

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Kemegue v. Rosario-Ramirez

Kemegue, 2026 NY Slip Op 03880 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 807105/21; Appeal No. 6929; Case No. 2025-05921 · Decided June 18, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order granting defendants summary judgment dismissing the plaintiff's personal injury complaint. The court held that defendants established that plaintiff did not sustain a serious injury under Insurance Law § 5102(d), and that plaintiff failed to raise a triable issue of fact regarding the alleged injuries, preexisting conditions, and prior motor vehicle accidents.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Friedman, J.; Gesmer, J.; Michael, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	June 18, 2026
DOCKET	Index No. 807105/21; Appeal No. 6929; Case No. 2025-05921
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing the complaint in a motor-vehicle personal-injury action.
STANDARD OF REVIEW	Summary judgment was proper because defendants established prima facie entitlement to judgment as a matter of law and plaintiff failed to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Tyrese Kemegue v. Francisco Alberto Rosario-Ramirez, other defendants

TOPICS

- personal injury
- summary judgment
- insurance
- appellate procedure
- standard of review

PRACTICE AREAS

Personal injury

Automobile accident litigation

New York serious-injury threshold

Summary judgment

Appellate procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment by demonstrating that plaintiff did not sustain a serious injury under Insurance Law § 5102(d).
2. Whether plaintiff raised a triable issue of fact in opposition to defendants' summary-judgment motion.

HOLDINGS

1. Defendants established prima facie entitlement to summary judgment by submitting competent medical evidence showing normal spinal ranges of motion, no objective abnormalities, and degenerative changes unrelated to the accident.
2. Plaintiff failed to raise a triable issue of fact because her treating chiropractor did not address evidence of preexisting spinal injuries or her prior motor-vehicle accidents.

FACTUAL BACKGROUND

Plaintiff claimed injuries to her cervical and lumbar spine arising from a motor-vehicle accident. Defendants submitted an orthopedic surgeon's report finding normal ranges of motion and no objective abnormalities, as well as a radiologist's conclusion that imaging showed chronic degenerative changes unrelated to the accident. Plaintiff opposed the motion with evidence from her treating chiropractor, but that evidence did not address preexisting spinal injuries or her prior motor-vehicle accidents.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted defendants' motion for summary judgment and dismissed the complaint. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Peart v Carreras, 227 AD3d 479, 479 [1st Dept 2024]
- Stickney v Akhar, 187 AD3d 425, 425 [1st Dept 2020]
- Clemmer v Drah Cab Corp., 74 AD3d 660, 660-661 [1st Dept 2010]
- Diakite v PSAJA Corp., 173 AD3d 535, 536 [1st Dept 2019]
- Macdelinne F. v Jimenez, 126 AD3d 549, 551 [1st Dept 2015]
- Sooknanan v Pinales, 215 AD3d 608, 609 [1st Dept 2023]
- Turner v Benycol Transp. Corp., 78 AD3d 506 [1st Dept 2010]

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Tyrese Kemegue, Plaintiff-Appellant, v Francisco Alberto Rosario-Ramirez et al., Defendants-Respondents. Decided and Entered: June 18, 2026 Index No. 807105/21|Appeal No. 6929|Case No. 2025-05921| Before: Kennedy, J.P., Friedman, Gesmer, Michael, Chan, JJ. The Odierno Law Firm, P.C., Melville (Scott Odierno of counsel), for appellant.

Marjorie E. Bornes, Freeport, for respondents. [*1] Order, Supreme Court, Bronx County (Ben R. Barbato, J.), entered September 11, 2025, which granted defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

The court correctly granted defendants' motion for summary judgment dismissing the complaint on the grounds that plaintiff did not sustain a serious injury under Insurance Law § 5102(d). Defendants established prima facie entitlement to summary judgment by submitting the medical report from an orthopedic surgeon, who found normal ranges of motion in plaintiff's lumbar and cervical spine with no evidence of tenderness to palpation or other abnormality (see *Peart v Carreras*, 227 AD3d 479, 479 [1st Dept 2024]; *Stickney v Akhar*, 187 AD3d 425, 425 [1st Dept 2020]).

His failure to review her medical records does not require denial of defendants' motion here since he detailed the objective tests that he used to personally examine plaintiff and found no abnormalities (see *Clemmer v Drah Cab Corp.*, 74 AD3d 660, 660-661 [1st Dept 2010]). Defendants' radiologist also concluded that plaintiff's cervical spine X-rays and lumbar spine MRI revealed chronic, degenerative changes that were unrelated to the subject accident (see *Diakite v PSAJA Corp.*, 173 AD3d 535, 536 [1st Dept 2019]; *Macdelinne F. v Jimenez*, 126 AD3d 549, 551 [1st Dept 2015]).

Plaintiff failed to raise a triable issue of fact in opposition. Her treating chiropractor did not address evidence of preexisting injuries to her spine or her prior motor vehicle accidents (see *Sooknanan v Pinales*, 215 AD3d 608, 609 [1st Dept 2023]; *Turner v Benycol Transp. Corp.*, 78 AD3d 506 [1st Dept 2010]).

We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 18, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

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