

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

519

CA 10-02378

PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND GREEN, JJ.

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JASON A. BRUBAKER, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MARIANNE M. HOUSEKNECHT, DEFENDANT-RESPONDENT.

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COLLINS & BROWN, LLC, BUFFALO (LUKE A. BROWN OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

BAXTER SMITH & SHAPIRO, P.C., WEST SENECA (WILLIAM BOLTREK, III, OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Niagara County  
(Richard C. Kloch, Sr., A.J.), entered June 21, 2010 in a personal  
injury action. The order, insofar as appealed from, denied the motion  
of plaintiff for partial summary judgment on the issue of comparative  
negligence.

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

Memorandum: Plaintiff commenced this action seeking damages for  
injuries he allegedly sustained when the vehicle he was driving was  
rear-ended by a vehicle driven by defendant. Plaintiff moved for  
partial summary judgment determining that defendant was negligent and  
that plaintiff was free from comparative negligence. Contrary to  
plaintiff's contention, Supreme Court properly granted the motion only  
with respect to the issue of defendant's negligence. "Viewing the  
evidence in the light most favorable to the nonmoving party, as we  
must . . . , we conclude that there are issues of fact that preclude  
summary judgment" with respect to the issue of plaintiff's comparative  
negligence, i.e., whether plaintiff's own conduct or the alleged  
failure of his brake lights to function contributed to the accident  
(*Russo v YMCA of Greater Buffalo*, 12 AD3d 1089, 1089, lv dismissed 5  
NY3d 746; see *Chilberg v Chilberg*, 13 AD3d 1089, 1090; see generally  
*Ramadan v Maritato*, 50 AD3d 1620).

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court