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

1238
CA 17-00860
PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

JOHN KOLODZIEJSKI AND NANCY KOLODZIEJSKI,
PLAINTIFFS-RESPONDENTS,

                          V   MEMORANDUM AND ORDER

ROBERT JASKOLKA, DEFENDANT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (AALOK J. KARAMBELKAR OF
COUNSEL), FOR DEFENDANT-APPELLANT.

VINAL & VINAL, P.C., BUFFALO (JEANNE M. VINAL OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

　　　　Appeal from an order of the Supreme Court, Erie County (Diane Y.
Devlin, J.), entered January 31, 2017. The order, insofar as appealed
from, denied the motion of defendant to compel plaintiff John
Kolodziejski to undergo a second independent medical exam, or to
preclude proof at trial of his physical injuries.

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

　　　　Memorandum: Defendant moved, inter alia, to compel John
Kolodziejski (plaintiff) to undergo a second independent medical
examination on the ground that plaintiff allegedly refused to perform
certain tests during the initial independent medical examination.
Supreme Court denied the motion, and we now affirm.

　　　　"While there is no restriction in CPLR 3121 limiting the number
of examinations to which a party may be subjected, a party seeking a
further examination must demonstrate the necessity for it" (*Rinaldi v
Evenflo Co., Inc.*, 62 AD3d 856, 856 [2d Dept 2009]). Here, the
examining physician was able to reach a definitive conclusion as a
result of the initial independent medical examination, and she never
indicated that her analysis and/or conclusion were affected by
plaintiff's alleged refusal to perform certain tests. The court
therefore properly declined to compel plaintiff to undergo a second
independent medical examination (*see Tucker v Bay Shore Stor.
Warehouse, Inc.*, 69 AD3d 609, 610 [2d Dept 2010]; *cf. Young v Kalow*,
214 AD2d 559, 559 [2d Dept 1995]).

Entered: November 9, 2017   Mark W. Bennett
                                             Clerk of the Court