

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

D32771
H/prt

_____AD3d_____

Submitted - October 5, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2010-09518

DECISION & ORDER

Donna Byrnes, appellant, v Dimitra K. Wojtowicz,
et al., respondents.

(Index No. 5898/09)

Gruenberg & Kelly, P.C., Ronkonkoma, N.Y. (John Aviles of counsel), for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for
respondents.

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, Kings County (Knipel, J.), dated August 20, 2010, as granted the defendants' motion 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 defendants met their prima facie burden of establishing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). The plaintiff alleged that, as a result of the subject accident, the cervical and lumbosacral regions of her spine sustained certain injuries, and the defendants provided competent medical evidence establishing, prima facie, that those injuries did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Layne v Drouillard*, 65 AD3d 1197; *Rodriguez v Huerfano*, 46 AD3d 794, 795). Furthermore, while the plaintiff also alleged that she sustained a serious injury

November 1, 2011

Page 1.

BYRNES v WOJTOWICZ

under the 90/180-day category of Insurance Law § 5102(d), the defendants established, prima facie, that she did not sustain such an injury.

In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court