

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

D18281  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 30, 2008

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
MARK C. DILLON  
RUTH C. BALKIN, JJ.

2007-06480

DECISION & ORDER

Joseph Mazza, Jr., etc, et al., respondents,  
v Theresa Manzella, appellant.

(Index No. 102744/05)

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Corigliano, Geiger, Verrill & Brandwein, Jericho, N.Y. (Kathleen M. Geiger of counsel), for appellant.

McCarthy & Kelly, LLP, New York, N.Y. (William P. Kelly of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated May 29, 2007, as denied her motion for summary judgment dismissing the complaint.

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

The defendant made a prima facie showing of entitlement to judgment as a matter of law by presenting proof that the infant plaintiff, who was riding a motorized bicycle, exited a driveway and collided into the defendant's motor vehicle in violation of Vehicle and Traffic Law § 1143 and § 1173 (*see Yasinovsky v Lenio*, 28 AD3d 652, 653; *Lallemant v Cook*, 23 AD3d 533; *Trzepacz v Jara*, 11 AD3d 531; *Ferrara v Castro*, 283 AD2d 392). In opposition, the plaintiffs failed to raise a triable issue of fact. The fact that the infant plaintiff did not see the defendant's approaching car does not excuse the infant plaintiff's conduct (*see Ferrara v Castro*, 283 AD2d at 393; *Bolta v Lohan*, 242 AD2d 356). Furthermore, the infant plaintiff's affidavit failed to raise a

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triable issue of fact regarding the defendant's alleged failure to take evasive action (*see McNamara v Fishkowitz*, 18 AD3d 721, 722; *Meliarenne v Prisco*, 9 AD3d 353, 354; *Lupowitz v Fogarty*, 295 AD2d 576). Accordingly, the defendant's motion for summary judgment dismissing the complaint should have been granted.

SPOLZINO, J.P., SANTUCCI, DILLON and BALKIN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court