

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

716

CA 12-00021

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND LINDLEY, JJ.

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RUTH S. HARRIS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

WILLIAM STOELZEL AND SHIRLEY STOELZEL,  
DEFENDANTS-RESPONDENTS.

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CAMARDO LAW FIRM, P.C., AUBURN (KEVIN M. COX OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

LAW OFFICE OF NORMAN J. CHIRCO, AUBURN (NORMAN J. CHIRCO OF COUNSEL),  
FOR DEFENDANTS-RESPONDENTS.

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Appeal from a judgment of the Supreme Court, Cayuga County  
(Thomas G. Leone, A.J.), entered March 30, 2011. The judgment  
dismissed the complaint upon a jury verdict.

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

Memorandum: Plaintiff commenced this action seeking, inter alia,  
a judgment declaring that she acquired an easement by prescription on  
three portions of defendants' property, for the benefit of her  
property. Following a trial, the jury returned a verdict in favor of  
defendants. Plaintiff failed to preserve for our review her  
contention that the verdict is against the weight of the evidence  
inasmuch as she failed to make a timely motion to set aside the  
verdict on that ground (*see Murdoch v Niagara Falls Bridge Commn.*, 81  
AD3d 1456, 1457, *lv denied* 17 NY3d 702; *Homan v Herzig* [appeal No. 2],  
55 AD3d 1413, 1413-1414). In any event, it cannot be said that "the  
evidence so preponderated in favor of the plaintiff that [the verdict]  
could not have been reached on any fair interpretation of the  
evidence" (*Martinez v Wascom*, 57 AD3d 1415, 1416 [internal quotation  
marks omitted]; *see Manouselis v Woodworth Realty, LLC*, 83 AD3d 801;  
*see generally Lolik v Big V Supermarkets*, 86 NY2d 744, 746).

Entered: June 8, 2012

Frances E. Cafarell  
Clerk of the Court