

Dickerson v City of Canandaigua

2007 NY Slip Op 31782(U)

June 15, 2007

Supreme Court, Ontario County

Docket Number: 0093773/2007

Judge: John J. Ark

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ONTARIO

TAMARRA L. DICKERSON, Individually and as
Parent and Natural Guardian of ZACHARIAH
DICKERSON and DAVID FIVIE, Infants Under the
Age of Fourteen,

Plaintiff,

v

THE CITY OF CANANDAIGUA, MARK A. POTTER,
and CHARLES J. DICKERSON,

Defendants.

Action No. 1

DECISION and ORDER

Index No. 93773

CHARLES J. DICKERSON,

Plaintiff,

v

THE CITY OF CANANDAIGUA AND MARK A. POTTER,

Defendants.

Action No. 2

DECISION and ORDER

Index No. 93887

APPEARANCES:

Sugarman Law Firm, LLP,
Sandra L. Holihan, Esq., of Counsel,
for Defendant City of Canandaigua

Hall & Karz,
Peter Rolph, Esq., of Counsel,
for Plaintiff Tamarra L. Dickerson,
Individually and as Parent and Natural
Guardian of Zachariah Dickerson and
David Fivie

Daniel J. Guarasci, Esq.,
for Defendant Charles J. Dickerson

Joseph S. Dressner, Esq.,
for Plaintiff Charles J. Dickerson

Foster, Foster & Zambito, LLP,
Charles N. Zambito, Esq., of Counsel,
for Defendant Mark A. Potter

POSTURE

The two instant actions are the result of a motor vehicle accident which occurred in the City of Canandaigua, New York on the morning of Sunday, August 11, 2002. Defendant City of Canandaigua (hereinafter "City") moves for consolidation of the two subject actions, and for summary judgment dismissing the actions and all cross-claims as against itself. Plaintiffs Tamarra L. Dickerson and Charles J. Dickerson cross-move for summary judgment on the issue of liability.

Oral argument was heard by the Court on April 26, 2007. The following papers were submitted for the Court's consideration:

Notice of Motion of Defendant City, Affirmation of Ms. Holihan (with exhibits) and Memorandum of Law, all dated October 9, 2006;

Affirmation in Response of Mr. Dressner (with exhibits) and Memorandum of Law, both dated January 18, 2007;

Plaintiff Tamarra L. Dickerson's Notice of Cross-Motion, Mr. Rolph's Affidavit in Opposition to Defendant City's Motion and In Support of Plaintiffs' Cross-Motion (with exhibits) and Memorandum of Law, all dated February 6, 2007;

Mr. Dressner's Supplemental Affirmation in Support of Plaintiff Charles J. Dickerson's

Cross-Motion against Defendant City, dated February 12, 2007;

Mr. Zambito's Attorney Affirmation in Opposition to Plaintiff Charles J. Dickerson's Cross-Motion against Defendant City, dated February 15, 2007;

Ms. Holihan's Affirmation In Further Support of Defendant City's Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motions, dated April 16, 2007; and the Affidavit of Robert K. Seyfried, P.E., P.T.O.E., with C.V., dated April 2, 2007;

Mr. Rolph's Affidavit in Reply to Defendant City's Affirmation in Opposition to Cross-Motion (with exhibit) dated April 23, 2007;

Mr. Rolph's Affidavit in Reply after oral argument (with exhibits) dated May 2, 2007.

FACTUAL BACKGROUND

The subject motor vehicle accident occurred when Mr. Dickerson, travelling northbound on Catherine Street in Canandaigua, was attempting to make a left-hand turn onto Gibson Street. His view of possible oncoming cars travelling eastbound on Gibson Street was obscured by a line of cars parked on the south side of the street.

After making several incremental forward moves in an attempt to improve his view of the eastbound lane of Gibson Street, his vehicle was struck on the driver's side by a pickup truck driven by Defendant Mark A. Potter. Mr. Dickerson, his wife, his son and his stepson were all injured in the collision. Neither driver was ticketed as a result of the accident.

The vehicles which obscured Mr. Dickerson's view were legally parked, under an exemption which allowed parking on the south side of Gibson Street, between Main Street and Catherine Street, on Sundays between the hours of 6:00 a.m. and 1:00 p.m. This exemption, which was created by city ordinance passed in 1967, was designed to facilitate parking by

churchgoers.

At some point following the ordinance's enactment, Defendant City reached agreement with the New York State Department of Transportation for maintenance of arterial highways passing through its geographical area. An arterial highway is a municipal thoroughfare which connects to a state highway. The agreement assigned responsibility to the City for the care and posting of, among other things, signs regulating parking on its arterial highways. After the agreement had been concluded, the 1967 ordinance was never rescinded nor amended, and the Sunday exemption from the normal prohibition on parking on the south side of Gibson Street near the intersection of Catherine Street continued in force on the date of the accident.

Following the accident, at the direction of City Manager Steven C. Cole, Public Works Director Louis Loy and Police Chief Patrick McCarthy examined the scene, in an effort to determine whether new and modified parking regulations could be enacted, to better protect the safety of pedestrians and motorists at the Gibson-Catherine intersection. A proposed ordinance was drafted by Mr. Loy, but not enacted by the City. During church festivals occurring as recently as August 29, 2005, the City Police Department frequently posted temporary "No Parking" signs as a safety measure in the vicinity of Gibson and Catherine Streets. This was presumably in response to continued concerns over driver sightlines at the intersection.

ARGUMENTS OF COUNSEL

Defendant City maintains that it ceded all authority and control over parking regulations at the accident scene once the agreement with the Department of Transportation had been concluded. Curiously, though it claims to have been acting solely in the capacity of a state agent, it did not implead the State of New York as a party defendant, in order to seek either contribution

or indemnification.

Plaintiffs argue that the City maintained authority for placement and maintenance of parking signs under the agreement with the Department of Transportation. They note the post-accident investigation at the instigation of the City Manager, the aborted ameliorative legislation to correct the vision deficiency at the offending intersection, and the recurrent police action to prevent parking during high-traffic events in the area. They also assert that the City is nevertheless under a duty to regulate traffic safety on Catherine Street, even assuming arguendo its lack of jurisdiction over parking regulations on Gibson Street. Plaintiffs believe that the City has breached its duty to them by failing to take measures to protect those travelling on Catherine Street near the intersection with Gibson Street.

DECISION

The Court finds that, at the very least, numerous issues of fact exist as to Defendant City's creation and/or sufferance of a dangerous condition, and its contribution to the subject accident. Its authority and control over parking are also in question, but the Court cannot state as a matter of law that the City bears no responsibility for the accident.

Accordingly, Defendant City's motion for summary judgment dismissing the actions and cross-claims as against it is hereby DENIED, in its entirety.

For reasons of judicial economy and witness convenience, and to eliminate litigational redundancy, Defendant City's motion for consolidation of the two actions is hereby GRANTED, and Index Nos. 93773 and 93887 are hereby consolidated for all future proceedings, including any further discovery, pre-trial motions and trial.

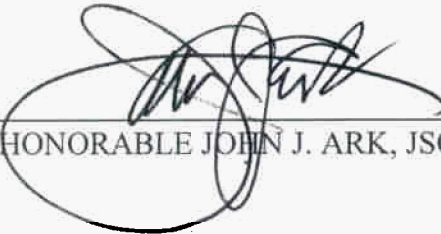
Plaintiffs seek summary judgment against Defendant City on the issue of liability.

Interestingly, neither Mr. Potter nor Mr. Dickerson was cited for any traffic violations as a result of the accident. However, opposing traffic professionals have opined on the causes of the accident, with Defendant City's expert claiming driver error, by one or both of the drivers involved. Even assuming control and negligence on the part of the City, proximate cause is still a well-framed issue. The Court cannot substitute its opinion for that of an ultimate fact finder.

Accordingly, Plaintiffs' motions for summary judgment against Defendant City on the issue of liability are hereby DENIED.

This Decision shall constitute the Order of the Court.

Dated: *June 15, 2007*


HONORABLE JOHN J. ARK, JSC