

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

105

CA 21-00457

PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, AND WINSLOW, JJ.

KISZEAK D. SCOTT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES P. HARTMAN, DEFENDANT-APPELLANT.

HAGELIN SPENCER LLC, BUFFALO (GRACE E. TESMER OF COUNSEL), FOR
DEFENDANT-APPELLANT.

VANDETTE PENBERTHY LLP, BUFFALO (JAMES M. VANDETTE OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Daniel Furlong, J.), entered March 24, 2021. The order denied the motion of defendant for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action to recover damages for the injuries she allegedly sustained in a motor vehicle accident. Supreme Court thereafter denied defendant's motion for summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury that was causally related to the accident (*see generally* Insurance Law § 5102 [d]). Defendant now appeals and we affirm.

We reject defendant's contention that the court erred in denying the motion because, even assuming, arguendo, that defendant satisfied his initial burden with respect to causation and every applicable category of serious injury, plaintiff submitted evidence raising triable questions of material fact in opposition thereto (*see Cuyler v Sepcic*, 196 AD3d 1122, 1123 [4th Dept 2021]; *Green v Repine*, 186 AD3d 1059, 1061 [4th Dept 2020]; *Grier v Mosey*, 148 AD3d 1818, 1819 [4th Dept 2017]). Indeed, "[i]t is well established that conflicting expert opinions may not be resolved on a motion for summary judgment" (*Edwards v Devine*, 111 AD3d 1370, 1372 [4th Dept 2013] [internal quotation marks omitted]).

Entered: April 29, 2022

Ann Dillon Flynn
Clerk of the Court