

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

**436**

**CA 19-00261**

PRESENT: CENTRA, J.P., NEMOYER, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

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THOMAS POLKA, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MOUNT ST. MARY'S HOSPITAL OF NIAGARA FALLS,  
MARC KLEMENTOWSKI, M.D., AND KYLE R. ANDREWS,  
AS ADMINISTRATOR OF THE ESTATE OF RENEE  
BUCKLEY-BLEILER, P.A., DECEASED,  
DEFENDANTS-RESPONDENTS.

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DEMPSEY & DEMPSEY, BUFFALO (CATHERINE B. DEMPSEY OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

STILLWELL MIDGLEY, BUFFALO (JOHN M. VISCO OF COUNSEL), FOR DEFENDANT-  
RESPONDENT MOUNT ST. MARY'S HOSPITAL OF NIAGARA FALLS.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (J. MARK GRUBER OF  
COUNSEL), FOR DEFENDANT-RESPONDENT MARC KLEMENTOWSKI, M.D.

THE TARANTINO LAW FIRM, LLP, BUFFALO (ANN M. CAMPBELL OF COUNSEL), FOR  
DEFENDANT-RESPONDENT KYLE R. ANDREWS, AS ADMINISTRATOR OF THE ESTATE  
OF RENEE BUCKLEY-BLEILER, P.A., DECEASED.

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Appeal from an order and judgment (one paper) of the Supreme Court, Niagara County (Daniel Furlong, J.), entered February 6, 2019. The order and judgment granted the motions of defendants for a directed verdict and dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously reversed on the law without costs, defendants' motions for a directed verdict are denied, the complaint is reinstated and a new trial is granted in accordance with the following memorandum: Plaintiff commenced this medical malpractice action against defendants, Mount St. Mary's Hospital of Niagara Falls (hospital), Marc Klementowski, M.D., and Kyle R. Andrews, as administrator of the estate of Renee Buckley-Bleiler, P.A., deceased, seeking damages for alleged negligence in the treatment of plaintiff's right ear. We agree with plaintiff that Supreme Court erred in granting defendants' motions for a directed verdict. Plaintiff presented expert testimony establishing that Buckley-Bleiler, who examined plaintiff in the hospital's emergency room on the night in question, should have recognized and diagnosed plaintiff with a middle ear infection based upon, inter alia, plaintiff's complaints at that time. Also according to plaintiff's experts, Buckley-Bleiler's negligence caused or

contributed to plaintiff's profound hearing loss. Furthermore, plaintiff established through the testimony of one expert that Klementowski, the supervising physician in the emergency room at the time, should have realized upon reviewing plaintiff's chart that plaintiff had a serious infection. Based on the expert testimony presented by plaintiff, it cannot be said that "it would . . . be utterly irrational for a jury to reach [a verdict in favor of plaintiff]" (*Cohen v Hallmark Cards*, 45 NY2d 493, 499 [1978]). We therefore reverse the order and judgment, deny defendants' motions for a directed verdict and grant a new trial before a different justice.

Entered: October 2, 2020

Mark W. Bennett  
Clerk of the Court