

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

D24245  
G/kmg

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Argued - June 15, 2009

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN  
ARIEL E. BELEN, JJ.

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2008-10204

DECISION & ORDER

Sara Stern, etc., appellant, v Michael Schwartz,  
respondent.

(Index No. 3219/07)

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Isaac Tessler, New York, N.Y., for appellant.

Murphy & Lambiase, Goshen, N.Y. (George A. Smith and Laura Freeman of  
counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Rockland County (Kelly, J.), dated October 8, 2008, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On March 26, 2007, the then-nine-year old plaintiff allegedly was injured when, as she was crossing Lincoln Avenue in Spring Valley, she came into contact with an automobile driven by the defendant. The accident occurred immediately after the plaintiff, who had just alighted from her mother's minivan, walked in front of the minivan and stepped into the street. The plaintiff's mother, who was still inside the minivan when the accident occurred, did not witness the accident.

The defendant established, prima facie, his entitlement to judgment as a matter of law, as the evidence submitted in support of his motion demonstrated that the subject motor vehicle accident was not proximately caused by any negligence on his part (*see Rogers v City of New York*, 52 AD3d 589, 590; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The evidence

submitted by the plaintiff in opposition to the motion failed to raise a triable issue of fact (*see* CPLR 3212[b]).

Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., ANGIOLILLO, BALKIN and BELEN, 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