

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

1034

CA 10-00709

PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ.

STEPHANIE D'ANGELO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ANDREA S. LITTERER, DEFENDANT-RESPONDENT.

BROWN CHIARI LLP, LANCASTER (BRADLEY D. MARBLE OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

HAGELIN KENT LLC, BUFFALO (VICTOR WRIGHT OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered June 18, 2009. The order denied the motion of plaintiff seeking leave to amend the complaint and to compel disclosure.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when the vehicle she was driving was struck by a vehicle driven by defendant. Supreme Court properly denied that part of plaintiff's motion seeking leave to amend the complaint to add a claim for punitive damages. "[T]he fact that defendant pleaded guilty to driving while intoxicated 'is insufficient by itself to justify the imposition of punitive damages' " (*Schragel v Juszczyk*, 43 AD3d 1375, 1375), and plaintiff failed to allege additional facts demonstrating that "defendant acted so recklessly or wantonly as to warrant an award of punitive damages" (*Deon v Fortuna*, 283 AD2d 388, 389). The court also properly denied that part of plaintiff's motion seeking to compel defendant to produce her hospital toxicology report from the date of the accident inasmuch as defendant has not waived the physician-patient privilege with respect to that report (see *Dillenbeck v Hess*, 73 NY2d 278, 287-288).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court