

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

1071

CA 19-00960

PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

TREVOR L. WARMACK, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SCOTT M. BLUM, DEFENDANT-RESPONDENT,
AND KARISSA A. YANKOWSKI, DEFENDANT-APPELLANT.

LAW OFFICE OF JENNIFER S. ADAMS, YONKERS (JOSEPH GOERGEN OF COUNSEL),
FOR DEFENDANT-APPELLANT.

BRINDISI, MURAD & BRINDISI PEARLMAN, LLP, UTICA (ANTHONY A. MURAD OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Erin P. Gall, J.), entered February 14, 2019. The order denied the motion of defendant Karissa A. Yankowski for summary judgment.

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 sustained when his vehicle was rear-ended by a vehicle driven by Karissa A. Yankowski (defendant). Supreme Court denied defendant's motion for summary judgment dismissing the complaint and any cross claims against her. We affirm. Defendant failed to meet her initial burden on the motion because her own submissions in support thereof raise triable issues of fact regarding the extent to which her conduct contributed to the accident (*see e.g. Dunkle v Vakoulich*, 173 AD3d 1662, 1663 [4th Dept 2019]; *Luttrell v Vega*, 162 AD3d 1637, 1637-1638 [4th Dept 2018]; *Zbock v Gietz*, 145 AD3d 1521, 1522-1523 [4th Dept 2016]). Thus, the court properly denied defendant's motion regardless of the sufficiency of plaintiff's opposing papers (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Entered: November 8, 2019

Mark W. Bennett
Clerk of the Court