

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

904

CA 08-02604

PRESENT: CENTRA, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

RONALD SPANOS AND MARIANNE SPANOS,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

MICHAEL R. FANTO AND MICHAEL FANTO,
DEFENDANTS-APPELLANTS.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, ROCHESTER (MATTHEW
A. LENHARD OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

SEGAR & SCIORTINO, ROCHESTER (STEPHEN A. SEGAR OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Matthew
A. Rosenbaum, J.), entered August 8, 2008 in a personal injury action.
The order denied the motion of defendants for summary judgment.

It is hereby ORDERED that the order so appealed from is
unanimously reversed on the law without costs, the motion is granted
and the complaint is dismissed.

Memorandum: Plaintiffs commenced this action seeking damages for
injuries allegedly sustained by Ronald Spanos (plaintiff) when he was
struck by a vehicle owned by one defendant and operated by the other
defendant. Supreme Court erred in denying defendants' motion seeking
summary judgment dismissing the complaint on the ground that plaintiff
did not sustain a serious injury in the accident (*see* Insurance Law §
5102 [d]). Defendants met their initial burden by submitting medical
records and reports constituting "persuasive evidence that plaintiff's
alleged pain and injuries were related to . . . preexisting
condition[s]" (*Pommells v Perez*, 4 NY3d 566, 580; *see Valentin v*
Pomilla, 59 AD3d 184, 186; *Clark v Perry*, 21 AD3d 1373, 1374), and
plaintiffs failed to raise a triable issue of fact whether plaintiff's
alleged pain and injuries were causally related to the subject
accident rather than those preexisting conditions (*see Valentin*, 59
AD3d at 186; *Coston v McGray*, 49 AD3d 934, 935; *Anania v Verdgeline*,
45 AD3d 1473). The conclusory statement of the examining physician
for defendants that plaintiff's complaints of "right hip and leg pain
with minimal complaints of low back pain . . . are causally related to
[the accident]" is insufficient to raise a triable issue of fact,
particularly in view of the further statement of that physician that
he found no objective evidence that plaintiff sustained an injury in
the accident (*see Dantini v Cuffie*, 59 AD3d 490, 491; *Eastman v*

Holland, 19 AD3d 444). Finally, we note that, although plaintiffs are correct that they generally would be entitled to recover for economic loss in excess of basic economic loss without proof of serious injury (see generally *Colvin v Slawoniewski*, 15 AD3d 900), they made no claim for such loss in this case (cf. *Barnes v Kociszewski*, 4 AD3d 824, 825).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court