

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

D23523
W/kmg

_____AD3d_____

Submitted - May 7, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-06725

DECISION & ORDER

Jarius Braxton, etc., respondent,
v Barbara Jennings, appellant.

(Index No. 26499/05)

Richard T. Lau, Jericho, N.Y. (Keith E. Ford of counsel), for appellant.

Harmon, Linder & Rogowsky, New York, N.Y. (Mitchell Dranow of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Jacobson, J.), dated May 27, 2008, which denied her motion for summary judgment dismissing the complaint.

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

Regardless of whether we accept the plaintiff's or the defendant's version of the subject accident, the defendant established, prima facie, that she did not contribute to the accident and that the sole proximate cause of the accident was the conduct of the infant plaintiff, who suddenly stepped into the road when it was not safe for him to do so (*see* 34 RCNY 4-04[b][2]; *cf. Ryan v Budget Rent a Car*, 37 AD3d 698; *Deitz v Huibregtse*, 25 AD3d 645; *Ruocco v Mulhall*, 281 AD2d 406). In opposition, the plaintiff failed to raise a triable issue of fact.

SPOLZINO, J.P., ANGIOLILLO, LEVENTHAL and LOTT, JJ., concur.

ENTER:


James Edward Pelzer

June 9, 2009

BRAXTON v JENNINGS

Clerk of the Court

June 9, 2009

BRAXTON v JENNINGS