

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

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CA 09-01733

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

ERNESTINE WALKER AND RONNIE LEE WALKER,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

NEIL H. GOLD AND SUSAN MATTICK-GOLD,
DEFENDANTS-APPELLANTS.

WILLIAMSON, CLUNE & STEVENS, ITHACA (ALLAN C. VANDEMARK OF COUNSEL),
FOR DEFENDANTS-APPELLANTS.

HALL AND KARZ, CANANDAIGUA (PETER ROLPH OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Ontario County (Frederick G. Reed, A.J.), entered June 24, 2009 in a personal injury action. The order denied defendants' motion for summary judgment dismissing the amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the amended complaint is dismissed.

Memorandum: Defendants appeal from an order denying their motion for summary judgment dismissing the amended complaint. Plaintiffs commenced this action seeking damages for injuries sustained by Ernestine Walker (plaintiff) when she was attacked by three dogs owned by defendants' tenants. When plaintiff was attacked, she was on the sidewalk across the street from defendants' property. Inasmuch as "the incident did not occur on defendant[s'] property and therefore defendant[s] owed no duty of care to [plaintiff], . . . Supreme Court erred in denying defendant[s'] motion" (*Ruffin v Dykes*, 37 AD3d 1191; see *Seiger v Dercole*, 50 AD3d 1524; *Weipert v Oldfield*, 298 AD2d 974). We therefore reverse the order, grant the motion and dismiss the amended complaint.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court