

Zwickel v Papsikis

2011 NY Slip Op 30669(U)

March 22, 2011

Supreme Court, Greene County

Docket Number: 08-0853

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
CLAIRE E. ZWICKEL,

COUNTY OF GREENE

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 08-0853
RJI NO. 19-09-4202

FOTINI A. PAPTSIKIS
and ANNA J. PAPTSIKIS,

Defendants.

Supreme Court Greene County All Purpose Term, March 11, 2011
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

On May 31, 2005 Plaintiff was driving her automobile in the Town of Catskill, Greene County, New York, when her vehicle was struck by a second vehicle, driven by Fotini Paptsikis and owned by Anna Paptsikis (hereinafter collectively "Defendants"). Plaintiff claims that Defendants' vehicle was negligently operated and that she sustained a "serious injury."

Plaintiff commenced this action, seeking to recover for her claimed injuries. Issue was joined by Defendants, discovery is complete and a trial date certain is set for April 18, 2011.

Defendants now move for summary judgment claiming that Plaintiff suffered no “serious injury.” (Insurance Law §5102[d]). Plaintiff opposes the motion. Because Defendants neither timely made their motion nor demonstrated good cause for their delay, the motion is denied.

CPLR §3212(a) states, in pertinent part, that “th[is] court may set a date after which no [summary judgment] motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.” (Brill v. City of New York, 2 NY3d 648, 652 [2004]; Miceli v. State Farm Mut. Auto. Ins. Co., 3 NY3d 725 [2004]; Coty v. County of Clinton, 42 AD3d 612 [3d Dept. 2007]; Town of Kinderhook v. Slovak, 47 AD3d 1093 [3d Dept. 2008]).

Initially, the parties agreed on a scheduling order which required the Note of Issue to be filed by May 10, 2010, with dispositive motions being filed per the CPLR. Thereafter, at the request of the parties, this Court modified the scheduling order by Letter Order of June 3, 2010 (hereinafter “Letter Order”). The Letter Order required Plaintiff to file her Note of Issue by September 17, 2010 and required the parties to file and serve dispositive motions in accord with the CPLR. No extension of this date was sought nor was it modified. Additionally, this Court reminded the parties of the Note of Issue filing requirement, by letter dated October 13, 2010.

Because this Court’s Letter Order required the Note of Issue to be filed by September 17, 2010, the parties were correspondingly ordered to file and serve any summary judgment motion “no later than one hundred twenty days after [September 17, 2010]... except with leave of court on good cause shown.” (CPLR §3212[a]).

Despite her clear obligation to do so, Plaintiff did not file the Note of Issue until February

2011. However, Plaintiff's "failure to timely file the note of issue did not absolve defendant from its independent obligation to comply with the scheduling order." (Harrington v. Palmer Mobile Homes, Inc., 71 AD3d 1274, 1275 [3d Dept. 2010]). As such, Defendants were obligated to file their summary judgment motion "no later than one hundred twenty days after [September 17, 2010]", i.e. January 17, 2011. (CPLR §3212[a] and General Construction Law §25-a [applied because the actual 120th day fell on a Saturday]).

Defendants made this motion on February 10, 2011, well after its time to do so expired pursuant to this Court's Letter Order. Moreover, "defendant[s] did not seek leave of court before the late filing, nor make any attempt to establish good cause for the delay." (Harrington v. Palmer Mobile Homes, Inc., supra at 1275).

Accordingly, Defendants' motion for summary judgment is denied.

This Decision and Order is being returned to the attorneys for the Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Greene County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
March 22, 2011


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated October 27, 2010, Affidavit of Stephen M. Groudine, dated February 10, 2011, with attached Exhibits A-I.
2. Affidavit of Claire Zwickel, dated February 21, 2011, with attached Exhibit 1; Affirmation of Bellanca Fletcher, dated March 4, 2011, with attached Exhibits A-F.
3. Reply Affidavit of Stephen M. Groudine, dated March 10, 2011.