

**Ward v Rios**

2007 NY Slip Op 30907(U)

March 29, 2007

Supreme Court, Suffolk County

Docket Number: 0025106/2004

Judge: Robert W. Doyle

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hand had also been resolved. In reaching these conclusions, Dr. Israel set forth the tests he performed on plaintiff, the results of those tests and how those results compared to normal test results.

Defendants also submit the affirmed medical report of Naunihal Singh, M.D., a neurologist, who examined plaintiff on defendant's behalf. In this report, Dr. Singh concludes that plaintiff has no neurological disability as a result of the motor vehicle accident in question but suffers from diabetic neuropathy, congenital scoliosis and osteoarthritis and degenerative changes in the lumbar and cervical spine. Dr. Singh sets forth the tests performed in reaching these conclusions and further sets forth range of motion findings concerning plaintiff's cervical and lumbar spine and how those results compare to normal ranges of motion.

Finally, defendant submits an affirmed medical report from Stephen W. Lastig, M.D., a radiologist, who reviewed the MRI study of plaintiff's cervical spine. Dr. Lastig notes that the changes in plaintiff's cervical spine are degenerative in nature and unrelated to the January 14, 2004 accident.

In opposition to defendant's application, plaintiff submits to the Court several affirmations. Jonathan Dashiff, M.D., an orthopedist, examined plaintiff shortly after the motor vehicle accident in question and has seen her since that time. He most recently examined plaintiff in March 2006. In his reports, Dr. Dashiff sets forth several tests he performed on plaintiff, including range of motion tests. While he notes his findings with respect thereto, he does not compare those findings to the normal ranges of motion (*see, Iles v. Jonat*, 35 AD3d 537, 825 NYS2d 540) nor does he express an opinion that any of the injuries suffered by plaintiff are causally related to the subject motor vehicle accident. For these reasons, his submissions are of no probative value. While plaintiff does supply an affirmation from Allan Greenfield, M.D., a radiologist, that affirmation, along with the attached medical reports, are also deficient. None of the medical reports of Dr. Greenfield, which result from MRI studies of plaintiff's shoulder, spine and knee, conclude that any of her injuries are the result of the motor vehicle accident in question. Finally, the affirmed medical report of Rick J. Singh, M.D., a neurologist, is similarly flawed. Dr. Singh, while concluding that plaintiff suffers from a limited range of motion, fails to quantify the extent of plaintiff's limited range or to compare it to the normal range of motion. While he finds that plaintiff suffers from cervical disc displacement and left shoulder impingement, he does not conclude that said injuries are the result of the motor vehicle accident in question.

In order to prevail on this type of motion, defendants have the initial burden of establishing that plaintiff did not sustain the type of "serious injury" necessary to satisfy the threshold requirement of Insurance Law § 5102(d) (*see, Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 746 NYS2d 865; *Gaddy v. Eyler*, 79 NY2d 955, 956-957, 582 NYS2d 990; *Boehm v. Estate of Mack*, 255 AD2d 749, 749-750, 680 NYS2d 732). As with all summary judgment motions, defendants were required to come forward with proof, in admissible form, sufficient to justify the Court granting them judgment as a matter of law (*see, Winegrad v. New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316; *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595). In order to sustain this initial burden, defendants produced the aforementioned affirmed

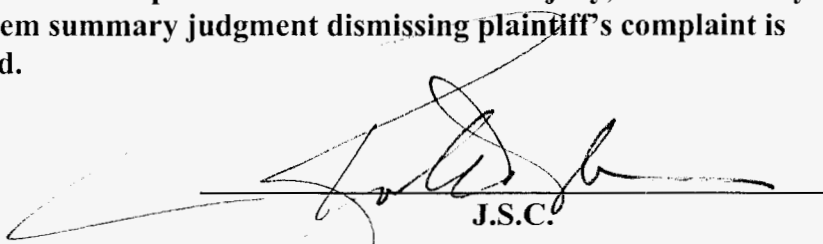
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independent medical examination reports. This evidence was clearly sufficient to meet defendant's initial burden on the threshold issue of serious injury and required plaintiff to come forward with evidence in admissible form creating a genuine triable issue of fact as to whether plaintiff sustained a serious injury as a result of the accident (*see, Gaddy v. Eyler, supra; Morgan v. Beh, 256 AD2d 752, 681 NYS2d 394; Weaver v. Derr, 242 AD2d 823, 661 NYS2d 684; Rennell v. Horan, 225 AD2d 939, 639 NYS2d 171*).

Plaintiff has not met that burden. The affirmed medical reports outlined above were deficient in the several respects that were noted. Although plaintiff appears to claim that she was unable to perform her normal daily activities and was disabled from work for six months after the accident, there is no competent medical evidence which would support her claim in this regard (*see, Boyle v. Gundogan, 19 AD3d 351, 796 NYS2d 157; Howell v. Reupke, 16 AD3d 377, 790 NYS2d 703*).

Accordingly, upon the failure of plaintiff to offer admissible proof sufficient to raise a triable issue of fact on the question of whether plaintiff suffered a serious injury, the motion by defendants for an order granting them summary judgment dismissing plaintiff's complaint is granted and the complaint dismissed.

Dated: MARCH 29, 2007

  
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 J.S.C.

FINAL DISPOSITION       NON-FINAL DISPOSITION