

**Stewart v Marte, 91 A.D.3d 754**

Supreme Court of New York, Appellate Division, Second Department

January 17, 2012, Decided

Counsel: Carman, Callahan & Ingham, LLP, Farmingdale, N.Y. (Michael F. Ingham and James M. Carman of counsel), for appellants.

Grey & Grey, LLP, Farmingdale, N.Y. (Sherman B. Kerner of counsel), for respondent.

Judges: William F. Mastro, A.P.J., Ruth C. Balkin, Thomas A. Dickerson, Cheryl E. Chambers, JJ. Mastro, A.P.J., Balkin, Dickerson and Chambers, JJ., concur.

**Opinion**

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Golia, J.), entered February 14, 2011, which, upon a jury verdict finding that the defendant Sandy Marte was negligent, but that his negligence was not a substantial factor in causing the accident, granted the plaintiff's motion pursuant to CPLR 4404 (a) to set aside the verdict as contrary to the weight of the evidence and for a new trial.

Ordered that the order is affirmed, with costs.

A jury verdict should not be set aside as contrary to the weight of the evidence unless the jury could not have reached the verdict by any fair interpretation of the evidence (see Lolik v Big V Supermarkets, 86 NY2d 744, 655 NE2d 163, 631 NYS2d 122 [1995]; Cohen v Hallmark Cards, 45 NY2d 493, 382 NE2d 1145, 410 NYS2d 282 [1978]; Nicastro v Park, 113 AD2d 129, 495 NYS2d 184 [1985]). "A jury's finding that a party was at fault but that such fault was not a proximate cause of the accident is inconsistent and against the weight of the evidence only when the issues are so inextricably interwoven as to make it logically impossible to find negligence without also finding proximate cause" (Garrett v Manaser, 8 AD3d 616, 617, 779 NYS2d 565 [2004]; see Schaefer v Guddemi, 182 AD2d 808, 809, 582 NYS2d 803 [1992]; Rubin v Pecoraro, 141 AD2d 525, 527, 529 NYS2d 142 [1988])

Under the circumstances presented here, the jury's determination that the defendant driver was negligent but that his negligent operation of his vehicle was not a substantial factor in causing the accident was contrary to the weight of the evidence. Accordingly, the Supreme Court properly granted the plaintiff's motion pursuant to CPLR 4404 (a) to set aside the verdict and for a new trial. Mastro, A.P.J., Balkin, Dickerson and Chambers, JJ., concur.