

Carroll v Golon

2011 NY Slip Op 31974(U)

June 27, 2011

Sup Ct, Nassau County

Docket Number: 7580/09

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 15 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

x _____ x

**PATRICK JOHN CARROLL and JENNIFER
CARROLL,**

Index No. 7580/09

**Motion Submitted: 4/11/11
Motion Sequence: 001**

Plaintiffs,

-against-

THOMAS J. GOLON,

Defendants.

x _____ x

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Plaintiffs move this Court for an Order granting summary judgment against defendant on the issue of liability, and setting this matter down for an inquest on damages. Defendant opposes the requested relief.

At the time of the incident giving rise to this action, plaintiff John Carroll was a Nassau County police officer directing traffic at an intersection. Plaintiff officer was directing traffic at the intersection, at approximately 10 a.m., because a town festival was to take place later that same day, October 18, 2008. Plaintiff alleges that defendant failed to obey plaintiff's command to stop. As a result, defendant's vehicle ran over plaintiff's left foot, injuring, *inter alia*, plaintiff's left ankle, knee and lower leg.

Plaintiff further alleges that defendant violated various sections of the Vehicle and Traffic Law (“VTL”), including sections 1102 (obedience to police officers and flagpersons), 1146 (drivers to exercise due care), and 1151(a) (pedestrians’ right of way in crosswalks), which violations caused plaintiff’s injuries. Thus, plaintiff asserts that he is entitled to summary judgment as a matter of law based on General Municipal Law § 205-e.

This Court recognizes that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact. (*Cauthers v. Brite Ideas, LLC*, 41 A.D.3d 755, 837 N.Y.S.2d 594 [2d Dept., 2007]). The Court’s analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein the defendant. (*Makaj v. Metropolitan Transportation Authority*, 18 A.D.3d 625, 796 N.Y.S.2d 621 [2d Dept., 2005]).

A police officer seeking to recover for injuries sustained in the line of duty under General Municipal Law § 205-e must first identify the statute or ordinance with which the defendant failed to comply, and then must set forth facts from which it may be inferred that the defendant’s negligence directly or indirectly caused the injuries (*General Municipal Law § 205-e(1)*; *Link v. City of New York*, 34 A.D.3d 757, 825 N.Y.S.2d 518 [2d Dept., 2006]). If a defendant’s violation of a statute or ordinance indirectly, caused injury to the officer, the officer need not establish the same amount of proof as proximate cause in common-law negligence cases. Instead, the proof required is that there be a practical or reasonable connection between the violation and the injury (*Cerati v. Berrios*, 61 A.D.3d 915, 878 N.Y.S.2d 160 [2d Dept., 2009]).

A violation of the VTL may serve as a basis for liability under General Municipal Law § 205-e, but it is not necessary for plaintiff to establish that defendant was convicted of the violation claimed to form the basis for 205-e liability (*Williams v. City of New York*, 2 N.Y.3d 352, 366, 811 N.E.2d 1103, 779 N.Y.S.2d 449 (2004); *Malsky v. Towner*, 196 A.D.2d 532, 601 N.Y.S.2d 310 [2d Dept., 1993]).¹

Thus, to establish a prima facie case under General Municipal Law § 205-e, the plaintiff must establish a violation of the relevant statute, ordinance, or regulation, and that there is at least a practical or reasonable connection between the violation and the injury.

¹Plaintiff testified that he did not know if defendant was issued traffic summonses as a result of the incident giving rise to this action, and defendant has not indicated whether summonses were issued to him.

Furthermore, General Municipal Law § 205-e, which provides police officers with a cause of action resulting from the violation of statutes, rules, ordinances and orders, imposes a form of absolute liability that omits assumption of risk and comparative negligence defenses (*see Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 83, 790 N.E.2d 772, 760 N.Y.S.2d 397 (2003); *Canner v. Riverside Beach, LLC*, 2010 N.Y. Slip Op. 30338U, 2010 N.Y. Misc. LEXIS 1424 (Sup. Ct. Nassau County 2010); *Wedlock v. Troncoso*, 185 Misc.2d 432, 712 N.Y.S.2d 328 [Sup. Ct. Richmond County 2000]).

In this case, plaintiff alleges that defendant violated VTL § 1102, among other VTL sections. VTL § 1102 provides as follows:

No person shall fail or refuse to comply with any lawful order or direction of any police officer or flagperson or other person duly empowered to regulate traffic

It is undisputed that plaintiff was empowered to regulate traffic on the date in question, and defendant does not challenge the lawfulness of plaintiff's order.

In support of their motion for summary judgment, plaintiffs have provided, *inter alia*, the deposition testimony of plaintiff John Carroll, defendant, and defendant's passenger, Richard Nelson. According to that testimony, the plaintiff officer signaled for defendant to bring his vehicle to a stop by raising his hands, with palms facing outward, and repeatedly shouting "stop" at least three times.

Defendant himself admitted that he recognized plaintiff as a uniformed police officer, and that plaintiff told him to stop. Defendant further acknowledged that he stopped his vehicle because plaintiff told him to stop, and that plaintiff told defendant that he "can't go down here." Defendant admitted that he nonetheless inched his way up through the intersection by "lightly" releasing the brake pedal, and that plaintiff was screaming at him.

Defendant's passenger confirmed that plaintiff had his hands up, and that he heard plaintiff yell "stop, stop stop," possibly as many as four or five times, prior to defendant's vehicle rolling over plaintiff's foot.

Having demonstrated that defendant violated VTL § 1102, by failing to comply with plaintiff's lawful order to stop, and that there is a practical or reasonable connection between the violation and the injury, plaintiff has established his *prima facie* entitlement to summary judgment as a matter of law. The burden now shifts to defendant to establish the existence of material issues of fact requiring a trial.

Defendant has not met his burden. Defendant has submitted the same deposition testimony in opposition to the instant motion. Defendant's assertion that he inched up within the intersection to better hear what plaintiff was screaming at him is unavailing and insufficient to raise a question of fact, especially because defendant admits that he initially stopped his vehicle in compliance with plaintiff's command.

Equally unavailing is whether or not a female police officer allegedly motioned that defendant could proceed through the intersection, prior to plaintiff's command to stop. Simply put, defendant acknowledged understanding plaintiff's command to stop, but chose to ignore it.

At one point, defendant's passenger testified that defendant had stuck his head out of the driver's side window, and that plaintiff was saying, "stop, stop." Defendant apparently ignored what plaintiff was saying and continued moving his vehicle forward until it ran over plaintiff's foot.

Defendant's explanation that he "was simply attempting to engage in a conversation with [plaintiff] when the incident occurred" (Affirmation in Opposition, paragraph 37), is equally immaterial to the determination of this motion. Defendant admitted that he moved forward after being commanded to stop. By his own admission, defendant intended to cross over the intersection to go to his business located beyond it, although traffic was being diverted.

Defendant's passenger confirmed that, as defendant approached the intersection and noticed the officers diverting traffic, defendant commented that, "they would allow him to drive through to get to his shop . . ." As a past member of the festival's board, defendant indicated to his passenger that he "was aware of how they operated . . .," stating that, since it was still early and the festival was being set up, "people were still allowed to proceed or take care of their businesses."

In view of defendant's failure to submit sufficient proof to raise a triable issue of fact, plaintiffs' summary judgment motion is granted on the issue of liability.

The foregoing constitutes the Order of this Court.

Dated: June 27, 2011
Mineola, N.Y.

Karen J. Murphy

J. S. C.

ENTERED

JUL 05 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**