

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

D17364  
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Submitted - October 26, 2007

ROBERT W. SCHMIDT, J.P.  
REINALDO E. RIVERA  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

2006-08866

DECISION & ORDER

Jose Carlos Rodriguez, appellant, v Virginia Huerfano,  
et al., respondents.

(Index No. 04-02714)

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Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker of counsel), for  
appellant.

Brian J. McGovern, LLC, New York, N.Y. (Timothy J. Valdez of counsel), for  
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an  
order of the Supreme Court, Suffolk County (Doyle, J.), dated August 24, 2006, which granted the  
defendants' motion for summary judgment dismissing the complaint on the ground that he did not  
sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

While riding his bicycle near the intersection of Hilltop Drive and Second Avenue in  
the Town of Islip, on the evening of March 19, 2003, the plaintiff was struck and knocked to the  
ground by a motor vehicle owned by the defendant David Garcia and operated by the defendant  
Virginia Huerfano. Following the plaintiff's commencement of this action to recover damages for  
the personal injuries sustained, the defendants successfully moved for summary judgment dismissing  
the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of  
Insurance Law § 5102(d). We affirm.

December 18, 2007

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The defendants established that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) through the submission of the affirmed medical report of their expert orthopedist, who conducted a physical examination of the plaintiff, finding a normal range of motion in his cervical and lumbar regions of the spine and the absence of any orthopedic disability (see *Gaddy v Eyley*, 79 NY2d 955, 956-957; *Shamssoodeen v Kibong*, 41 AD3d 577).

In opposition, the plaintiff failed to raise a triable issue of fact. The magnetic resonance imaging (hereinafter MRI) report regarding the plaintiff's lumbar region of the spine, upon which the plaintiff's treating chiropractor relied in opposing the motion, was without probative value, since it was not affirmed by the plaintiff's physician (see *Grasso v Angerami*, 79 NY2d 813, 814), and was not actually relied upon by the defendants' expert (see *Zarate v McDonald*, 31 AD3d 632, 633; *Ayzen v Melendez*, 299 AD2d 381). Even if the underlying MRI report were admissible (see *Pommells v Perez*, 4 NY3d 566, 577 n 5), the report of the plaintiff's treating chiropractor still failed to provide objective and recent evidence of the extent or degree and duration of the claimed limitation of the plaintiff's lumbar region of the spine (see *Mejia v DeRose*, 35 AD3d 407, 408; *Young v Russell*, 19 AD3d 688, 689). Therefore, no serious injury was sufficiently established with competent medical evidence to raise a triable issue of fact (see *Iusmen v Konopka*, 38 AD3d 608, 609; *Felix v New York City Tr. Auth.*, 32 AD3d 527, 528).

The plaintiff's remaining contentions are without merit.

SCHMIDT, J.P., RIVERA, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court