

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

973

CA 09-01405

PRESENT: SMITH, J.P., FAHEY, SCONIERS, PINE, AND GORSKI, JJ.

ROBERTO ANGELICOLA AND LYNN ANGELICOLA,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

PATRICK HEATING OF MOHAWK VALLEY, INC. AND
DAVID W. PATRICK, DEFENDANTS-RESPONDENTS.

PETRONE & PETRONE, P.C., SYRACUSE (J. WILLIAM SAVAGE OF COUNSEL), FOR
PLAINTIFFS-APPELLANTS.

COHEN & COHEN LLP, UTICA (RICHARD A. COHEN OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (Anthony F. Shaheen, J.), entered June 19, 2009. The order granted the cross motion of defendants for the preclusion of certain evidence.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Plaintiffs appeal from an order that granted defendants' cross motion in limine seeking to preclude the admission of certain evidence. The appeal must be dismissed on the ground that an evidentiary ruling, "even when made 'in advance of trial on motion papers constitutes, at best, an advisory opinion which is neither appealable as of right nor by permission' " (*Winograd v Price*, 21 AD3d 956). Contrary to the contention of plaintiffs, the order on appeal does not limit the scope of the issues to be tried and thus is not appealable on that ground (*cf. Innovative Transmission & Engine Co., LLC v Massaro*, 63 AD3d 1506, 1508; *Rondout Elec. v Dover Union Free School Dist.*, 304 AD2d 808, 810).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court