

Matter of Boykins v Washousky

2019 NY Slip Op 34488(U)

September 30, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 615404/2017

Judge: Paul J. Baisley, Jr.

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY**

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

-----X
The Estate of DAYQUON BOYKINS, by his Mother,
Natural Guardian and Appointed Administrator
NADINE BOYKINS,

Plaintiff,

-against-

CHRISTOPHER WASHOUSKY and STACY A.
WASHOUSKY,

Defendants.

-----X

INDEX NO.: 615404/2017

CALENDAR NO.: 201801717MV

MOTION DATE: 1/31/19

MOTION SEQ. NO.: 001 MG; CASEDISP

PLAINTIFF'S ATTORNEYS:

Henry W. Davoli, Jr., PLLC
342 North Long Beach Road
Rockville Centre, New York 11570

DEFENDANTS' ATTORNEYS:

Schondebare & Korcz, PC
1650 Sycamore Avenue, Suite 17
Bohemia, New York 11716

Upon the following papers read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by defendants, dated December 19, 2018; Answering Affidavits and supporting papers by plaintiff, dated December 28, 2018; Replying Affidavits and supporting papers ____; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion (motion seq. no. 001) of defendants Christopher Washousky and Stacy A. Washousky for summary judgment is granted.

This is an action to recover damages for personal injury and wrongful death allegedly sustained by plaintiff's decedent, Dayquon Boykins ("Boykins"), as a result of a motorcycle accident which occurred on May 12, 2017, on Station Road in Bellport, New York. It is alleged that the accident occurred when the motorcycle operated by Boykins collided with the minivan owned by defendant Christopher Washousky and operated by defendant Stacy A. Washousky as defendants' vehicle was making a left turn from the southbound lane of Station Road into a parking lot. It is undisputed that, prior to the accident, Boykins was operating his motorcycle in the southbound lane of Station Road behind a vehicle operated by non-party Anthony Rios, which was traveling behind Washousky's vehicle. It is further undisputed that Boykins crossed over the double yellow line into the northbound lane on Station Road prior to striking the driver's side of defendants' vehicle. As a result of the impact, Boykins was propelled off of his motorcycle and tragically died at the scene.

Defendants now move for summary judgment dismissing plaintiff's claims on the grounds that plaintiff cannot establish a *prima facie* case of negligence against defendants, that the plaintiff's negligence was the sole proximate cause of the accident, and that Stacy Washousky was faced with an emergency and is free from liability for the accident. Defendants' submissions

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in support of their motion include the pleadings, the deposition transcripts of Stacy Washousky and non-party Anthony Rios, and the certified police accident report. Defendants also submit the deposition transcript of police officer Evan Wines, who responded to the accident.

Stacy Washousky testified that the subject accident occurred on May 12, 2017, at approximately 4:10 p.m. At the time of the accident, Ms. Washousky was taking her daughter to Gymnast Gymnastics Center ("Gymnast"). She testified that she made a right turn from Horseblock Road onto Station Road, which is a two-way street with one northbound lane and one southbound lane divided by a double yellow line. The traffic on Station Road was light and there were no vehicles traveling in front of her. Ms. Washousky testified that she traveled in the southbound lane of Station Road for three to four minutes. As she approached the parking lot for Gymnast on her left, she turned her directional on and decreased her speed from 30 miles per hour to between five and ten miles per hour. She testified that she was looking forward as she prepared to turn left and observed that there was no traffic in the northbound lane of Station Road. Ms. Washousky further testified that, as she made the left turn into the parking lot of Gymnast, there was a loud crash and something impacted the left side of her vehicle, between the driver and passenger doors. Her vehicle was in the middle of her turn and was traveling approximately five miles per hour at the time of the impact. After the impact, Ms. Washousky pulled over into the driveway of the parking lot, and she and her daughter exited her vehicle. She testified that she did not see the motorcycle which struck her vehicle prior to the accident.

Anthony Rios testified at a non-party deposition in this matter. Mr. Rios testified that his vehicle was the first car stopped at a traffic light on the southbound lane of Station Road, at its intersection with Horseblock Road, approximately one mile from the area where the accident occurred. As Mr. Rios was stopped at the traffic light, he heard a motorcycle revving its engine behind him; and he observed the motorcycle pass two cars and come to a stop behind his vehicle. Mr. Rios testified that, while stopped for the traffic light, he also observed a minivan turn right onto Station Road from Horseblock Road. When the traffic light turned green, Mr. Rios' vehicle began traveling behind the minivan, with the motorcycle traveling behind Mr. Rios. He testified that he observed the driver of the minivan activate her turn signal to go into a gym on the left side of the roadway, and he slowed his vehicle to approximately ten miles per hour. Mr. Rios further testified that the operator of the motorcycle then revved his engine and passed Mr. Rios' vehicle on the left, crossing the double yellow lines separating the southbound and northbound lanes of traffic. The motorcycle then struck the driver's side doors of the turning minivan and the operator was ejected from the motorcycle. Mr. Rios testified that the motorcycle was traveling southbound in the northbound lane of Station Road, at approximately 30 to 40 miles per hour, at the time of the accident. Mr. Rios gave a witness statement to the police who arrived at the scene of the accident, which was consistent with his deposition testimony.

Evan Wines, a detective for the Suffolk County Police Department, also testified at a non-party deposition in this matter. Detective Wines testified that his duties include the investigation

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of fatal motor vehicle accidents, and that he was involved in the investigation of the subject accident. He testified that he arrived at the scene of the accident at approximately 4:30 p.m., where he read a witness statement which had been obtained by his partner from Anthony Rios, and he interviewed the driver of the minivan involved in the accident. Detective Wines also observed debris from the accident in the northbound lane of the roadway. Based on his investigation, Detective Wines opined that the motorcycle operator was traveling in a southbound direction when he crossed the double yellow line on the roadway into the northbound lane and struck the minivan which was making a left-hand turn into a parking lot. Detective Wines prepared a report regarding the incident which he identified at his deposition. The certified report notes that Station Road, in the area where the accident occurred, is a two lane road with one northbound and one southbound lane separated by double yellow road markings. Detective Wines' report further notes:

“From the position of the vehicles it appears that the Honda was traveling south on Station [Road] and was turning left into the parking lot of 1145 Station Rd. when it was struck on the driver's side by the Suzuki Motorcycle, which had also been traveling south on Station Rd. The point of impact appeared to be in the northbound lane which indicated that the motorcycle had entered the northbound lane prior to striking the Honda.”

Plaintiff opposes the motion with an attorney's affirmation arguing that factual issues are present with regard to Stacy Washousky's alleged negligence in causing the accident, which preclude summary judgment. In support of this contention, plaintiff “incorporate[s] by reference” the deposition transcripts, pleadings and marked exhibits submitted by defendants, and submits photographs of the subject roadway which were marked at Stacy Washousky's deposition. Although plaintiff's opposition cites certain testimony purportedly quoted from the deposition of the decedent's mother, the transcript of said testimony was not submitted by plaintiff, and the cited testimony has therefore not been considered by the Court.

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 317 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562, 427 NYS2d 595, 597 [1980]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 165 NYS2d 498, 505 [1957]). A party opposing a motion for summary judgment must proffer evidence of material issues of fact requiring a trial (*see Zuckerman v City of New York*, 49 NY2d at 562, 427 NY2d at 598). However, in opposing a summary judgment motion, mere conclusions, unsubstantiated allegations or assertions are insufficient to raise triable issues of fact (*Zuckerman v New York, supra*).

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Here, the defendants met their *prima facie* burden for summary judgment dismissing the complaint by submitting evidence establishing that the plaintiff's decedent's act of crossing over the double yellow line into the oncoming lane of traffic was the sole proximate cause of the accident (*see Ciraldo v County of Westchester*, 147 AD3d 813, 813, 47 NYS3d 95, 95-96 [2d Dept 2017]; *Snemyr v W.A. Morales-Aparicio*, 47 AD3d 702, 703, 850 NYS2d 489, 490 [2d Dept 2008]; *Biscardi v Ciampa*, 27 AD3d 681, 682, 815 NYS2d 588, 589 [2d Dept 2006]; *O'Connor v Lopane*, 24 AD3d 426, 426, 805 NYS2d 125, 126 [2d Dept 2005]; *Pasquerella v Pisani*, 269 AD2d 436, 436, 702 NYS2d 922, 923 [2d Dept 2000]). "Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law §1126 (a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making" (*Foster v Sanchez*, 17 AD3d 312, 313, 792 NYS2d 579, 580 [2d Dept 2005]; *see also Browne v Logan Bus Co., Inc.*, 156 AD3d 856, 857, 65 NYS3d 780, 780 [2d Dept 2017]; *Rodriguez v Guitierrez*, 138 AD3d 964, 967, 31 NYS3d 97, 100 [2d Dept 2016]; *Barbaruolo v Difede*, 73 AD3d 957, 957, 900 NYS2d 671, 672 [2d Dept 2010]; *Snemyr v W.A. Morales-Aparicio, supra*; *Gadon v Oliva*, 294 AD2d 397, 397-398, 742 NYS2d 122, 123 [2d Dept 2002]). In addition, a driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic (*see Browne v Logan Bus Co., Inc., supra*; *Ciraldo v County of Westchester, supra*; *Rodriguez v Guitierrez, supra*; *Barbaruolo v Difede, supra*; *Eichenwald v Chaudhry*, 17 AD3d 403, 404, 794 NYS2d 391, 392 [2d Dept 2005]).

In opposition to defendants' motion, plaintiff failed to raise a triable issue of fact (*see Ciraldo v County of Westchester, supra*; *Barbaruolo v Difede, supra*; *O'Connor v Lopane, supra*). Since the decedent died as a result of the accident, and therefore cannot describe the occurrence, plaintiff is entitled to every inference that can reasonably be drawn from the evidence in determining whether questions of fact exist which preclude summary judgment (*Barbaruolo v Difede*, 73 AD3d at 958, 900 NYS2d at 672; *see Noseworthy v City of New York*, 298 NY 76, 80, 80 NE2d 744 [1948]). "However, it does not relieve the plaintiff of the obligation to provide some proof from which negligence can reasonably be inferred" (*Barbaruolo v Difede*, 73 AD3d at 958, 900 NYS2d at 672; *see also Sanchez-Santiago v Call-A-Head Corp.*, 95 AD3d 1292, 1294, 945 NYS2d 716, 717 [2d Dept 2012]). "Mere speculation that the defendant driver could have done something to avoid a vehicle crossing over a double yellow line is insufficient to defeat a motion for summary judgment" (*Barbaruolo v Difede*, 73 AD3d at 958, 900 NYS2d at 672; *see also Scott v Kass*, 48 AD3d 785, 786, 851 NYS2d 649, 651 [2d Dept 2008]; *Eichenwald v Chaudhry, supra*; *Gadon v Oliva, supra*).

Here, plaintiff's contentions that issues of fact are present are based entirely on speculation and are insufficient to overcome the defendants' *prima facie* showing of entitlement to summary judgment (*see Ciraldo v County of Westchester, supra*; *Sanchez-Santiago v Call-A-Head Corp., supra*; *Barbaruolo v Difede, supra*; *O'Connor v Lopane, supra*; *Miranda v Devlin,*

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260 AD2d 451, 452, 688 NYS2d 578, 579 [2d Dept 1999]). Contrary to plaintiff's assertion, there is no evidence indicating that defendants' vehicle was "erratically operated" or that Ms. Washousky was traveling "unreasonably slow" prior to the accident. In addition, as Ms. Washousky was not required to anticipate that plaintiff's vehicle would attempt to pass her from behind by crossing over into oncoming traffic, the accident was not caused by any failure by her to "see that which could be seen" (*see Browne v Logan Bus Co., Inc., supra; Ciraldo v County of Westchester, supra; Rodriguez v Guitierrez, supra; Barbaruolo v Difede, supra; Eichenwald v Chaudhry, supra*). Plaintiff has failed to proffer evidence of material issues of fact requiring a trial. Accordingly, defendants' motion is granted.

Dated: September 30, 2019



J.S.C.

HON. PAUL J. BAISLEY, JR.