

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

260

CA 09-00831

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

JANICE BARTON, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JENNIFER L. KOHLER AND TERRY H. KOHLER,
DEFENDANTS-RESPONDENTS.

VINAL & VINAL, BUFFALO (JEANNE M. VINAL OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

COHEN & LOMBARDO, P.C., BUFFALO (JAMES J. NASH OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Kevin M. Dillon, J.), entered February 13, 2009 in a personal injury action. The order, among other things, granted defendants' motion 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 she allegedly sustained when her vehicle was struck by a vehicle owned by defendant Terry H. Kohler and operated by defendant Jennifer L. Kohler. Supreme Court properly granted defendants' motion seeking summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d). "Defendants met their initial burden by submitting medical records and reports constituting 'persuasive evidence that plaintiff's alleged pain and injuries were related to . . . preexisting condition[s]' . . . , and plaintiff[] failed to raise a triable issue of fact whether [her] alleged pain and injuries were related to the subject accident rather than those preexisting conditions" (*Spanos v Fanto*, 63 AD3d 1665, 1666).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court