

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

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CA 11-02024

PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, AND MARTOCHE, JJ.

ADAM R. STEARNS AND KATHLEEN STEARNS,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

IRENE O'BRIEN, DEFENDANT-RESPONDENT.
(APPEAL NO. 2.)

CHARLES A. HALL, ROCHESTER, FOR PLAINTIFFS-APPELLANTS.

LAW OFFICE OF KEITH D. MILLER, LIVERPOOL (KEITH D. MILLER OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Ontario County (Craig J. Doran, A.J.), entered January 21, 2011 in a personal injury action. The judgment dismissed the complaint upon a verdict of no cause of action.

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

Memorandum: Plaintiffs contend on appeal that Supreme Court erred in denying their motion to set aside the verdict of no cause of action, finding that Adam R. Stearns (plaintiff) did not sustain a serious injury. Previously, we affirmed an order that denied those parts of defendant's motion for summary judgment dismissing the complaint with respect to the permanent consequential limitation and significant limitation of use categories of serious injury as defined by Insurance Law § 5102 (d) (*Stearns v O'Brien*, 77 AD3d 1383). We note that plaintiffs met their burden at trial by submitting the requisite objective proof that plaintiff was injured as a result of the accident. Nevertheless, we agree with defendant that the jury was entitled to conclude that the injury was nothing more than "a mild, minor, or slight limitation of use" (*King v Johnston*, 211 AD3d 907, 907; see *Gaddy v Eycler*, 79 NY2d 955, 957).

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court