

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

**1167**

**CA 13-00342**

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND VALENTINO, JJ.

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ERICA DANIELS, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

FRANCES A. RUMSEY, DEFENDANT-APPELLANT,  
ET AL., DEFENDANT.  
(APPEAL NO. 1.)

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BOUVIER PARTNERSHIP, LLP, BUFFALO (NORMAN E.S. GREENE OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

THE HIGGINS KANE LAW GROUP, P.C., BUFFALO (TERRENCE P. HIGGINS OF  
COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Gerald J. Whalen, J.), entered May 15, 2012. The order, inter alia, denied that part of the motion of defendant Frances A. Rumsey to compel a physical examination of plaintiff by an orthopedic specialist.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Same Memorandum as in *Daniels v Rumsey* ([appeal No. 2] \_\_\_ AD3d \_\_\_ [Nov. 15, 2013]).

Entered: November 15, 2013

Frances E. Cafarell  
Clerk of the Court