

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Zanni v. Knutson

2022 NY Slip Op 07261 (App. Div. 2022) · No. 2020-04096 · Decided December 21, 2022

SUMMARY

The Appellate Division, Second Department, reversed an order granting the defendants summary judgment in a personal-injury action arising from a motor vehicle accident. The court held that the plaintiff raised a triable issue of fact regarding serious injuries under Insurance Law § 5102(d), and that the defendants' expert's causation concession eliminated the need for the plaintiff to address causation or a gap in treatment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; William G. Ford, J.; Deborah A. Dowling, J.
JURISDICTION	New York
DECIDED	December 21, 2022
DOCKET	2020-04096
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendants' motion for summary judgment dismissing the personal-injury complaint on the ground that he did not sustain a serious injury under Insurance Law § 5102(d).
STANDARD OF REVIEW	De novo review of the order granting summary judgment.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Michael Zanni v. Anneliese Knutson, et al.

TOPICS

- personal injury
- appellate procedure
- standard of review
- negligence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the defendants were entitled to summary judgment on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. Whether the plaintiff raised a triable issue of fact regarding serious injury and whether the defendants' concession regarding causation eliminated any need for the plaintiff to establish causation or explain a gap in treatment.

HOLDINGS

1. Although the defendants met their prima facie burden of establishing that the plaintiff did not sustain a serious injury under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d), the plaintiff raised a triable issue of fact in opposition. Summary judgment dismissing the complaint was therefore improper.
2. Because the defendants' expert conceded that the alleged cervical and lumbar injuries were caused by the accident, the burden did not shift to the plaintiff to raise a triable issue regarding causation or explain any gap in treatment.

FACTUAL BACKGROUND

The plaintiff allegedly sustained cervical and lumbar spine injuries in a motor vehicle accident on October 5, 2016. The defendants submitted competent medical evidence that the alleged injuries did not constitute serious injuries under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d). In opposition, the plaintiff submitted evidence raising a triable issue of fact, and the defendants' expert conceded that the alleged cervical and lumbar injuries were caused by the accident.

PROCEDURAL HISTORY

Michael Zanni commenced an action seeking damages for injuries allegedly sustained in a motor vehicle accident. The Supreme Court, Suffolk County, granted the defendants' motion for summary judgment dismissing the complaint. The Appellate Division reversed and denied the defendants' motion.

DISPOSITION

reversed

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 NY2d 345
- Gaddy v. Eyler, 79 NY2d 955, 956-957
- Staff v. Yshua, 59 AD3d 614
- Perl v. Meher, 18 NY3d 208, 218
- Pommells v. Perez, 4 NY3d 566, 572

- Cortez v. Nugent, 175 AD3d 1383, 1384

OPINION

PER CURIAM.

Zanni v Knutson (2022 NY Slip Op 07261) Zanni v Knutson 2022 NY Slip Op 07261 Decided on December 21, 2022 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 21, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS WILLIAM G. FORD DEBORAH A. DOWLING, JJ. 2020-04096 (Index No. 603871/17) [*1]Michael Zanni, appellant, vAnneliese Knutson, et al., respondents. Decolator, Cohen & DiPrisco, LLP, Garden City, NY (Dominic DiPrisco of counsel), for appellant. Martyn, Martyn, Smith & Murray, Hauppauge, NY (Erica L. Ingebretsen of counsel), for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Fernando M. Camacho, J.), dated May 4, 2020.

The order granted the defendants' 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in a motor vehicle accident that occurred on October 5, 2016. The defendants 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 accident.

In an order dated May 4, 2020, the Supreme Court granted the defendants' motion. The plaintiff appeals. 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 accident (see *Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957).

The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine did not constitute serious injuries 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).

However, in opposition, the plaintiff raised a triable issue of fact as to whether he sustained serious injuries to the cervical and lumbar regions of his spine under the permanent consequential

limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (see *Perl v Meher*, 18 NY3d 208, 218). Since the defendants' expert conceded that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine were caused by the accident, the burden never shifted to the plaintiff to raise a triable issue of fact regarding causation, or to explain any gap in treatment (see [*2]*Pommells v Perez*, 4 NY3d 566, 572; *Cortez v Nugent*, 175 AD3d 1383, 1384).

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint. DILLON, J.P., CHAMBERS, FORD and DOWLING, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court