

Dickerson v MV Transp., Inc.
2018 NY Slip Op 32422(U)
September 18, 2018
Supreme Court, Kings County
Docket Number: 518004/16
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518004/16
Motion Date: 9-10-18
Motion Cal. Nos: 12-13

-----X
YWANNA DICKERSON,

Plaintiff,

DECISION/ORDER

-against-

MV TRANSPORTATION, INC., MTA/NEW YORK
CITY TRANSIT-PARATRANSIT, CITY OF NEW
YORK, NEW YORK CITY TRANSIT AUTHORITY
ACCESS-A-RIDE and HENRY O. COSTON, JR.,

Defendant,
-----X

The following papers numbered 1 to 5 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memos of Law.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	3
Other.....	
Notice of Cross-Motion	
Affidavits/Affirmations/Exhibits/Memos of Law.....	4
Answering Affirmations/Affidavits/Exhibits.....	5
Reply Affirmations/Affidavits/Exhibits.....	
Other.....	

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Upon the foregoing papers, the motion and cross-motion are decided as follows:

In this action to recover damages for personal injuries arising out of a motor vehicle

ms# 01-x mg
ms# 02-moot

accident that occurred on July 18, 2015, the defendants, MV TRANSPORTATION, INC., MTA/NEW YORK CITY TRANSIT-PARATRANSIT, CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY ACCESS-A-RIDE and HENRY O. COSTON, JR., move pursuant to CPLR 3212 for an order awarding them summary judgment dismissing plaintiff's complaint on the ground that the plaintiff, YWANNA DICKERSON, did not suffer a "serious injury" within the meaning of Insurance Law § 5102(d). The plaintiff cross-moves for an order pursuant to CPLR §§ 3124 and 3126 striking defendants' answer and/or precluding defendants' from introducing evidence at trial due to their failure to provide discovery. The motion and cross-motion are consolidated for disposition.

The defendants met their 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 N.Y.2d 345, 746 N.Y.S.2d 865, 774 N.E.2d 1197; *Gaddy v. Eyley*, 79 N.Y.2d 955, 956-957, 582 N.Y.S.2d 990, 591 N.E.2d 1176). Contrary to plaintiff's contention, defendants demonstrated, prima facie, that the plaintiff did not suffer a "serious injury" under the 90/180 day category by demonstrating that she was confined to her bed and home for just one day and that she only missed one day of work (*see Richards v. Tyson*, 64 A.D.3d 760, 761, 883 N.Y.S.2d 575; *Kabir v. Vanderhost*, 105 A.D.3d 811, 811, 962 N.Y.S.2d 703, 704).

In opposition, the plaintiff failed to raise a triable issue of fact. The only medical proof submitted by plaintiff in opposition to the motion that was in admissible form was the affirmation of Dr. I.S. Ramachandran Nair dated June 21, 2018 and the affirmation of Dr. Vadim Kolesnikov dated June 8, 2018 setting from this interpretations of the MRI studies of plaintiff's

cervical spine taken on October 12, 2015 and lumbar spine taken on November 11, 2105.

Although Dr. Nair set forth the results of the range of motion studies he conducted of plaintiff's cervical and lumbar spine on August 20, 2015, he did compare his findings to normal findings (*see Starkey v. Curry*, 94 A.D.3d 866, 866, 941 N.Y.S.2d 882; *Ambroselli v. Team Massapequa, Inc.*, 88 A.D.3d 927, 928, 931 N.Y.S.2d 652; *McKenzie v. Redl*, 47 A.D.3d 775, 776-777, 850 N.Y.S.2d 545; *Paul v. Weatherwax*, 146 A.D.3d 792, 794, 45 N.Y.S.3d 151, 153). Moreover, other than positive straight leg on the left, he did set forth any objective medical findings concerning plaintiff's cervical and lumbar spine when he last examined her on May 24, 2018 (*see Estrella v. GEICO Ins. Co.*, 102 A.D.3d 730, 731, 959 N.Y.S.2d 210; *Griffiths v. Munoz*, 98 A.D.3d 997, 998, 950 N.Y.S.2d 787; *Lively v. Fernandez*, 85 A.D.3d 981, 982, 925 N.Y.S.2d 650). In this regard, he neither quantified any limitations of motion in these regions, nor did he set forth an adequate qualitative assessment of the these regions (*see generally, Toure, supra.*). Although positive findings on straight leg-raising can be objective evidence of serious injury, Dr. Nair failed to explain the significance of these test results and relate them to the plaintiffs' injuries (*Carroll v. Jennings*, 264 A.D.2d 494, 495, 694 N.Y.S.2d 458, 459; *Kim v. Cohen*, 208 A.D.2d 807, 618 N.Y.S.2d 386; *Risbrook v. Coronamos Cab Corp.*, 244 A.D.2d 397, 664 N.Y.S.2d 75),

While it is true that Dr. Kolesnikov opined that the plaintiff was suffering from disc bulges and disc herniations at C4-5 and C5-6 and a disc herniation at L4-5 nerve root with possible nerve root impingement, it is settled law that evidence of a disc herniation alone does not constitute proof of a serious injury (*see, Descovich v. Blieka*, 279 A.D.2d 499, 718 N.Y.S.2d 870; *Uber v. Heffron*, 286 A.D.2d 729, 730, 730 N.Y.S.2d 174), 175).

Finally, the plaintiff failed to explain the almost two year gap in treatment from July 25, 2016 to , when she last saw Dr. Gair prior to May 24, 2018 (see *Pommells v. Perez*, 4 N.Y.3d 566, 574, 797 N.Y.S.2d 380, 830 N.E.2d 278; *Garcia v. Lopez*, 59 A.D.3d 593, 872 N.Y.S.2d 719; *Rivera v. Bushwick Ridgewood Properties, Inc.*, 63 A.D.3d 712, 714, 880 N.Y.S.2d 149, 151).

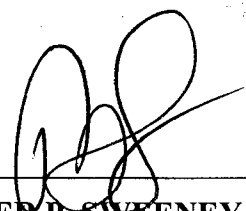
For all of the above reasons, it is hereby

ORDERED that defendants' motion for an order awarding them summary judgment dismissing plaintiff's complaint is **GRANTED**; and it is further

ORDERED that the cross-motion is **DENIED** as moot.

This constitutes the decision and order of the Court.

Dated: September 18, 2018



PETER P. SWEENEY, J.S.C.
HON. PETER P. SWEENEY

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