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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: HON. ANTHONY L. PARGA, J.S.C.

DEIRDRE I. SIEGEL and BRADLEY SIEGEL,

Plaintiffs,

- against -

Sequence #05,06  
Motion Date: 7/14/00  
Index # 001343/98  
Part 26

THOMAS M. McEVILLY,

Defendant.

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Upon the foregoing papers, the motion by the plaintiffs' attorneys for an order relieving them as counsel for the plaintiff, and the motion by the defendant for an order granting summary judgment dismissing the complaint, are consolidated for disposition and decided as follows:

The motion by the plaintiffs' attorneys for an order relieving them as attorneys of record for the plaintiffs is denied as the movant has rescinded its application due to the plaintiffs' "willingness to have [the movants] continue in [its] representation" (see letter dated May 24, 2000).

The motion by the defendant for an order granting summary judgment dismissing the complaint, on the ground that plaintiff Deidre Siegel ("plaintiff") did not sustain a serious injury within the meaning of Insurance Law §5102(d), is granted.

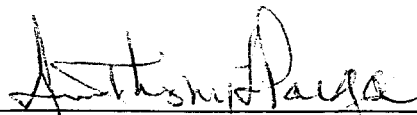
This is an action to recover damages for cervical and lumbar injuries which were allegedly sustained by the plaintiff as a result of an automobile accident which occurred on July 10, 1997.

In support of the motion at bar, the defendant submitted an affirmed medical report from an orthopedist and neurologist who examined the plaintiff on behalf of the defendant and found no objective orthopedic or neurological impairments. These reports sufficiently established a *prima facie* case that the plaintiff did not sustain a serious injury as a result of the underlying collision (see, *Gaddy v. Eyler*, 79 NY2d 955).

The burden then shifted to the plaintiff to come forward with sufficient admissible evidence to raise a triable issue of fact as to whether she had sustained a serious injury within the definitions set forth in Insurance Law §5102[d] (see, *Licari v. Elliot*, 57 NY2d 230, 237; *Pippis v. Tong*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8367 [2nd Dept.]; *Hasham v. Clarke*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8366 [2nd Dept.]). However, "the plaintiffs' evidence submitted in opposition to the motion was insufficient to raise a triable issue of fact on that issue. Although the [affidavit] of plaintiff's examining physician purports to quantify certain alleged restrictions in the plaintiff's range of motion, the physician failed to set forth the objective tests that were performed to support her conclusions (see, *Grossman v. Wright*, \_\_\_ AD2d \_\_\_, 707 NYS2d 233 [2d Dept. 2000]; *Watt v. Eastern Investigative Bureau*, \_\_\_ AD2d \_\_\_, 708 NYS2d 472 [2d Dept. 2000]; *Welcome v. Diab.*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 7071 [2d Dept. June 19, 2000]; *Villa v. Schechter*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 6481 [2d Dept. June 12, 2000])" (*Gilroy v. Duncombe*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8356 [2d Dept. July 31,

2000]). The plaintiff also failed to meet her burden by not submitting objective medical proof (e.g., x-ray, MRI) which would support her physician's findings and connect her purported physical limitations to the injuries she allegedly sustained from the car accident (*Gaddy v. Eyler, supra* at 957; *Grossman v. Wright, supra* at 237). Furthermore, plaintiff's treating physician does not explain why plaintiff's purported 10 degree limitation of use should be construed by the Court to be greater than minor, mild or slight (*Gaddy v. Eyler, supra* at 957; compare *Lopez v. Senatore*, 65 NY2d 1017, 1019), nor does she explain the gap in treatment between December 1998 and May 15, 2000, the day of plaintiff's most recent examination (*Goldin v. Lee*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8682 [2nd Dept.]; *Davis v. Brightside Fire Protection Inc.*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8566 [2nd Dept.]; *Reynolds v. Cleary*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 8200 [2nd Dept.]; *Kim v. Budhu*, \_\_\_ AD2d \_\_\_, 2000 N.Y. App. Div. LEXIS 6299 [2nd Dept.]). The plaintiff's subjective complaints of pain were insufficient for these purposes (see, *Grossman v. Wright, supra*; *Lincoln v. Johnson*, 225 AD2d 593; *Orr v. Miner*, 220 AD2d 567, 568).

Dated: September 12, 2000



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Anthony L. Parga, J.S.C.

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