

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

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CA 08-02183

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND CENTRA, JJ.

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ALAN J. HERDZIK, INDIVIDUALLY AND AS PARENT  
AND NATURAL GUARDIAN OF SCOTT HERDZIK,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JAMES LOMMER, SR. AND MARIA LOMMER,  
DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 2.)

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CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (ARTHUR A. HERDZIK OF  
COUNSEL), FOR PLAINTIFF-APPELLANT.

DIXON & HAMILTON, LLP, GETZVILLE (DENNIS P. HAMILTON OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Erie County (Gerald J. Whalen, J.), entered August 28, 2008 in a personal injury action. The judgment dismissed the complaint against defendants upon a verdict of no cause of action.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the complaint against defendants is reinstated and a new trial is granted on the issue of proximate cause only.

Same Memorandum as in *Herdzik v Chojnacki* ([appeal No. 1] \_\_\_\_ AD3d \_\_\_\_ [Dec. 30, 2009]).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court