

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

D33470
O/kmb

_____AD3d_____

Submitted - December 14, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-00124

DECISION & ORDER

Dawn Wright, appellant, v Waverly E. Simpson,
et al., respondents.

(Index No. 12637/08)

Sean H. Rooney, Brooklyn, N.Y., for appellant.

James G. Bilello, Westbury, N.Y. (Patricia McDonagh of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated October 27, 2010, which 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The defendants met their 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 (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). The plaintiff alleged, inter alia, that as a result of the subject accident, the cervical region of her spine sustained certain injuries. The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to that region did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

December 27, 2011

Page 1.

WRIGHT v SIMPSON

However, in opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical region of her spine constituted a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, _____NY3d_____, 2011 Slip Op 08452 [2011]). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court