

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

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**CA 17-00805**

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

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TAMAICA TAYLOR, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MARCIA BIRDSONG, DEFENDANT,  
AND DAVID L. VANGALIO, DEFENDANTS-RESPONDENTS.

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FRANK S. FALZONE, BUFFALO, FOR PLAINTIFF-APPELLANT.

BARTH SULLIVAN BEHR, BUFFALO (DANIEL CARTWRIGHT OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Erie County (Deborah A. Chimes, J.), entered June 8, 2016. The order, inter alia, denied the motion of plaintiff pursuant to CPLR 4404 (a) to set aside a jury verdict and grant her a new trial on the issue whether she sustained a serious injury.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Plaintiff appeals from an order that denied her motion pursuant to CPLR 4404 (a) to set aside a jury verdict and grant her a new trial on the issue whether she sustained a serious injury within the meaning of Insurance Law § 5102 (d), and that granted defendant David L. Vangalio's motion for a directed verdict on the issue of Vangalio's negligence. We conclude that the appeal must be dismissed. Although the order on appeal was entered after entry of the final judgment, that order is subsumed in the judgment and there is no right to appeal directly therefrom (see *Thoreson v Penthouse Intl.*, 179 AD2d 29, 36 [1st Dept 1992], *affd* 80 NY2d 490 [1992], *rearg denied* 81 NY2d 835 [1993]; *Paul Revere Life Ins. Co. v Campagna*, 233 AD2d 954, 955 [4th Dept 1996]). We note that, even if we did not dismiss the appeal on that ground, we would be unable to address the merits of plaintiff's contentions on appeal inasmuch as the record does not include a full trial transcript (see *Bouchey v Claxton-Hepburn Med. Ctr.*, 117 AD3d 1216, 1216-1217 [3d Dept 2014]; *Kruseck v Ross*, 82 AD3d 939, 940 [2d Dept 2011]; *Mergl v Mergl*, 19 AD3d 1146, 1147 [4th Dept 2005]).

Entered: February 9, 2018

Mark W. Bennett  
Clerk of the Court