

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

1326

CA 10-01189

PRESENT: MARTOCHE, J.P., SCONIERS, GREEN, AND PINE, JJ.

JOHN F. LARSEN, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

DEBORAH A. ROTOLO, DEFENDANT-APPELLANT,
ET AL., DEFENDANT.

ROSSI AND MURNANE, NEW YORK MILLS (VINCENT J. ROSSI, JR., OF COUNSEL),
FOR DEFENDANT-APPELLANT.

RALPH W. FUSCO, UTICA, FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Anthony F. Shaheen, J.), entered November 19, 2009 in a personal injury action. The order, insofar as appealed from, directed defendant Deborah A. Rotolo to pay the fees and expenses of counsel for plaintiff to accompany plaintiff to an independent medical exam.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs and the motion of defendant Deborah A. Rotolo is granted in part by vacating the first ordering paragraph.

Memorandum: Supreme Court erred in denying that part of the motion of Deborah A. Rotolo (defendant) seeking a determination that she is not obligated to pay the fees of plaintiff's attorney in the amount of \$450 representing his travel costs to accompany plaintiff to a medical examination to be conducted on behalf of defendant pursuant to CPLR 3121, and in further ordering defendant to pay an additional \$20 "for gas and tolls." " 'In New York the general rule is that each litigant is required to absorb the cost of his [or her] own attorney's fees . . . in the absence of a contractual or statutory liability' " (*Widewaters Prop. Dev. Co., Inc. v Katz*, 38 AD3d 1220, 1222, quoting *Umfrey v NeMoyer*, 184 AD2d 1047, 1048).

Entered: November 19, 2010

Patricia L. Morgan
Clerk of the Court