

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

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Submitted - March 21, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-04608

DECISION & ORDER

Lakeya Thomason, appellant, v Tyshja Thomason,
et al., respondents.

(Index No. 3911/03)

Carl Maltese, Smithtown, N.Y. (C. Alex Maltese of counsel), for appellant.

Schondebare & Korcz, Ronkonkoma, N.Y. (Amy B. Korcz of counsel), for
respondents Tyshja Thomason and Leandra Thomason.

James P. Nunemaker, Jr., Uniondale, N.Y. (Linda Meisler of counsel), for respondent
Sherry Tauber.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Doyle, J.), entered April 13, 2006, which granted the motion of the defendants Tyshja Thomason and Leandra Thomason, and the separate motion of the defendant Sherry Tauber, for summary judgment dismissing the complaint insofar as asserted against them on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants met their respective prima facie burdens on their motions for summary judgment by demonstrating that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d

May 1, 2007

THOMASON v THOMASON

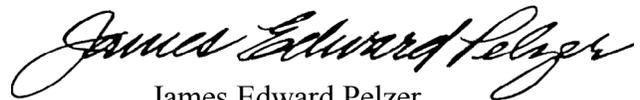
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955; *Yakubov v CG Trans Corp.*, 30 AD3d 509; *Bell v Rameau*, 29 AD3d 839; *Luckey v Bauch*, 17 AD3d 411; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). In opposition, the plaintiff failed to raise a triable issue of fact (see *Li v Woo Sung Yun*, 27 AD3d 624; *Nemchyonok v Peng Liu Ying*, 2 AD3d 421; *Ifrach v Neiman*, 306 AD2d 380). For example, the affirmed medical report of the plaintiff's examining physician, which was based on an examination of the plaintiff conducted about 2 ½ years after the accident, specified the degrees in the plaintiff's cervical spine range of motion, but did so without comparing those findings to the normal range of motion (see *Faulkner v Steinman*, 28 AD3d 604; *Baudillo v Pam Car & Truck Rental, Inc.*, 23 AD3d 420; *Manceri v Bowe*, 19 AD3d 462, 463).

Finally, the plaintiff failed to proffer competent medical evidence that she was unable to perform substantially all of her daily activities for not less than 90 of the first 180 days subsequent to the subject accident (see *Faulkner v Steinman*, *supra*; *Davis v New York City Tr. Auth.*, 294 AD2d 531; *Sainte-Aime v Ho*, 274 AD2d 569).

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court