

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

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**CA 14-01155**

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

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GINGER KURTZ, AS PARENT AND NATURAL GUARDIAN OF  
SAMANTHA MANDARINO, AN INFANT,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JOHN J. POIRIER, DEFENDANT-RESPONDENT.  
(APPEAL NO. 1.)

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ROBERT E. LAHM, PLLC, SYRACUSE (JOEL FEROLETO OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

BARTH SULLIVAN BEHR, SYRACUSE (LAURENCE D. BEHR OF COUNSEL), FOR  
DEFENDANT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Onondaga County  
(James P. Murphy, J.), entered February 19, 2014. The judgment  
dismissed the complaint upon a jury verdict of no cause of action.

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

Memorandum: Plaintiff commenced this negligence action seeking  
damages for injuries sustained by her daughter when she was struck by  
a motor vehicle operated by defendant while walking to school.  
Contrary to plaintiff's contention, Supreme Court properly denied her  
motion to set aside the jury verdict in favor of defendant as against  
the weight of the evidence. It is well established that "[a]  
verdict rendered in favor of a defendant may be successfully  
challenged as against the weight of the evidence only when the  
evidence so preponderated in favor of the plaintiff that it could not  
have been reached on any fair interpretation of the evidence' "  
(*Sauter v Calabretta*, 103 AD3d 1220, 1220). Here, there was a fair  
interpretation of the evidence supporting the jury's determination  
that defendant was not negligent. Plaintiff's daughter testified that  
she never saw defendant's motor vehicle before it struck her, and  
defendant testified he was traveling below the speed limit and that  
plaintiff's daughter entered the unmarked crosswalk only five or six  
feet in front of his vehicle. He testified that he "slammed on [his]  
brakes and [sounded his] horn," and he noted that "[i]t was so quick  
[he] couldn't do anything." Plaintiff's expert testified on cross-  
examination that he had "no idea how far away [plaintiff's daughter]  
was when she stepped in front of [defendant's] car" but, assuming that  
the distance was five feet, defendant would not have been able to stop

in time to avoid hitting plaintiff's daughter. Moreover, the reporting police officer testified that defendant was not a contributing cause of the accident and that the accident was caused by "pedestrian error." We therefore agree with defendant that the court properly denied plaintiff's motion.

Entered: May 8, 2015

Frances E. Cafarell  
Clerk of the Court