

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

Jeffery v. Queen City Foods, LLC, and Maria Farinacci

2021 NY Slip Op 04842 (N.Y. Ct. App. 2021) · No. 532 CA 20-00974 · Decided August 26, 2021

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order granting the plaintiff summary judgment on negligence, proximate cause, and serious injury and denying the defendants' cross motion. The court held that the defendants' biomechanical expert was not qualified to opine on injury causation and that the plaintiff established a serious shoulder injury under the permanent consequential limitation and significant limitation categories of Insurance Law § 5102(d).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Per Curiam; Smith, J.P.; Lindley, J.; Troutman, J.; Bannister, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	August 26, 2021
DOCKET	532 CA 20-00974
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiff partial summary judgment on negligence, proximate cause, and serious injury, and denying defendants' cross-motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the moving party established entitlement to judgment as a matter of law and whether a triable issue of fact was raised. The opinion also reviewed the sufficiency of the expert evidence supporting the causation dispute.
PRECEDENTIAL VALUE	published opinion
PARTIES	Queen City Foods, LLC, Maria Farinacci v. Robert Jeffery

TOPICS

negligence

proximate cause

summary judgment

personal injury

appellate procedure

PRACTICE AREAS

torts

personal injury

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment dismissing the complaint on the ground that Jeffery did not sustain a serious injury.
2. Whether defendants raised a triable issue regarding whether the accident caused Jeffery's shoulder injury through the opinion of a biomechanical expert.
3. Whether Supreme Court properly granted Jeffery summary judgment on serious injury and proximate cause.
4. Whether defendants preserved any challenge to the portion of the order granting Jeffery summary judgment on negligence.

HOLDINGS

1. Because defendants did not challenge the portion of the order granting Jeffery summary judgment on negligence, they abandoned any contention regarding that issue.
2. A biomechanical expert is not qualified to render an opinion regarding injury causation; therefore, defendants could not rely on the biomechanical expert's opinion to create a conflict concerning whether the accident caused Jeffery's shoulder injury.
3. Supreme Court properly denied defendants' cross-motion and granted Jeffery's motion with respect to serious injury and proximate cause because defendants did not contest that Jeffery established a serious injury as a matter of law and failed to raise a causation conflict through competent evidence.

KEY QUOTATIONS

"This is an unacceptable practice (see generally Kopp v Rhino Room, Inc., 192 AD3d 1690, 1692 [4th Dept 2021]; Cangemi v Yeager, 185 AD3d 1397, 1398 [4th Dept 2020]; Doucette v Cuvillo, 159 AD3d 1528, 1528 [4th Dept 2018])." ([*1])

"It is well settled, however, that biomechanical experts are not qualified to render opinions regarding injury causation" ([*2])

"Inasmuch as plaintiff established a serious injury as a matter of law, [t]he 'is entitled to recover damages for all injuries causally related to the accident, even those that do not meet the serious injury threshold'" ([*2])

FACTUAL BACKGROUND

Jeffery was operating a vehicle when it was rear-ended by a vehicle operated by Maria Farinacci, an employee of Queen City Foods, LLC. Jeffery alleged that he sustained a serious shoulder injury qualifying under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law §

5102(d). Defendants relied exclusively on a biomechanical expert to argue that the accident did not cause the shoulder injury, but the court concluded that the biomechanical expert was not qualified to offer an injury-causation opinion.

PROCEDURAL HISTORY

Robert Jeffery commenced a personal-injury action arising from a rear-end collision. Supreme Court, Erie County, granted Jeffery's motion for partial summary judgment on negligence, proximate cause, and serious injury, and denied defendants' cross-motion seeking dismissal on the ground that Jeffery did not sustain a serious injury. The Appellate Division, Fourth Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Ciesinski v Town of Aurora, 202 AD2d 984, 984 [4th Dept 1994]
- Kopp v Rhino Room, Inc., 192 AD3d 1690, 1692 [4th Dept 2021]
- Cangemi v Yeager, 185 AD3d 1397, 1398 [4th Dept 2020]
- Doucette v Cuvillo, 159 AD3d 1528, 1528 [4th Dept 2018]
- Gates v Longden, 120 AD3d 980, 981 [4th Dept 2014]
- Cardin v Christie, 283 AD2d 978 [4th Dept 2001]
- Maurer v Colton (appeal No. 3), 180 AD3d 1371, 1374 [4th Dept 2020]
- Swed v Pena, 65 AD3d 1033, 1034 [2d Dept 2009]

OPINION

Jeffery v. Queen City Foods, LLC 2021 NY Slip Op 04842

PER CURIAM.

Jeffery v Queen City Foods, LLC (2021 NY Slip Op 04842) Jeffery v Queen City Foods, LLC 2021 NY Slip Op 04842 Decided on August 26, 2021 Appellate Division, Fourth 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 August 26, 2021

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department PRESENT: SMITH, J.P., LINDLEY, TROUTMAN, BANNISTER, AND DEJOSEPH, JJ. 532 CA 20-00974

[*1]ROBERT JEFFERY, PLAINTIFF-RESPONDENT,

vQUEEN CITY FOODS, LLC, AND MARIA FARINACCI, DEFENDANTS-APPELLANTS. SMITH, SOVIK, KENDRICK & SUGNET, P.C., BUFFALO (ALAN J. BEDENKO OF COUNSEL), FOR DEFENDANTS-APPELLANTS. DOLCE FIRM, BUFFALO (JOHN B.

LICATA OF COUNSEL), FOR PLAINTIFF-RESPONDENT. Appeal from an order of the Supreme Court, Erie County (Joseph R. Glownia, J.), entered July 31, 2020. The order granted the motion of plaintiff for summary judgment on the issues of negligence, proximate cause and serious injury and denied the cross motion of defendants for summary judgment. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: Plaintiff commenced this action seeking damages for injuries that he sustained when the vehicle he was operating was rear-ended by a vehicle operated by defendant Maria Farinacci, an employee of defendant Queen City Foods, LLC. Plaintiff alleged, inter alia, that he sustained a serious injury to his shoulder under the permanent consequential limitation of use and significant limitation of use categories set forth in Insurance Law § 5102 (d). Plaintiff thereafter moved for partial summary judgment on the issues of negligence, proximate cause, and serious injury, and defendants cross-moved for summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury. Defendants appeal from an order that granted plaintiff's motion and denied defendants' cross motion. We affirm. Initially, we note that, inasmuch as defendants do not challenge that part of the order granting plaintiff's motion with respect to the issue of negligence, they have abandoned any contention with respect thereto (see *Ciesinski v Town of Aurora*, 202 AD2d 984, 984 [4th Dept 1994]). We further note that, even though Supreme Court granted plaintiff's motion with respect to the issue of serious injury, it failed to specify under which category of serious injury plaintiff is entitled to recover. This case involved a competing summary judgment motion and cross motion, and the court chose not to write. This is an unacceptable practice (see generally *Kopp v Rhino Room, Inc.*, 192 AD3d 1690, 1692 [4th Dept 2021]; *Cangemi v Yeager*, 185 AD3d 1397, 1398 [4th Dept 2020]; *Doucette v Cuvillo*, 159 AD3d 1528, 1528 [4th Dept 2018]). To maximize effective appellate review, we must remind our colleagues in the trial courts to provide their reasoning instead of simply issuing orders. With respect to the merits, we nevertheless conclude that, contrary to defendants' contention, the court properly denied the cross motion and granted the motion with respect to the issues of serious injury and proximate cause. Defendants do not contest that plaintiff established as a matter of law that he sustained a serious injury to his shoulder under the categories of permanent consequential limitation of use and significant limitation of use. Instead, defendants contend only that the alleged shoulder injury was not caused by the accident. To support that argument, defendants rely exclusively on the expert opinion of a biomechanical expert. It is well [*2]settled, however, that biomechanical experts are not qualified to render opinions regarding injury causation (see *Gates v Longden*, 120 AD3d 980, 981 [4th Dept 2014]). Defendants' reliance on *Cardin v Christie* (283 AD2d 978 [4th Dept 2001]) is misplaced because the biomechanical expert in that case was also a medical doctor. Putting aside the opinion of plaintiff's biomechanical expert, as we must, there is no conflict between the remaining physicians that the accident caused the shoulder injury. "Inasmuch as plaintiff established a serious injury as a matter of law, [h]e 'is entitled to recover damages for all injuries causally related to the accident, even those that do not meet the serious

injury threshold' " (Maurer v Colton [appeal No. 3], 180 AD3d 1371, 1374 [4th Dept 2020]). In light of the foregoing, defendants' remaining contentions are academic (see Swed v Pena, 65 AD3d 1033, 1034 [2d Dept 2009]). Entered: August 26, 2021 Mark W. Bennett Clerk of the Court

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