

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

981

CA 13-00276

PRESENT: SCUDDER, P.J., FAHEY, SCONIERS, AND VALENTINO, JJ.

ALBERT R. SUNICK, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN M. WADSWORTH, DEFENDANT-APPELLANT.

BURGIO, KITA & CURVIN, BUFFALO (JAMES P. BURGIO OF COUNSEL), FOR DEFENDANT-APPELLANT.

MAXWELL MURPHY, LLC, BUFFALO (ALAN D. VOOS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered December 17, 2012. The order denied the motion of defendant to change the place of the trial from Erie County to Chautauqua County.

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

Memorandum: The parties were involved in an automobile/motorcycle accident in Chautauqua County, and plaintiff thereafter commenced this negligence action in Erie County. Defendant sought a change of venue from Erie County to Chautauqua County "upon the grounds that the convenience of material witnesses and the ends of justice will be promoted by the change." Supreme Court denied the motion, and we affirm. The standard of review for a change of venue is not whether the court abused its discretion but, rather, it is "whether such discretion was exercised in a provident manner" (*O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 172). Under the circumstances presented here, we cannot conclude that the court improvidently exercised its discretion in denying the motion to change venue. In our view, defendant failed to meet his burden of establishing that nonparty witnesses would in fact be inconvenienced in absence of a change of venue (see *Huttenlocker v White*, 298 AD2d 960, 960; *O'Brien*, 207 AD2d at 173).

Entered: September 27, 2013

Frances E. Cafarell
Clerk of the Court