

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

Damian T. Henry v. Tanata Cook, et al.

Henry, 2025 NY Slip Op 06694 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2024-02855 · Decided December 3, 2025

SUMMARY

The New York Supreme Court, Appellate Division, Second Department dismissed a nonparty passenger's appeal from an order granting the plaintiff summary judgment against the defendants in a personal-injury action arising from a motor vehicle accident. The court held that the appellant was not aggrieved because the order granted no relief against her, and she failed to show that she was united in interest with the defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Linda Christopher, J.; Lillian Wan, J.; Janice A. Taylor, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 3, 2025
DOCKET	2024-02855
DISPOSITION	dismissed
PROCEDURAL POSTURE	Nonparty Lateema Nero appealed from an order granting the plaintiff summary judgment on liability and dismissing the defendants' comparative-negligence affirmative defense. The plaintiff moved to dismiss the appeal because Nero was not aggrieved by the order.
PRECEDENTIAL VALUE	Published
PARTIES	Lateema Nero, nonparty-appellant v. Damian T. Henry, respondent

TOPICS

appellate procedure

standing

summary judgment

comparative fault

personal injury

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Nero was an aggrieved person entitled to appeal under CPLR 5511 from an order granting the plaintiff relief against the defendants.
2. Whether Nero was united in interest with the defendants so as to qualify for appellate standing despite not being the subject of the relief granted.

HOLDINGS

1. Nero was not aggrieved because she did not seek relief and the order granted no relief against her.
2. Nero failed to demonstrate that she was united in interest with the defendants under the circumstances of the case and therefore could not appeal.

KEY QUOTATIONS

"A person is aggrieved within the meaning of CPLR 5511 "when he or she asks for relief but that relief is denied in whole or in part," or "when someone asks for relief against him or her, which the person opposes, and the relief is granted in whole or in part"" (2025 NY Slip Op 06694)

"Since Nero was not aggrieved by the order appealed from, her appeal must be dismissed" (2025 NY Slip Op 06694)

FACTUAL BACKGROUND

The plaintiff and the defendants were involved in a motor vehicle accident. The plaintiff sued for personal injuries alleging negligence, while Nero, a passenger in the defendants' vehicle, separately sued, among others, the plaintiff and the defendants. The related actions were joined for discovery and trial, but the challenged order granted relief only against the defendants by determining liability and dismissing their comparative-negligence defense.

PROCEDURAL HISTORY

Following a motor vehicle accident, Damian T. Henry commenced an action for personal injuries against the defendants. Nero, a passenger in the defendants' vehicle, commenced a separate related action, and the actions were joined with a third action for discovery and trial. The Supreme Court, Kings County, granted Henry's motion for summary judgment against the defendants; the Appellate Division granted Henry's motion to dismiss Nero's appeal.

DISPOSITION

dismissed

CASES CITED

- *Mixon v. TBV, Inc.*, 76 AD3d 144, 156-157

- Saccheri v. Cathedral Props. Corp., 123 AD3d 899, 900
- Estella v. Val Auto, LLC, 221 AD3d 967, 967-968

OPINION

PER CURIAM.

Henry v Cook (2025 NY Slip Op 06694) Henry v Cook 2025 NY Slip Op 06694 Decided on December 3, 2025 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 3, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

LINDA CHRISTOPHER LILLIAN WAN JANICE A. TAYLOR, JJ. 2024-02855 (Index No. 503694/20) [*1]Damian T. Henry, respondent, v Tanata Cook, et al., defendants; Lateema Nero, nonparty-appellant. Law Offices of Bryan Barenbaum, P.C., Brooklyn, NY (Huy M. Le and Andrew Pillersdorf of counsel), for nonparty-appellant. Law Offices of Neil Moldovan, P.C., Garden City, NY (Gina M. Fortunato of counsel), for respondent.

In an action to recover damages for personal injuries, nonparty Lateema Nero appeals from an order of the Supreme Court, Kings County (Wavny Toussaint, J.) dated November 27, 2023. The order granted the plaintiff's motion for summary judgment on the issue of liability and dismissing the defendants' affirmative defense alleging comparative negligence. DECISION & ORDER Motion by the respondent to dismiss the appeal on the ground that the appellant is not aggrieved by the order.

By decision and order on motion of this Court dated December 16, 2024, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof. Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is ORDERED that the motion to dismiss the appeal is granted; and it is further, ORDERED that the appeal is dismissed, without costs or disbursements.

The plaintiff and the defendants were involved in a motor vehicle accident. The plaintiff commenced this action to recover damages for personal injuries, alleging negligence. Nonparty Lateema Nero, a passenger in the defendants' vehicle, commenced a separate action against, among others, the plaintiff and the defendants. Thereafter, the plaintiff moved for summary judgment on the issue of liability and dismissing the defendants' affirmative defense alleging comparative negligence.

The two actions, along with a third related action, were joined for discovery and trial. In an order dated November 27, 2023, the Supreme Court granted the plaintiff's motion. Nero appeals. The

plaintiff moves to dismiss the appeal on the ground that Nero is not aggrieved by the order. A person is aggrieved within the meaning of CPLR 5511 "when he or she asks for relief but that relief is denied in whole or in part," or "when someone asks for relief against him or her, which the person opposes, and the relief is granted in whole or in part" (*Mixon v TBV, Inc.*, 76 AD3d 144, 156-157 [emphasis omitted]; see *Saccheri v Cathedral Props.*

Corp., 123 AD3d 899, 900). In "rare instances a person against whom no relief was sought may be aggrieved by the granting of relief to an adversary against a party with whom he or she is united in interest" (*Mixon v TBV, Inc.*, 76 AD3d at 157 n 2).

Here, Nero appeals from an order that granted the plaintiff's motion for summary judgment against the defendants. Nero was not aggrieved by the order granting the motion because the plaintiff did not seek, and the order did not grant, any relief against her (see *id.* at 156-157).

Moreover, Nero failed to demonstrate that she was "united in interest" (*id.* at 157 n 2) with the defendants under the particular circumstances of this case. Since Nero was not aggrieved by the order appealed from, her appeal must be dismissed (see CPLR 5511; *Estella v Val Auto, LLC*, 221 AD3d 967, 967-968; *Saccheri v Cathedral Props. Corp.*, 123 AD3d at 900; *Mixon v TBV, Inc.*, 76 AD3d at 156-157).

We decline the request by the plaintiff to impose sanctions against Nero for bringing an allegedly frivolous appeal (see 22 NYCRR 130-1.1). BARROS, J.P., CHRISTOPHER, WAN and TAYLOR, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court