

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

**42**

**CA 13-00809**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ.

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ACEA MOSEY, AS ADMINISTRATOR OF THE ESTATE OF  
LAURA CUMMINGS, DECEASED, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TIMOTHY B. HOWARD, ERIE COUNTY SHERIFF,  
DEFENDANT-RESPONDENT.  
(APPEAL NO. 2.)

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CONNORS & VILARDO, LLP, BUFFALO (JOHN T. LOSS OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

MICHAEL A. SIRAGUSA, COUNTY ATTORNEY, BUFFALO (JEREMY C. TOTTH OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered July 10, 2012. The order granted the motion of defendant to dismiss the complaint and dismissed the complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying defendant's motion in part and reinstating the third cause of action and the fourth cause of action to the extent that it is based on the third cause of action and as modified the order is affirmed without costs.

Same Memorandum as in *Mosey v County of Erie* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [May 2, 2014]).

Entered: May 2, 2014

Frances E. Cafarell  
Clerk of the Court