

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 9, 2006

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-02004

DECISION & ORDER

Shequela Medley, appellant, v County of
Westchester, respondent.

(Index No. 04-08108)

Martino & Weiss, Mount Vernon, N.Y. (Louis J. Martino of counsel), for appellant.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz
and Thomas G. Gardiner of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Nastasi, J.), entered February 3, 2006, as granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion for summary judgment dismissing the complaint is denied.

The plaintiff was injured when a small picket fence approximately three feet in height collapsed and fell on her at the Playland Amusement Park in Rye, New York, an amusement park owned by the County of Westchester. Although the County established, *prima facie*, that the fence in question had been properly maintained and was not defective, it failed to address the plaintiff's contention that one of the County's employees negligently caused the small fence to collapse by falling against it. As the County's submission left unresolved material issues of fact regarding the negligence of its employee, the Supreme Court should have denied the County's motion for summary judgment dismissing the complaint (*see Ayotte v Gervasio*, 81 NY2d 1062).

January 30, 2007

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The plaintiff's remaining contention is without merit.

MILLER, J.P., SPOLZINO, FISHER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court