

Beckford-Campbell v Saljanin
2019 NY Slip Op 34509(U)
December 24, 2019
Supreme Court, Westchester County
Docket Number: 64078/2018
Judge: Terry Jane Ruderman
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ELEANOR BECKFORD-CAMPBELL,

Plaintiff,

-against-

DECISION and ORDER

Sequence No. 1

Index No. 64078/2018

DELOS SALJANIN,

Defendant.

-----X
RUDERMAN, J.

The following papers were considered in connection with defendant's unopposed motion for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint on the grounds that plaintiff did not incur a serious injury as that term is defined by Insurance Law § 5102(d):

Papers

Notice of Motion, Affirmation, Exhibits A - N

Numbered

1

This action arises out of a motor vehicle accident which occurred on the morning of October 7, 2015. Plaintiff testified at her deposition that she was stopped at a red light on Hussey Road, on her way to her job as a part-time school bus driver, when her car was hit from behind. Before the accident happened, she had seen defendant's car stopped approximately five feet behind her. She acknowledged that the only damage to her car was some small dents in the rear bumper, which she never had repaired. Following the accident plaintiff reported experiencing pain in her neck and upper back, and was initially treated with physical therapy and

chiropractic treatment. At some point no fault payments stopped, although her insurance paid for additional chiropractic treatment. Plaintiff testified that these treatments helped for some time, but the pain would return when she began engaging in activities.

In moving for summary judgment, defendant contends that the subject accident caused plaintiff only sprains that have been resolved. He submits the reports of orthopedic surgeon Dr. Greory Galano, who conducted an independent medical examination of plaintiff on April 11, 2019, and reviewed past medical records, which included an MRI report of plaintiff's cervical spine, dated November 10, 2015, indicating the presence of a small right paracentral disc herniation at C6-7. Dr. Galano reported that despite plaintiff's report of pain in her neck and upper back, her cervical spine sprain was objectively resolved. He found no loss in range of motion.

Defendant also submits a physical examination report from orthopedic surgeon Dr. John R. Denton dated January 18, 2016, that was included in plaintiff's no-fault file. Dr. Denton found that plaintiff had a resolved cervical spine sprain and a resolved thoracic spine sprain, with no disability. Additionally, defendant provides a report of a chiropractic examination by Dr. Judd Davis dated May 9, 2016, who also found that plaintiff's cervical and thoracic spine strains had resolved, with no disability.

Finally, defendant submits reports by Dr. Jonathan Lerner who reviewed both the MRI report from November 10, 2015, as well as a prior MRI report from June 20, 2014, which followed an earlier accident in which plaintiff was involved in 2014. Dr. Lerner opined that the condition of the cervical spine reflected in the 2014 MRI was no different from that in the November 10, 2015 MRI, establishing that no new injuries resulted from the accident at issue

here.

Analysis

When defendants move for summary judgment dismissing a complaint on the grounds of a lack of serious injury, they bear the initial burden of establishing, prima facie, that the plaintiff did not sustain a serious injury caused by the accident (*Smith v Matinale*, 58 AD3d 829 [2d Dept 2009]).

When the relied-on category of serious injury is a ‘significant’ or ‘consequential’ limitation of use or function, “whether a limitation of use or function is ‘significant’ or ‘consequential’ . . . relates to medical significance and involves a comparative determination of the degree or qualitative nature of an injury based on the normal function, purpose and use of the body part” (*Toure v Avis Rent a Car Sys.*, 98 NY2d 345, 353 [2002]). The necessary objective evidence must show both (1) contemporaneous treatment – qualitative or quantitative – to establish that the plaintiff’s injuries were causally related to the accident and (2) recent examination to establish the required permanency (*see Perl v Meher*, 18 NY3d 208, 217 [2011]).

To satisfy the statutory serious injury threshold, subjective complaints of pain are insufficient; “there must be some objective proof of a plaintiff’s injury” (*see McEachin v City of New York*, 137 AD3d 753, 756 [2d Dept 2016], citing *Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 352 [2002] and *Perl v Meher*, 18 NY3d 208, 216 [2011]). In addition, the mere fact that an MRI reveals the presence of soft tissue injury such as bulging or herniated discs is insufficient in itself to establish serious injury (*see Kearsse v New York City Tr. Auth.*, 16 AD3d 45, 46 [2d Dept 2005]). For a triable issue of fact to be presented where the plaintiff sustained such a soft tissue injury, there must be objective medical evidence that the injury was causally related to the

subject accident and that objective findings, such as a decreased range of motion, support a claim that the injury caused a permanent or significant impairment or limitation of use or function of that body part (*see Clervoix v Edwards*, 10 AD3d 626, 627 [2d Dept 2004]).

Here, defendants' orthopedic expert, Dr. Galano, asserted that plaintiff's injuries consisted solely of sprains and strains, which were all objectively resolved by the time of his examination of plaintiff. While he acknowledged the MRI report indicating the existence of a herniation, he found no objective medical evidence that the injury was causally related to the subject accident or to support a claim that the condition caused a permanent or significant impairment or limitation of use or function of plaintiff's neck or cervical spine. Moreover, Dr. Lerner explained that the November 10, 2015 MRI report which reflected a cervical herniation could not be relied on to establish that the herniation was caused by the subject accident, in view of the 2014 MRI which reflected the presence of the same condition.

Defendant has established, *prima facie*, his right to dismissal of the serious injury claim. Despite the existence of an MRI which shows herniated or bulging discs, there is evidence that the condition existed prior to the accident, and moreover, plaintiff has a full range of motion, and appears to suffer from no disabilities causally related to the motor vehicle accident (*see Kearse v New York City Tr. Auth.*, 16 AD3d at 49-50). In the absence of any showing by plaintiff in opposition, defendant has established his right to summary judgment dismissing the complaint. Accordingly, it is hereby

ORDERED that defendants' motion is granted, the complaint is dismissed, and the Clerk

is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
December 24, 2019


HON. TERRY JANE RUDERMAN, J.S.C.