIN D. RAMSEY OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

FOLEY AND FOLEY, PALMYRA (JAMES F. FOLEY OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

WILLIAM A. JACOBSON, ITHACA, AMICUS CURIAE IN SUPPORT OF  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Wayne County (Francis A. Affronti, J.), entered October 20, 2009. The order, among other things, granted plaintiff's motion to compel.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (*see Ciesinski v Town of Aurora*, 202 AD2d 984).

Entered: October 1, 2010

Patricia L. Morgan  
Clerk of the Court