

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

299

**CA 13-01356**

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND WHALEN, JJ.

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JEROME BURGESS, II AND JUSTIN RELIFORD,  
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

MALCOM MEYER AND PETER MONACELLI,  
DEFENDANTS-RESPONDENTS.

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ATHARI & ASSOCIATES, LLC, UTICA (MO ATHARI OF COUNSEL), FOR  
PLAINTIFFS-APPELLANTS.

FELDMAN KIEFFER, LLP, BUFFALO (ALAN J. BEDENKO OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Monroe County (John J. Ark, J.), entered June 17, 2013. The order, among other things, denied that part of plaintiffs' motion seeking to strike parts of a report submitted by defendants' expert.

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

Memorandum: Plaintiffs appeal from an order that, inter alia, denied that part of their motion seeking to strike parts of a report submitted by defendants' expert. Before a note of issue was filed and before there was any expert disclosure between the parties (*cf. Heyward v Shanne*, 114 AD3d 1212, 1213-1214), plaintiffs moved in part pursuant to CPLR 3103 and 22 NYCRR 100.3 (B) (5) for an order striking all references in the report "to socio-economic, eugenic, or other eugenics as an alternative intervening event sufficient to supersede cause." We conclude that Supreme Court properly denied that part of plaintiffs' motion inasmuch as neither CPLR 3103 nor 22 NYCRR 100.3 (B) (5) authorizes the court to grant the relief sought by plaintiffs.

Entered: May 2, 2014

Frances E. Cafarell  
Clerk of the Court