Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D70070
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_____AD3d_____ Submitted - May 23, 2022

FRANCESCA E. CONNOLLY, J.P.
SHERI S. ROMAN
LINDA CHRISTOPHER
WILLIAM G. FORD, JJ.

2020-06763 DECISION & ORDER

David Smith, appellant,
v Juliann Giuffre, respondent.

(Index No. 65637/18)

Meagher & Meagher, P.C., White Plains, NY (Christina M. Killerlane of counsel), for appellant.

Bryan M. Kulak (James G. Bilello, Hicksville, NY [Alina Vengerov], of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lawrence H. Ecker, J.), dated July 22, 2020. The order granted the defendant's motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident that occurred on September 16, 2016. The defendant moved for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident. In an order dated July 22, 2020, the Supreme Court granted the defendant's motion, and the plaintiff appeals.

The defendant met her 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 accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). The defendant submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and thoracic regions of the plaintiff's spine did not constitute a serious injury under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614). In opposition, the plaintiff failed to raise a triable issue of fact. The medical reports and records submitted by the plaintiff were neither sworn nor affirmed and, thus, were inadmissible (*see Grasso v Angerami*, 79 NY2d 813, 814-815; *Nicholson v Kwarteng*, 180 AD3d 695, 696).

Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

CONNOLLY, J.P., ROMAN, CHRISTOPHER and FORD, JJ., concur.

ENTER:

Maria T. Fasulo

Maria T. Fasulo
Clerk of the Court