

Friend v Williams

2023 NY Slip Op 34948(U)

February 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 519911/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 519911/2020
Motion Date: 1-30-23
Mot. Seq. No.: 2

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ALEXIA FRIEND,

Plaintiff,

-against-

DECISION/ORDER

MICHAEL KYLE WILLIAMS,

Defendant.
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Upon the following papers, listed on NYSCEF as document numbers 23-40, 42-55, 61-62 were read on this motion:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the defendant moves for an order pursuant to CPLR 3212 granting summary dismissing plaintiff's complaint on the ground that plaintiff's injuries do not satisfy the "serious injury" threshold requirement of New York Insurance Law §5102(d).

In her Verified Bill of Particulars, plaintiff claims that as a result of the accident, she sustained personal injuries to her cervical spine, shoulders, elbows, and wrists in the accident, including "herniated and bulging discs at C4-C5, C5-C6 with annular tear, C6-C7, C7-T1 with radiculopathy and reduced range of motion; bilateral median nerve entrapment in both wrists with reduced range of motion; shoulder pain with reduced range of motion; right sided carpal tunnel syndrome; injury to ulnar nerve."

In support of the motion, the defendant submitted competent medical evidence, including the affirmed medical reports of Dr. Passick, an orthopedist, and Dr. Greenfield, a radiologist, which established, prima facie, that plaintiff's alleged injuries were not serious under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (see *Hayes v. Vasilios*, 96 A.D.3d 1010, 1011, 947 N.Y.S.2d 550; *Staff v. Yshua*, 59 A.D.3d 614, 874 N.Y.S.2d 180; *Rodriguez v. Huerfano*, 46 A.D.3d 794, 795, 849 N.Y.S.2d 275) and, in any event, were not caused by the subject accident but, instead, were degenerative in nature (see *Kabir v. Vanderhost*, 105 A.D.3d 811, 962 N.Y.S.2d 703; *Il ChungLim v. Chrabaszcz*, 95 A.D.3d 950, 944 N.Y.S.2d 236; *Faulkner v. Steinman*, 28 A.D.3d 604, 605, 813 N.Y.S.2d 529). Defendant further established, prima facie, that the plaintiff did

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not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d). In this regard, through the transcript of the plaintiff's deposition testimony, the defendant demonstrated that the plaintiff did not miss any time from work following the accident (*see Marin v. Ieni*, 108 A.D.3d 656, 969 N.Y.S.2d 165; *Bamundo v. Fiero*, 88 A.D.3d 831, 931 N.Y.S.2d 239; *Lewars v. Trans. Facility Mgt. Corp.*, 84 A.D.3d 1176, 1178, 923 N.Y.S.2d 701).

In opposition, however, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether she suffered a serious injury to her cervical spine as a result of the accident under the under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d). The MRI report of plaintiff's cervical spine dated September 21, 2020, demonstrates that the plaintiff presented with a straightening of the normal cervical lordosis, a C4/C5 disc bulge with small left paramedian/central disc protrusion, a C5/C6 small central disc protrusion with annular tear, mild central canal stenosis, a C6/C7 disc bulge with small central/right paramedian disc protrusion, a mild central canal stenosis, and a C7/T1 minimal central disc protrusion. Although Dr. Greenfield, defendant's radiologist, opined that the injuries to plaintiffs' cervical spine were degenerative in nature, Dr. Kyriakides came to a contrary opinion. In his report dated May 11, 2022, which plaintiff submitted in opposition to the motion, Dr. Kyriakides stated:

I completely disagree with Dr. Alan B. Greenfield who feels that all of the patient's injuries are degenerative in nature. The patient is a young female in her early 30s with no prior cervical, right shoulder or upper extremity symptoms, injuries or treatment. She has a positive EMG following this accident.

Upon examining her, it is clear that she does not have widespread arthritis in all of the joints and other body parts involved, but only has neurological deficit and acute findings secondary to the trauma. Perhaps, it would behoove Dr. Greenfield to actually examine the patient and review the EMG including taking a thorough history of the patient to assess if she had any prior history of pain, numbness, tingling or neurological deficits or had ever visited the doctor before this, and the answer would be, as she has told me, no, she did not.

It is my medical opinion that the patient's herniations and disc pathologies were caused by the accident of 8/21/20 for a number of reasons, The patient had no complaints or symptoms prior to the

accident, and she had a positive EMG following the accident. The EMG would not be positive in a degenerative process. Although degenerative findings are present on the MRI study, these findings are not the causative agent of the patient's pain or symptoms. The trauma led to the pain and symptoms, as evidenced by her symptomatic condition following 8/21/20, albeit the presence of baseline degenerative findings.

As such, it is my medical opinion that the patient has been rendered partially permanently disabled as a result of this 8/21/20 accident and requires continued treatment.

It is further my medical opinion that the above stated injuries are permanent in nature as her symptoms have persisted beyond 1 1/2 years. The patient's limitations are significant, permanent and consequential and are causally related to the motor vehicle accident of 8/21/20.

The Court finds that Dr. Kyriakides' report was sufficient to rebut the findings of defendant's radiologist (*see Hayes v. Gaceur*, 162 A.D.3d 437, 79 N.Y.S.3d 119; *Yuen v. Arka Memory Cab Corp.*, 80 A.D.3d 481, 915 N.Y.S.2d 529; *Morales v. Cabral*, 177 A.D.3d 556, 557, 113 N.Y.S.3d 684, 686).

Further, Dr. Kyriakides' range of motion studies demonstrated significant limitations in various ranges of motions studies of plaintiff's cervical spine. He found a follows:

Cervical flexion limited to 28 degrees (normal 50 degrees), extension to 22 degrees (normal 60 degrees), side bending to the right to 15 degrees (normal 45 degrees), side bending to the left to 12 degrees (normal 45 degrees), rotation 15 degrees to the right (normal 80 degrees) and 17 degrees to the left (normal 80 degrees).

In sum, the plaintiff submitted sufficient admissible proof raising a triable issue of fact as to whether the plaintiff suffered a serious injury to her cervical spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (*see Toure v. Avis Rent A Car Sys.*, 98 N.Y.2d 345, 746 N.Y.S.2d 865, 774 N.E.2d 1197; *Kauderer v. Penta*, 261 A.D.2d 365, 689 N.Y.S.2d 190). Since the plaintiff raised a triable issue of fact as to whether she sustained as serious injury to her cervical spine, the Court need not address whether there are triable issue of fact that she sustained as serious injury to the other parts of her body that she claims were injured in the accident.

The Court has considered defendant's remaining arguments in support of the motion and find them to be without merit.

Accordingly, it is hereby.

ORDERED motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: February 24, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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