

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

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CA 19-01164

PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, BANNISTER, AND DEJOSEPH, JJ.

PAULA L. GIBBS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

STATE FARM FIRE AND CASUALTY COMPANY,
DEFENDANT-RESPONDENT.

PAULA L. GIBBS, PLAINTIFF-APPELLANT PRO SE.

MURA & STORM, PLLC, BUFFALO (JERRY MARTI OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John F. O'Donnell, J.), entered November 28, 2018. The order, among other things, granted defendant's motion for sanctions as against plaintiff.

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

Memorandum: Plaintiff appeals from an order that, inter alia, granted the motion of defendant seeking the imposition of sanctions against plaintiff and denied plaintiff's request that sanctions be imposed against defendant and its counsel. Contrary to plaintiff's contention, we conclude that Supreme Court did not abuse its discretion in imposing a sanction against plaintiff for her frivolous conduct in disregarding its order settling the record for another appeal (see 22 NYCRR 130-1.1 [c] [1]; *Place v Chaffee-Sardinia Volunteer Fire Co.*, 143 AD3d 1271, 1272 [4th Dept 2016]; *Vacation Vil. Homeowners' Assn. v Mordkofsky*, 265 AD2d 746, 746-747 [3d Dept 1999], appeal dismissed 94 NY2d 898 [2000]). We further conclude that the court did not err in denying plaintiff's request for sanctions. Plaintiff "did not make a proper motion for such relief" (*Nicit v Nicit*, 181 AD2d 1046, 1047 [4th Dept 1992]; see CPLR 2214, 2215; 22 NYCRR 130.1-1 [d]) and, in any event, plaintiff's contention that the court abused its discretion in denying her request for the imposition of sanctions against defendant and its counsel, to the extent that it is properly before us in the context of this appeal, is without merit (see *Amherst Magnetic Imaging Assoc. v Community Blue, HMO of Blue Cross of W. N.Y.*, 286 AD2d 896, 898 [4th Dept 2001], lv denied 97 NY2d 612 [2002]; *Peck v Voss*, 265 AD2d 890, 891 [4th Dept 1999]).

Entered: August 20, 2020

Mark W. Bennett
Clerk of the Court