

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

D57515  
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Submitted - September 26, 2018

WILLIAM F. MASTRO, J.P.  
ROBERT J. MILLER  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2016-13018

DECISION & ORDER

Christian Amato, appellant,  
v Roman Gorecik, respondent.

(Index No. 103251/12)

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Sim & Record, LLP, Bayside, NY (Sang J. Sim of counsel), for appellant.

Gallagher, Walker, Bianco & Plastaras, LLP, Mineola, NY (Michael R. Walker of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (Kim Dollard, J.), dated November 2, 2016. The order, insofar as appealed from, 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 insofar as appealed from, with costs.

The plaintiff commenced this action to recover damages for personal injuries he allegedly sustained in a motor vehicle accident on April 25, 2012. 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 subject accident. The Supreme Court, among other things, 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 Eyler*, 79 NY2d 955, 956-957). The

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defendant submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine were not caused by the subject accident (*see Gouvea v Lesende*, 127 AD3d 811; *Fontana v Aamaar & Maani Karan Tr. Corp.*, 124 AD3d 579; *Jilani v Palmer*, 83 AD3d 786, 787). In addition, the defendant established, prima facie, that the plaintiff did not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d) by submitting a transcript of the plaintiff's deposition testimony, which demonstrated that he missed only about two weeks of work during the 180-day period following the accident (*see John v Linden*, 124 AD3d 598, 599; *Marin v Ieni*, 108 AD3d 656, 657; *Richards v Tyson*, 64 AD3d 760, 761). In opposition, the plaintiff failed to raise a triable issue of fact (*see John v Linden*, 124 AD3d at 599; *Irizarry v Lindor*, 110 AD3d 846, 848).

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

MASTRO, J.P., MILLER, DUFFY and LASALLE, 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