

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

D15936
O/gts

_____AD3d_____

Submitted - June 4, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2006-07950

DECISION & ORDER

Keyante Reid, etc., et al., appellants, v
Soraya M. Miguel, et al., respondents.

(Index No. 9125/04)

Harold Solomon, Rockville Centre, N.Y. (Bernard G. Chambers of counsel), for appellants.

Richard T. Lau & Associates, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal from a judgment of the Supreme Court, Queens County (Satterfield, J.), entered August 2, 2006, which, upon an order of the same court dated June 19, 2006, granting the defendants' motion for summary judgment, dismissed the complaint.

ORDERED that on the court's own motion, the notice of appeal from the order is deemed a notice of appeal from the judgment (*see* CPLR 5512[a]); and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

By the uncontroverted testimony of the defendant Soraya M. Miguel (hereinafter the defendant driver) and the infant plaintiff Keyante Reid (hereinafter the infant plaintiff) that the infant plaintiff ran into the street, mid-block, thereby resulting in the accident involving the infant plaintiff

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and the defendant driver's oncoming vehicle, the defendants established their prima facie entitlement to judgment as a matter of law on the issue of liability (*see Ruocco v Mulhall*, 281 AD2d 406; *Garner v Fox*, 265 AD2d 525; Vehicle and Traffic Law § § 1152[a] and 1151[b]).

In opposition, the plaintiffs failed to submit evidence sufficient to raise a triable issue of fact as to whether the defendant driver exercised due care to avoid the subject accident (*see Odumbo v Perera*, 27 AD3d 709; *Bongiovi v Hoffman*, 18 AD3d 686, 687; *Breslin v Ruddan*, 291 AD2d 471, 472; *Bolta v Lohan*, 242 AD2d 356; Vehicle and Traffic Law § 1146). Therefore, the defendants were entitled to summary judgment dismissing the complaint.

SCHMIDT, J.P., GOLDSTEIN, COVELLO and DICKERSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court