

Baker v Martinez

2014 NY Slip Op 33601(U)

May 15, 2014

Supreme Court, New York County

Docket Number: 2012-2287

Judge: Ann C. Crowell

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This opinion is uncorrected and not selected for official publication.



ORIGINAL

SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

PATRICK J. BAKER and TRACY L. BAKER,

Plaintiffs,

- against -

DECISION and ORDER

RJI # 45-1-2013-0077

Index #2012-2287

MABEL C. MARTINEZ,

Defendant.

JOSEPH R. DINUZZO,

Plaintiff,

- against -

MABEL C. MARTINEZ,

Defendant.

2014 JUN -9 PM 2: 29
SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY

FILED

APPEARANCES

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Law Office of Brian D. Richardson
Attorneys for the Defendant
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ANN C. CROWELL, J

On September 24, 2012, plaintiff Joseph R. DiNuzzo ("DiNuzzo") commenced this action by filing a Summons and Complaint. By Notice of Motion dated February 4, 2014, plaintiff filed the instant motion to amend the complaint pursuant to CPLR § 3025(b) to

add a request for punitive damages. Defendant has opposed the motion.

On August 19, 2011, at approximately 12:24 a.m., DiNuzzo was struck by a 2010 Honda operated by the defendant Mabel C. Martinez ("Martinez") in the Town of Yorktown, County of Westchester. Plaintiff was a pedestrian construction worker within a work zone. Martinez had started drinking that evening at approximately 7:00 p.m. Martinez recalls having two (2) beers and a shot at a friend's house. Martinez believes she had at most another two to three beers at a bar called AJ's Bar & Grill before the accident.

Martinez remembers leaving the bar, checking her Ipod to put on a playlist, and the car just stopping suddenly. Martinez does not recall anything else about the accident except being yelled at by another construction worker. A chemical test of Martinez's breath yielded a blood alcohol content of 0.21%. Later, Martinez pled guilty to two (2) counts of Vehicular Assault in the First Degree (class D felonies).

It is well settled that leave to amend a pleading pursuant to CPLR § 3025(b) should be freely given provided that there is no prejudice and the proposed amendment is not plainly lacking in merit. *Nelson v State of New York*, 67 AD3d 1142, 1143 [3d Dept. 2009]; *Ciarelli v Lynch*, 46 AD3d 1039, 1039-1040 [3d Dept. 2007]. In the absence of an abuse of discretion, a court's decision as to whether to grant leave to amend a pleading shall remain undisturbed. *Pagan v Quinn*, 51 AD3d 1299, 1300 [3d Dept. 2008].

Punitive damages "may be awarded when a defendant's conduct is so reckless or wantonly negligent as to be the equivalent of a conscious disregard of the rights of others." *Rahn v Carkner*, 241 AD2d 585, 586 [3d Dept. 1997] (citations omitted). It is well settled that intoxication alone does not open the door for punitive damages. *Trudeau v Cooke*, 2 AD3d 1133 [3d Dept. 2003]. Each situation must be considered on a case by case basis. *Id.*


Martinez was clearly intoxicated based upon her plea elocution of guilty to vehicular assault in the first degree and a BAC of 0.21%. The defendant was driving her car on Compond Road for a brief time period before the accident. She admits looking at her Ipod at some point during her travel to select a play list. Defendant's intoxication alone is insufficient for an award of punitive damages. There is no other evidence to indicate that she acted with evil or reprehensible motives, or so recklessly or wantonly as to warrant an award of punitive damages. See, *Trudeau v Cooke, supra* (intoxication and speeding insufficient under the facts); *Ives v Correll*, 211 AD2d 899 [3d Dept. 1995] (intoxication and failure to brake or take evasive measures insufficient); *Taylor v Dyer*, 190 AD2d 902 [3d Dept. 1993] (alcohol involvement, rear end collision and fleeing the scene insufficient); *Rodgers v Duffy*, 95 AD3d 864 [2d Dept. 2012] (intoxication alone insufficient). There is no evidence that Martinez was speeding at the time of the accident. See, *Parkhill v Cleary*, 305 AD2d 1088 [4th Dept. 2003]; *Letterman v Reddington*, 278 AD2d 868 [4th Dept. 2000].

At the defendant's sentencing the judge stated. "I have never seen a more compelling presentence report, convincing me that someone is very sorry for the events that occurred." The defendant exhibited very poor judgment to achieve her reported BAC of .021% and attending to her Ipod while driving. However these facts alone do not demonstrate that her conduct, was "so flagrant as to transcend mere carelessness" or so wantonly reckless as to evince a conscious disregard for the rights of others. *Evans v. Stranger*, 307 AD2d 439 [3d Dept. 2003]. Plaintiff DiNuzzo's motion to amend the complaint is denied.

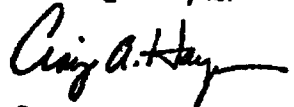
Any relief not specifically granted is denied. No costs are awarded to any party. This decision shall constitute the Order of the Court. The original Decision and Order shall be

forwarded to the attorney for the defendant for filing and entry. The underlying papers will be filed by the Court.

Dated: May 15, 2014
Ballston Spa, New York


ANN C. CROWELL, J.S.C.
ENTERED

Craig A. Hayner


Saratoga County Clerk

SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY

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ENTERED

Papers Received and Considered:

Notice of Motion dated February 4, 2014

Affidavit of Edward P. Ryan, Esq., sworn to February 4, 2014, with Exhibits 1-3

Affirmation of Brian D. Richardson, Esq., dated April 22, 2014

Reply Affidavit of Edward P. Ryan, Esq., sworn to April 25, 2014