

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

D56529
L/hu

_____AD3d_____

Argued - April 24, 2018

JOHN M. LEVENTHAL, J.P.
LEONARD B. AUSTIN
COLLEEN D. DUFFY
BETSY BARROS, JJ.

2017-01052

DECISION & ORDER

Stephanie Atken, appellant, v Gordon Jackson,
respondent.

(Index No. 20179/14)

Krentsel & Guzman, LLP, New York, NY (Nicole A. Palermo and Michael H. Zhu,
Esq., P.C., of counsel), for appellant.

David J. Sobel, P.C., Smithtown, NY, for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (W. Gerard Asher, J.), dated December 5, 2016. The order granted the defendant's motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is affirmed, with costs.

This action arises from a motor vehicle accident that occurred on January 10, 2014, at or near the intersection of Lynn Avenue and Woodridge Road in Southampton. The plaintiff commenced this action to recover damages for personal injuries that she allegedly sustained in the accident. The defendant moved for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. The Supreme Court granted the defendant's motion, and the plaintiff appeals.

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

(see *Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact, particularly since neither she nor her physicians offered a reasonable explanation for a lengthy gap in treatment from May 2014 to the summer of 2015 (see *Pommells v Perez*, 4 NY3d 566, 574; *Maffei v Santiago*, 63 AD3d 1011, 1012).

Accordingly, we agree with the Supreme Court's determination to grant the defendant's motion for summary judgment dismissing the complaint.

LEVENTHAL, J.P., AUSTIN, DUFFY and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court