

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

1026

CA 17-00114

PRESENT: CENTRA, J.P., CARNI, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

HENRY J. WATERMAN, JR., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER AND DAVID J. BAGLEY, II,
DEFENDANTS-APPELLANTS.

BRIAN F. CURRAN, CORPORATION COUNSEL, ROCHESTER (SPENCER L. ASH OF
COUNSEL), FOR DEFENDANTS-APPELLANTS.

CELLINO & BARNES, P.C., ROCHESTER (K. JOHN WRIGHT OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Elma A. Bellini, J.), entered July 27, 2016. The order denied the motion of defendants for summary judgment dismissing the complaint and granted the cross motion of plaintiff for summary judgment on the issue of proximate cause.

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

Memorandum: Supreme Court properly denied defendants' motion for summary judgment dismissing the complaint. Contrary to defendants' contention, they are not entitled to governmental immunity. "Governmental immunity does not apply when a public employee, acting in the course of his or her employment, commits an ordinary tort that anyone else might commit—for example, when the employee is negligent in driving a [vehicle]" (*Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 432 [Smith, J., concurring]). Contrary to defendants' further contention, the court did not abuse its discretion in refusing to consider unauthenticated and uncertified exhibits submitted in support of their motion (see *Dyer v 930 Flushing, LLC*, 118 AD3d 742, 742-743; see also *McBryant v Pisa Holding Corp.*, 110 AD3d 1034, 1035).

Entered: October 6, 2017

Mark W. Bennett
Clerk of the Court