

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

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_____AD3d_____

Submitted - December 2, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-07402

DECISION & ORDER

Paola Pacheco, appellant, v Lloyd A. Conners,
respondent.

(Index No. 19242/05)

Klein & Folchetti, Port Chester, N.Y. (Robert W. Folchetti of counsel), for appellant.

Abamont & Associates (Congdon, Flaherty, O’Callaghan, Reid, Donlon, Travis &
Fishlinger, Uniondale, N.Y. [Gregory A. Cascino], of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Smith, J.), entered June 3, 2008, as granted that branch of the defendant’s motion which was for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant met his prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident by submitting a physician’s report and the plaintiff’s deposition testimony (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957; *Kivlan v Acevedo*, 17 AD3d 321). Specifically, the plaintiff testified at her deposition that she stopped working as a part-time babysitter as a result of the accident, but she did not testify that her injuries substantially impacted on all of her activities of daily living, except to the extent that it affected her ability to roller skate and ice skate.

In opposition to the defendant's prima facie showing, the plaintiff failed to raise a triable issue of fact. The plaintiff did not submit competent evidence to support a claim that she was unable to perform substantially all of her daily activities for not less than 90 days of the first 180 days immediately following the accident due to a medically-determined injury or impairment (*see Farozes v Kamran*, 22 AD3d 458).

DILLON, J.P., MILLER, ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court