

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

1343

CA 11-00542

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, GREEN, AND MARTOCHE, JJ.

JOSEPH BYRD, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

FREDERICK E. RONEKER, JR., DEFENDANT-APPELLANT,
ET AL., DEFENDANTS.
(APPEAL NO. 2.)

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (NANCY A. LONG OF COUNSEL),
FOR DEFENDANT-APPELLANT.

BARRY J. DONOHUE, TONAWANDA, FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered March 8, 2011 in a personal injury action. The order settled the record on appeal from an order entered October 25, 2010.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting in part the motion of defendant Frederick E. Roneker, Jr. to settle the record on appeal and including plaintiff's memorandum of law therein for the sole purpose of determining whether certain of plaintiff's contentions are preserved for our review and as modified the order is affirmed without costs.

Same Memorandum as in *Byrd v Roneker* ([appeal No. 1] ___ AD3d ___ [Dec. 30, 2011]).

Entered: December 30, 2011

Frances E. Cafarell
Clerk of the Court