

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

**731**

**CA 15-01163**

PRESENT: WHALEN, P.J., CARNI, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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MAURA CLUNE, INDIVIDUALLY AND AS ADMINISTRATRIX  
OF THE ESTATE OF JAMES CAMPBELL, DECEASED,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL C. MOORE, M.D., DEFENDANT-RESPONDENT,  
MERCY HOSPITAL OF BUFFALO, ET AL., DEFENDANTS.  
(APPEAL NO. 2.)

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HOGAN WILLIG, PLLC, AMHERST (LINDA LALLI STARK OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (MICHAEL J. WILLETT OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (John M. Curran, J.), entered April 27, 2015. The judgment dismissed the complaint against defendant Michael C. Moore, M.D. upon defendants' motion pursuant to CPLR 4401.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the motion is denied, the complaint is reinstated and a new trial is granted.

Same memorandum as in *Clune v Moore* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Sept. 30, 2016]).

Entered: September 30, 2016

Frances E. Cafarell  
Clerk of the Court