

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14744
C/cb

_____AD3d_____

Argued - January 16, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2005-08915
2005-08916
2005-11463
2005-11464

DECISION & ORDER

Laquionus Pressley, respondent, v Vincent DePalma,
appellant, et al., defendant.
(Action No. 1)

(Index No. 3960/03)

Neena N. Sweetser, respondent, v Jason Miller, et al.,
defendants, Vincent DePalma, appellant.
(Action No. 2)

(Index No. 5246/03)

Boeggeman, George, Hodges & Corde, P.C., White Plains, N.Y. (Robert S. Ondrovic
of counsel), for appellant.

Finkelstein & Partners, Newburgh, N.Y. (Andrew L. Spitz of counsel), for respondent
in Action No. 1.

Bruce A. Schonberg, Central Valley, N.Y. (Steven A. Kimmel of counsel), for
respondent in Action No. 2.

Nesci, Keane, Piekarski, Keogh & Corrigan, White Plains, N.Y. (Jason M.
Bernheimer of counsel), for defendant Jason Miller in both actions.

April 17, 2007

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PRESSLEY v DEPALMA
SWEETSER v MILLER

Paul I. Marx, White Plains, N.Y., for defendant LaQuiones Pressley in Action No. 2.

In two related actions to recover damages for personal injuries, which were jointly tried, Vincent DePalma, a defendant in both actions, appeals (1) from an interlocutory judgment of the Supreme Court, Orange County (Slobod, J.), entered July 18, 2005, which, upon a jury verdict finding him 100% at fault in the happening of the accident, dismissed the complaint in Action No. 1 insofar as asserted against the defendant Jason Miller, (2), as limited by his brief, from so much of an interlocutory judgment of the same court dated July 22, 2005, as, upon the jury verdict, is in favor of the plaintiff and against him on the issue of liability in Action No. 1, (3), as limited by his brief, from so much of an interlocutory judgment of the Supreme Court, Orange County (Slobod, J.), dated September 28, 2005, in Action No. 2 as, upon the jury verdict, is in favor of the plaintiff and against him on the issue of liability in Action No. 2, (4) from an order of the same court dated October 17, 2005, which denied his motion pursuant to CPLR 4404 to set aside the jury verdict rendered in both actions.

ORDERED that the appeal from the interlocutory judgment entered July 18, 2005, is dismissed, as the appellant is not aggrieved by that interlocutory judgment (*see* CPLR 5511); and it is further,

ORDERED that the appeal from the order dated October 17, 2005, is dismissed; and it is further,

ORDERED that the interlocutory judgments dated July 22, 2005, and September 28, 2005, are affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

The appeal from the intermediate order dated October 17, 2005, must be dismissed because the right of direct appeal therefrom terminated with the entry of the interlocutory judgments (*see Matter of Aho*, 39 NY2d 241, 248). The issue raised on the appeal from that order is brought up for review and has been considered on the appeal from the interlocutory judgments (*see* CPLR 5501[a][1]).

The appellant contends that the Supreme Court erred in limiting the testimony of a police officer who responded to the scene of the subject motorcycle accident. We disagree. The Supreme Court providently exercised its discretion in precluding the police officer from testifying as to his observations of marks on the roadway and his opinion as to the point of impact (*see Coffey v Callichio*, 136 AD2d 673; *Campbell v Manhattan & Bronx Surface Tr. Operating Auth.*, 81 AD2d 529). The proposed testimony was, in the circumstances of this case, beyond that which would be within the expertise of an officer who routinely responds to accidents.

A responding officer may testify to his observations of the location and position of vehicles upon his arrival at the scene, if relevant, and may, in some instances, give an opinion as to the point of impact (*see Evers v Carroll*, 17 AD3d 629, and cases cited therein). Here, however, the

officer arrived at the scene of the multiple vehicle accident approximately 15 minutes after the accident, by which time the scene had been altered by the removal of everything that could be moved from the road. The fire department had moved one of the motorcycles because it was almost on top of a passenger. The officer was unable to determine whether certain skid marks were attributable to one motorcycle or another, or to determine whether various marks he observed on the road were from the subject accident or were caused by other vehicles on other days. Therefore, the Supreme Court properly limited the testimony of the police officer.

MILLER, J.P., SPOLZINO, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court