

Matesic v Lukasik

2020 NY Slip Op 33933(U)

November 27, 2019

Supreme Court, Niagra County

Docket Number: E162380/2017

Judge: Matthew J. Murphy

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

ELLEN S. MATESIC,

Plaintiff

Index No. E162380/2017

vs.

MATTHEW W. LUKASIK, LINDA M. LUKASIK,
LOYOLA RECOVERY FOUNDATION, INC. and
MAREN M. SMITH

Defendants.

DECISION ON SUMMARY JUDGMENT MOTION

APPEARANCES:

Joseph D. Morath, Jr., Esq.
Attorney for Plaintiff

Meghan M. Brown, Esq.
Attorney for Defendant Loyola Recovery Foundation

Alyson C. Culliton, Esq.
Attorney for Defendants Lukasik

Elise L. Cassar, Esq.
Attorney for Defendant Smith

MURPHY, J.

DECISION ON SUMMARY JUDGMENT MOTION

Defendant Maren A. Smith (Smith) moves for summary judgment dismissing the complaint against her on the basis of the emergency doctrine. Plaintiff Ellen S. Matesic (Matesic) opposes the motion.

On April 15, 2017, Matesic was a passenger in a car driven by her daughter, Smith. The Smith car was struck by a car driven by Defendant Matthew W. Lukasik (Lukasik) and owned by Defendant Linda M. Lukasik. Lukasik had recently been discharged from Defendant Loyola Recovery Foundation, Inc. (Loyola), and was driving under the influence of opiates when his car crossed the double yellow line, striking Smith's car.

In support of the motion, Smith submitted the Affirmation of counsel, Elise L Cassar, Esq., with exhibits, and the expert Affidavit of Thomas C. Onions. The exhibits include the pleadings and the deposition transcripts of Matesic, Smith, and Matthew Lukasik.

Matesic testified that she was a passenger in Smith's Town and County minivan on April 15, 2017. It was a Saturday, and it was a clear and mild day (22). Smith had been traveling on Ridge Road for about 10 minutes before the accident; it was a two-lane road. When she first saw the Lukasik vehicle, it was traveling in the wrong lane (24). She said to Smith that there was a car in her lane, and Smith said the same thing (25). Ten seconds, "maybe more," passed between the time she first saw the Lukasik vehicle in the wrong lane and the collision (25). She knew it was at least ten seconds because "we had time to think" (26). Smith did not do anything right away, but at "the last second, she turned towards the left" (26). Smith testified that she could not recall with certainty what was said in the car because her recollection was "fuzzy" (27). She believed there was more Smith could have done to avoid the collision: "[s]he could have gotten off the road instantaneously, like to the shoulder, or make a left turn into a driveway" (27). She would have had enough time to do, according to Matesic (28).

Smith testified that the accident occurred around 7:00 p.m. Her son Grady was in the back seat. She did not have any alcohol that day. She was very familiar with Ridge Road. She did not see the Lukasik vehicle "a distance away" but did say to Matesic that there was in car in her lane (19). She disagreed with Matesic's testimony that there was about 10 seconds from when they first saw the Lukasik vehicle; it was "[l]ess than ten" but she could not recall how much less (20). She first saw the Lukasik vehicle when it was "crossing into [her] lane" (21). She believed that when she saw the Lukasik vehicle she "may or may not have taken [her] foot off the brake and [she] turned to the left" (22).

Matthew W. Lukasik testified that he did not remember the collision itself, only "after the fact" (52). He "took a right and [he remembered] right before the impact. [He] saw the car right in front and then the impact and then [he] blanked out. After that [he] was knocked out" (52). He could not recall any details of the accident.

Smith also submitted the expert Affidavit of Thomas C. Onions. Mr. Onions is the President of Crash Technologies, Inc., a company which provides consulting services and expert analysis in the area of accident reconstruction. He based his opinion in part on data extracted from the data recorders of both vehicles, which allowed him to estimate the speed of the vehicles at the time of the accident. In particular, he opined that Smith applied the brakes 1.5 seconds before the accident and took an evasive steering maneuver 1.6 seconds before impact with the Lukasik vehicle. He further concluded that the vehicles were approximately 545 to 720 feet away from each other "when [Smith] perceived that hazard and began to react to it." He stated that Matesic's testimony that Smith first observed the Lukasik vehicle in her lane 10

seconds before the impact "cannot be supported": "Based on the existing geography of the roadway and surrounding landscape, the two vehicles would not have come within sight of one another until they were within 5 seconds of one another." It was Mr. Onions' professional opinion, "to a reasonable degree of scientific certainty, that the sole proximate cause of this accident was the action(s) of [Lukasik] without any contribution on the part of [Smith]" (emphasis in original).

In opposing the motion, Matesic argued that whether Smith's response to the "emergency" was reasonable is a question of fact precluding summary judgment. In support of that position, Matesic submitted the same deposition transcripts, as well as the expert Affidavit of Martin E. Gordon. Mr. Gordon is a professor in the College of Engineering Technology at RIT. He relied on essentially the same evidence as Mr. Onions in reaching his conclusion, which was, "to a reasonable degree of engineering certainty that the [Lukasik vehicle] should have become perceptible to [Smith] approximately 7.25 seconds before impact when the vehicles were separated by a distance of approximately 1225 feet. Based on expectancy theory, [Smith] would have been surprised to see a vehicle in her lane, but should have been able to perceive and react to [Lukasik's] vehicle approximately 3 seconds after first perception, or at approximately 4.25 seconds prior to impending impact. Under normal conditions most people have a perception/reaction time of approximately 1.5 seconds." Thus, he concluded that Smith's actions were a proximate cause of the accident, because she should have steered to the right, sooner than she reacted.

LEGAL ANALYSIS

As noted in *Caristo v Sanzone* (96 NY2d 172 [2001]), the emergency doctrine was first considered well over a century ago (see *Wynn v Central Park N. & E. Riv. R.R. Co.*, 133 NY 575 [1892]). The doctrine "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (*Rivera v New York City Tr. Auth.*, 77 NY2d 322 [1991]), provided the actor has not created the emergency.

"Both the existence of an emergency and the reasonableness of a party's response thereto will ordinarily present questions of fact" (*Williams v City of New York*, 88 AD3d 989, 990 [2nd Dept 2011]; see *Chwojda v Schunk*, 164 AD3d 1630 [4th Dept 2018]; *Levy v Braman Motorcars*, 119 AD3d 530 [2nd Dept 2014]). Although in appropriate circumstances the matter may be determined as a matter of law (see *Tsai v Zong-Ling Duh*, 79 AD3d 1020 [2nd Dept 2010]), this is not one of them.

Smith could not recall many details of the accident, including precisely how long it was from the time she saw the Lukasiak vehicle until the collision. Matesic's testimony that Smith could have done more to avoid the collision is speculative. Lukasiak was not able to provide any additional clarity on the accident.

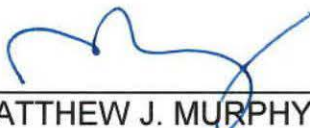
Additionally, the contrasting opinions of Mr. Onions and Mr. Gordon support this.

Court's view that summary judgment is not appropriate. Both experts have significant experience in the field of accident reconstruction, both examined the same evidence and both rendered reasonable, albeit, differing expert opinions.

The standard for summary judgment is well established and oft repeated: the court's role is issue finding rather than issue determination and it must view the evidence in the light most favorable to the party opposing the summary judgment motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact (see *Esposito v Wright*, 28 AD3d 1142 [4th Dept 2006]). Here, the eyewitnesses and the experts have provided stark contrasts regarding Smith's reaction to "emergency" created by the Lukasik vehicle, creating an issue of fact for the jury (see *Zbock v Gietz*, 145 AD3d 1521 [4th Dept 2016]).

Accordingly, Smith's motion for summary judgment dismissing the claim against her is denied. This constitutes the Decision and Order of the Court.

DATED: November 27, 2019



HON. MATTHEW J. MURPHY
ACTING SUPREME COURT JUDGE