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publication in the New York Reports.  
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3                    No.    199        SSM 22  
Damon Frutchey, an Infant,  
by Gregg Frutchey, His Parent  
and Guardian, et al.,  
                          Appellants,  
                          v.  
Jacqueline Felicita,  
                          Defendant,  
Michael V. DeLosa, et al.,  
                          Respondents.

Submitted by William S. Friedlander, for appellants.  
Submitted by Keith A. O'Hara, for respondents.

MEMORANDUM:

The order of the Appellate Division should be reversed,  
with costs, and the motion by defendants Michael V. DeLosa and  
Allen's Plumbing, Heating and Air Conditioning, Inc. for summary  
judgment denied. Plaintiffs raised triable issues of fact  
concerning whether (1) defendant DeLosa acted negligently in

traveling at an excessive speed and in following too closely to Nichols's vehicle, given the road and weather conditions and, (2) if so, such negligence was a proximate cause of the accident (see Herbert v Morgan Drive-A-Way, 202 AD2d 886, 888-889 [1994] [Yesawich Jr., J., dissenting], revd on dissenting mem 84 NY2d 835 [1994]; Esposito v Wright, 28 AD3d 1142, 1144 [4th Dept 2006]).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and the motion by defendants Michael V. DeLosa and Allen's Plumbing, Heating and Air Conditioning, Inc. for summary judgment denied, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 11, 2008