

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

D15892  
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Submitted - June 15, 2007

ROBERT W. SCHMIDT, J.P.  
FRED T. SANTUCCI  
GABRIEL M. KRAUSMAN  
WILLIAM E. McCARTHY, JJ.

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2006-08233

DECISION & ORDER

Alexandra Wojtusiak, respondent, v Santo  
Elardo, appellant.

(Index No. 26165/04)

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Baxter, Smith, Tassan & Shapiro, P.C., Jericho, N.Y. (Robert C. Baxter, Roseann Madonna, and Sim R. Shapiro of counsel), for appellant.

Emery Celli Brinckerhoff & Abady, LLP, New York, N.Y. (Richard D. Emery and O. Andrew F. Wilson of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Suffolk County (Pitts, J.), dated July 25, 2006, which denied his motion pursuant to CPLR 3124 to compel the plaintiff to answer certain deposition questions and provide authorizations to obtain records regarding her prior treatment for drug addiction, anorexia, and depression.

ORDERED that on the court's own motion, the notice of appeal from so much of the order as denied that branch of the defendant's motion which was to compel the plaintiff to answer certain deposition questions is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[b][1]; *Mayer v 486 Assoc. Inc.*, 35 AD3d 406); and it is further,

ORDERED that the order is affirmed, with costs.

The Supreme Court properly determined that the plaintiff's drug-treatment history was not subject to disclosure because her mental health was not at issue, and was not relevant or material

August 14, 2007

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for the purposes of discovery because it pertained to illnesses and treatments unrelated to the subject accident (*see Calendar v Mnasin*, 23 AD3d 509; *Cottrell v Weinstein*, 270 AD2d 449, 449-450).

The defendant's remaining contentions are without merit.

SCHMIDT, J.P., SANTUCCI, KRAUSMAN and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court