

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

720

CA 08-02114

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ.

---

ROGER A. COSMO AND PEARL COSMO,  
PLAINTIFFS-APPELLANTS,

V

ORDER

TOWN OF EVANS AND DENNIS M. FELDMAN,  
DEFENDANTS-RESPONDENTS.

---

DAVID G. JAY, BUFFALO (KEVIN J. BAUER OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS.

LIPPMAN O'CONNOR, BUFFALO (CHRISTOPHER M. DUGGAN OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

---

Appeal from an order of the Supreme Court, Erie County (Gerald J. Whalen, J.), entered May 16, 2008 in a personal injury action. The order granted defendants' motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs (*see Herod v Mele*, \_\_\_ AD3d \_\_\_ [May 1, 2009]).

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court