

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

19

CA 16-00868

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ.

DOUGLAS J. DANNER AND DONNA L. DANNER,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

RAYMOND J. CAMPBELL, DEFENDANT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (AARON M. ADOFF OF COUNSEL),
FOR DEFENDANT-APPELLANT.

VINAL & VINAL, P.C., BUFFALO (GREGG S. MAXWELL OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Patrick H. NeMoyer, J.), entered November 9, 2015. The order granted the motion of plaintiffs to set aside a verdict and directed a new trial on liability.

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

Memorandum: Defendant appeals from an order granting plaintiffs' motion to set aside the jury verdict as against the weight of the evidence and ordering a new trial. We affirm. "A motion to set aside a jury verdict as against the weight of the evidence . . . should not be granted 'unless the preponderance of the evidence in favor of the moving party is so great that the verdict could not have been reached upon any fair interpretation of the evidence' " (*Ruddock v Happell*, 307 AD2d 719, 720, quoting *Dannick v County of Onondaga*, 191 AD2d 963, 964; see *Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *McMillian v Burden*, 136 AD3d 1342, 1343). "[T]he question whether a verdict is against the weight of the evidence involves what is in large part a discretionary balancing of many factors" (*Cohen v Hallmark Cards*, 45 NY2d 493, 499). We agree with Supreme Court that the jury's determination finding plaintiff Douglas J. Danner 75% at fault for the accident and defendant only 25% at fault is against the weight of the evidence (see *Bonds v Laidlaw Tr., Inc.*, 61 AD3d 1345, 1346).

Entered: February 3, 2017

Frances E. Cafarell
Clerk of the Court