

**Keefe v Andrews**

2018 NY Slip Op 34282(U)

February 8, 2018

Supreme Court, Erie County

Docket Number: Index No. 802914/2016

Judge: Timothy J. Walker

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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NICOLE M. KEEFE and  
DANIEL J. KEEFE,

Plaintiffs,

-against-

**DECISION AND ORDER**  
Index No. 802914/2016

KYLE R. ANDREWS, as Administrator of the  
Estate of MARTIN PETERS,

Defendants.

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**BEFORE: HON. TIMOTHY J. WALKER, Presiding Justice**

**APPEARANCES: THE O'BRIEN FIRM**  
Christopher J. O'Brien, Esq.  
Attorneys for Plaintiffs

**AUGELLO & MATTELIANO, LLP**  
Joseph A. Matteliano, Esq.  
Attorneys for Defendants

**WALKER, J.**

This action arises out of a motor vehicle accident which occurred around 8:34 a.m. on December 3, 2014. Plaintiff Nicole Keefe was driving northbound on Niagara Falls Boulevard in Amherst, New York, when her vehicle was struck by Defendant Martin Peters' vehicle, which was traveling southbound. Plaintiff alleges that, as a result of the accident, she sustained spinal fractures, and experiences headaches, vertigo, dizziness and vision problems.

Pursuant to CPLR § 3212, Plaintiffs applied for summary judgment on the issue of negligence. Defendants cross-moved for summary judgment, alleging Defendant Peters suffered

a sudden unforeseeable medical emergency prior to the accident. Defendants' and Plaintiffs' respective experts disagree on what medical condition caused Peters to drive into oncoming traffic. However, Defendants do not dispute that Peters drove his vehicle into an oncoming lane of traffic.

It is well-settled that “a driver who experiences a sudden medical emergency will not be chargeable with negligence provided that the medical emergency was unforeseen” [*Dalchand v. Missigman*, 288 AD2d 956, 956 (4<sup>th</sup> Dept. 2001)]. A fatal heart attack may constitute a sudden medical emergency, if it was unforeseeable [*see, New York v Susco*, 245 AD2d 854, 855 (3d Dept. 1997)]. Here, defendants can establish entitlement to judgment as a matter of law “by demonstrating through deposition testimony, the defendant driver’s medical records, and expert medical evidence” Peters suffered a sudden and unforeseeable medical emergency [*Van De Merlen v Karpf*, 147 AD3d 1008, 1008 (2d Dept 2017)].

Defendants submitted the affirmation of Susan P. Graham, M.D., a cardiologist. Dr. Graham opines that Peters suffered “an unexpected abrupt loss of consciousness from a cardiovascular event just prior to the accident” (Aff. Of Susan Graham, dated June 8, 2017, ¶30). Two (2) EKGs performed immediately after the accident indicate that Peters suffered heart damage, including premature ventricular contractions (irregular beats), which is indicative of a heart attack (Aff. Of Susan Graham, dated June 8, 2017 ¶15). Dr. Graham opines further that “the ischemia to Peters’ heart resulted in a cardiovascular event that caused him to lose consciousness when operating his vehicle” at the time of the accident (Aff. Of Susan Graham, dated June 8, 2017 ¶16). Peters had no pulse at the accident scene, indicating that this was not an

episode of syncope (in which his heart rate would have returned to normal), and he could have been revived (*Id.*).

Defendants also submit medical records from Dr. Michael J. Mineo who, in his discharge summary, concluded that Peters suffered a cardiac arrest. Daniel Thomas, a nonparty witness, stated that, just prior to the accident, Peters “was unconscious or asleep with his head slumped resting on the steering wheel.”

With respect to foreseeability, Dr. Graham opines that Peters had no prior history of heart disease (Graham aff. At ¶17). Lynn Peters (Peters’ wife) affirmed that her husband never saw a cardiologist, and was never diagnosed with, or treated for any type of cardiac condition. Ms. Peters states further that ten (10) minutes prior to the accident, Peters did not appear to be suffering from any condition that would have affected his ability to drive.

As such, Defendants met their initial burden on this issue.

In opposition, Plaintiffs submit proof that Peters suffered a syncope episode immediately before the accident and, because Peters had a history of vasovagal syncope for years preceding the collision, this episode was foreseeable. There were three (3) reported episodes of syncope, and the latest occurred three (3) weeks prior to the accident. Further, due to his most recent episode of syncope, Peters followed up with Roswell Park Cancer Institute and Dr. Phili recommended “additional testing” for the syncope.

Plaintiffs’ expert, Stanley J. Schneller, M.D., a cardiologist, opines that “syncope resulted in Peters losing consciousness and driving into oncoming traffic.” Vasovagal syncope is a “condition characterized by dizziness and fainting due to slow heart rates and blood pressure”

(Aff. of Stanley J. Schneller, dated July 28, 2017 ¶9). Episodes of vasovagal syncope are accompanied by a brief prodrome, where the patient is aware of an impending faint.

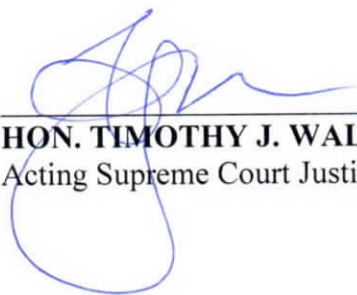
According to Dr. Schneller, Peters did not suffer a heart attack, because a cardiac monitor administered by Twin City Ambulance showed that Peters had a sinus bradycardia (low heart rate of sixty beats per minute). According to Dr. Schneller, this finding is inconsistent with Peters having suffered cardiac arrest due to a heart attack at the time of the accident. Further, Dr. Schneller opines that Defendants' expert's reliance on Peters' EKGs are of limited value, because they do not indicate the condition of his heart prior to the accident, and were taken after Peters sustained significant trauma and internal bleeding.

As such, Plaintiffs have raised a genuine issue of material fact namely, whether Peters suffered a sudden and unforeseeable medical emergency.

Plaintiffs' request for a *Frye* hearing on the basis that "the defense expert has ignored critical medical evidence in the case," is denied, because Plaintiffs do not contend that the theory espoused by Defendants' expert was based on novel scientific principles [*Likos v. Niagara Frontier Transit Metro System, Inc.*, 149 AD3d, 1474, 1476 (4<sup>th</sup> Dept 2017)].

This constitutes the Decision and Order of this Court. Submission of an order by the Parties is not necessary. The mailing of a copy of this Decision and Order by this Court shall not constitute notice of entry.

Dated: February 8, 2018  
Buffalo, New York



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HON. TIMOTHY J. WALKER, J.C.C.  
Acting Supreme Court Justice