

DeJesus v Adkins

2020 NY Slip Op 34623(U)

March 17, 2020

Supreme Court, Orange County

Docket Number: Index No. EF000178-2019

Judge: Catherine M. Bartlett

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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

JESSICA DEJESUS,

Plaintiff,

-against-

KAITLYN ADKINS, MICHAEL ADKINS, ANAHI
MORAN, JILL CATLING & JON GROSSI,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF000178-2019
Motion Date: March 16, 2020

The following papers numbered 1 to 10 were read on the motions of defendants Anahi
Moran, Jill Catling and Jon Grossi for summary judgment dismissing the claims against them,
and Plaintiff's motion for partial summary judgment on liability against all Defendants:

Table listing legal documents and page numbers: Notice of Motion (Moran) - Affirmation / Exhibits 1-2, Notice of Motion (Catling/Grossi) - Affirmation / Exhibits 3-4, Notice of Cross Motion (Plaintiff) - Affirmation / Exhibits - Affidavit 5-7, Affirmation in Opposition (Adkins) / Exhibits 8, Reply Affirmation (Moran) 9, Reply Affirmation (Catling/Grossi) 10

Upon the foregoing papers it is ORDERED that the motions are disposed of as follows:

This is a personal injury action arising out of a multiple-vehicle accident that occurred on
October 27, 2017 at the intersection of Liberty Street and Third Street in the City of Newburgh,

New York. Defendant Anahi Moran was traveling northbound on Liberty Street, a through highway, at a speed of approximately 25 mph in a 30 mph zone. Defendant Kaitlyn Adkins was driving westbound on Third Street, and stopped at a stop sign at the intersection with Liberty Street. A third vehicle, owned by defendant Jill Catling, had been parked by defendant Jon Grossi on the east side of Liberty Street just short of the intersection with Third Street. Ms. Moran's vision to the right (i.e., east toward Third Street) and Ms. Adkins' vision to the left (i.e., south along Liberty Street) was obstructed by the Catling/Grossi vehicle. Ms. Adkins inched forward in an effort to see, and then entered the intersection, intending to make a right turn, whereupon the front left of her vehicle struck the rear passenger side of Ms. Moran's vehicle. Ms. Moran did not see or hear Ms. Adkins' vehicle before the collision, which caused her vehicle to spin out and to strike plaintiff Jessica DeJesus' vehicle, which was parked on the right side of Liberty Street past the intersection with Third Street.

Defendants Anahi Moran, Jill Catling and Jon Grossi move for summary judgment dismissing the claims against them. Plaintiff cross moves for partial summary judgment on liability against all Defendants.

Legal Analysis

A. Defendant Adkins Was Negligent As A Matter Of Law

Vehicle and Traffic Law ("VTL") §1172(a) provides in pertinent part:

...every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection...and the right to proceed shall be subject to the provisions of section 1142.

VTL §1142(a) provides in pertinent part:

...every driver of a vehicle approaching a stop sign shall stop as required by section 1172 and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

Both Plaintiff and defendant Moran established *prima facie* that defendant Kaitlyn Adkins was negligent as a matter of law in that she failed to yield the right of way to defendant Moran's vehicle in violation of VTL §§ 1172(a) and 1142(a).

“As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign in violation of Vehicle and Traffic Law §1142(a) is negligent as a matter of law.”

Belle-Fleur v. Desriviere, 178 AD3d 993 (2d Dept. 2019). *See, Balladares v. City of New York*, 177 AD3d 942, 943 (2d Dept. 2019); *Fernandez v. American United Transportation*, 177 AD3d 704, 705 (2d Dept. 2019); *Shvydkaya v. Park Avenue BMW Acura Motor Corp.*, 172 AD3d 1130, 1131 (2d Dept. 2019); *Enriquez v. Joseph*, 169 AD3d 1008, 1009 (2d Dept. 2019).

The failure of a motorist to yield the right of way in violation of the statute is negligence as a matter of law and cannot be disregarded by the jury [cit.om.]. A driver is entitled to partial summary judgment on the issue of liability based on defendant's violation of VTL §1142(a) [cit.om.]. A driver is entitled to anticipate that a motorist facing a stop sign will yield the right of way [cit.om.]. The fact that the view of a motorist properly stopped is obscured does not exculpate the motorist; the motorist is under a common-law duty to see what is there to be seen [cit.om.]. Further, the fact that the motorist may have initially stopped at the stop sign does not negate her liability if she subsequently failed to yield the right of way [cit.om.].

1A NY PJI 3d 2:80, at 509-510 (2020). *See, e.g., Balladares v. City of New York, supra; Fernandez v. American United Transportation, supra; Shvydkaya v. Park Avenue BMW Acura Motor Corp., supra; Enriquez v. Joseph, supra; Fuertes v. City of New York*, 146 AD3d 936, 937 (2d Dept. 2017); *Maliza v. Puerto-Rican Transp. Corp.*, 50 AD3d 650 (2d Dept. 2008).

Here, it is undisputed that (1) Ms. Adkins had embarked on a right turn into the northernmost segment of the intersection (*i.e.*, furthest away from Ms. Moran's approaching vehicle) when the collision occurred, and (2) she impacted the rear passenger side of Ms. Moran's vehicle. The inference that Ms. Moran's vehicle had entered the intersection or was approaching so closely as to constitute an immediate hazard when Ms. Adkins ventured past the stop sign into the intersection is compelling, and Ms. Adkins raised no triable issue of fact as to her failure to yield the right of way to Ms. Moran's approaching vehicle in violation of §1142(a) of the Vehicle and Traffic Law.

Consequently, defendant Kaitlyn Adkins was negligent as a matter of law.

B. As A Matter Of Law, Defendant Moran Is Not Liable For The Accident

Since there may be more than one proximate cause of a motor vehicle accident, Ms. Adkins' failure to yield does not preclude as a matter of law a finding that negligence on Ms. Moran's part also contributed to the accident. *See, Romano v. 202 Corp.*, 305 AD2d 576, 577 (2d Dept. 2003). *See also, Gezelter v. Pecora*, 129 AD3d 1021, 1023 (2d Dept. 2015); *Arias v. Tiao*, 123 AD3d 857, 859 (2d Dept. 2014); *Espiritu v. Shuttle Express Coach, Inc.*, 115 AD3d 787, 789 (2d Dept. 2014). Although a driver with the right of way is entitled to anticipate that the other vehicle will obey the traffic laws requiring it to yield, she may nevertheless be found to have contributed to the happening of the accident if she did not use reasonable care to avoid the accident. *See, Belle-Fleur v. Desriviere, supra; Rabenstein v. Suffolk County Dept. of Public Works*, 131 AD3d 1145 (2d Dept. 2015); *Gezelter v. Pecora, supra; Arias v. Tiao, supra; Romano v. 202 Corp., supra.*

Accordingly, Ms. Moran, to obtain summary judgment dismissing the claims against her, must establish her own freedom from fault. *See, Stanford v. Smart Pick, Inc.*, 134 AD3d 1096 (2d Dept. 2015); *Jones v. Pinto*, 133 AD3d 634, 635 (2d Dept. 2015); *Gezelter v. Pecora, supra*; *Arias v. Tiao, supra*; *Calderon-Scotti v. Rosenstein*, 119 AD3d 722 (2d Dept. 2014); *Espiritu v. Shuttle Express Coach, Inc., supra*. In the Court's view, the evidence establishes as a matter of law that Ms. Moran bears no responsibility for this accident.

First, Ms. Moran's testimony, which is effectively uncontroverted, establishes that she was traveling at a rate of only about 25 mph in a 30 mph zone.

Second, although Ms. Moran's view of Third Street was obstructed by the Catling/Grossi vehicle parked on Liberty Street just short of the intersection, she was entitled to anticipate that vehicles entering Liberty Street from Third Street would obey the traffic laws which required them to yield the right-of-way and had "no duty to watch for and avoid a driver who might fail to stop or to proceed with due caution at a stop sign" (*Doxtader v. Janczuk*, 294 AD2d 859, 859-860...[2002], *lv. denied* 99 NY2d 505...[2003], quoting *Perez v. Brux Cab Corp.*, 251 AD2d 157, 159...[1998]...)." *Miglionico v. Leroy Holdings Company, Inc.*, 78 AD3d 1306, 1307 (3d Dept. 2010). *See, Namisnak v. Martin*, 244 AD2d 258, 260 (1st Dept. 1997); 1A NY PJI 3d 2:80A, at 511 (2020). The Second Department cases of *Ballentine v. Perrone*, 179 AD3d 993, 114 NYS2d 696 (2d Dept. 2020) and *Canales v. Arichabala*, 123 AD3d 869 (2d Dept. 2014) are distinguishable because their facts differ in highly material respects from those of the case at bar.

In *Ballentine v. Perrone*, a driver with the right-of-way struck a bicyclist who entered the intersection from behind "a construction wall [that] blocked her view of traffic on Roebling Street in the direction that Perrone was traveling." *Id.*, 114 NYS2d at 697. Like Ms. Moran, Mr.

Perrone was traveling about 25 mph looking straight ahead when the collision occurred. *Id.* The Second Department held that Mr. Perrone “failed to eliminate triable issues of fact as to whether [he] kept a proper lookout or was traveling at a reasonable and prudent speed as he approached the intersection *in light of the conditions then present.*” *Id.*, at 698 (emphasis added).

On two counts, however, *Ballentine* is distinguishable from the case at bar. First, the “conditions then present” were highly unusual: “there was a lot of activity at the subject intersection because a street fair was taking place and there was a lot of construction, which covered the sidewalk and extended into the parking lane in the street.” *Id.*, at 697. Here, in contrast, conditions were perfectly ordinary, i.e., an urban street with cars parked along the curb. To apply *Ballentine* in such circumstances would effectively overturn the general rule that a driver with the right-of-way is under no duty to watch for and avoid a driver who might fail to stop or to proceed with due caution at a stop sign. Second, whereas Mr. Perrone struck the bicyclist, who was “slowly inching forward, with one foot on the ground, in order to peer around the construction wall when the collision occurred” (*id.*, at 697), here, in contrast, Ms. Moran was struck by Ms. Adkins, who, after inching forward, proceeded into the intersection and struck the rear passenger side of Ms. Moran’s vehicle.

It is this latter consideration that distinguishes *Canales v. Arichabala, supra*, from the case at bar. In *Canales*, a construction vehicle parked at the corner of the intersection where the collision occurred may have obstructed the vision of both the driver with the right-of-way (Rosado) and the driver facing a stop sign (Pazmino). Rosado drove through the intersection without specifically looking for crossing traffic and “the front of Rosado’s vehicle collided with the front *passenger* side of Pazmino’s vehicle.” *Id.* (emphasis added). It is noteworthy that

Rosado can only have struck the *passenger* side of Pazmino's vehicle if Pazmino had traveled more than half way across the intersection before the collision occurred. In these circumstances, the Second Department found a triable issue of fact "as to whether Rosado had sufficient time and warning to take steps to avoid the accident." *Id.*, at 870. Here, in contrast, Ms. Moran did not strike Ms. Adkins' vehicle; her vehicle was struck on the rear passenger side.

The critical bearing of this question – who struck whom – is borne out by the caselaw. Where a vehicle with the right-of-way has struck a vehicle that failed to yield, the circumstances may warrant an inference that the offending vehicle was in the intersection first and that the driver with the right-of-way had an opportunity to react and take measures to avoid a collision. *See, e.g., Calderon-Scotti v. Rosenstein, supra*, 119 AD3d 722 (2d Dept. 2014); *Nevarez v. S.R.M. Management Corp.*, 58 AD3d 295 (1st Dept. 2008).¹ Here, however, it was Ms. Adkins who struck Ms. Moran (and in the rear portion of her vehicle, to boot), not Ms. Moran who struck Ms. Adkins. When as here the driver with the right-of-way has been broadsided by the offending vehicle, the circumstances may well be such that he had no meaningful opportunity to take action to avoid the accident and is exonerated as a matter of law. *See, e.g., Shvydkaya v.*

¹In *Calderon-Scotti v. Rosenstein, supra*, the plaintiff operator was turning left and had passed the median and the left hand lane when passenger side of her vehicle was struck by the front of the defendant's vehicle in the far right lane. The Second Department held that the defendant failed to eliminate all triable issues of fact as to "whether the plaintiff was already within the intersection as [defendant] approached and whether he should have seen the plaintiff's vehicle as it made the left turn in time to take evasive action in response." *Id.*, 119 AD3d at 724.

In *Nevarez v. S.R.M. Management Corp., supra*, similarly, the plaintiff operator was turning left when the defendant's vehicle struck the passenger side of her car. The Appellate Division concluded that since the defendant broadsided the plaintiff, there was a reasonable probability that plaintiff entered the intersection first, such that the defendant had a duty to use reasonable care to avoid the collision. *Id.*, 58 AD3d at 297-298.

Park Avenue BMW Acura Motor Corp., *supra*, 172 AD3d at 1131-32; *Lu v. Saia*, 123 AD3d 813, 813-814 (2d Dept. 2014); *Beaumont v. Smith*, 16 AD3d 1106, 1107 (4th Dept. 2005); *Namismak v. Martin*, 244 AD2d 258, 260 (1st Dept. 1997). *See also*, *Palma v. Sherman*, 55 AD3d 891, 892 (2d Dept. 2008) (where plaintiff collided with defendant's automobile near front passenger side headlight, defendant awarded summary judgment because "the contact occurred in such a manner that [defendant] was unable either to warn [plaintiff] or avoid the contact").

Finally, as the Second Department has repeatedly observed, "[a]lthough a driver with the right-of-way has a duty to use reasonable care to avoid a collision,...a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision." *See*, *Enriquez v. Joseph*, *supra*, 169 AD3d at 1009; *Yu Mei Liu v. Weihong Liu*, 163 AD3d 611, 612 (2d Dept. 2018); *Shashaty v. Gavitt*, 158 AD3d 830, 831 (2d Dept. 2018); *Giwa v. Bloom*, 154 AD3d 921, 921-922 (2d Dept. 2017); *Fuertes v. City of New York*, *supra*; *Smith v. Omanes*, 123 AD3d 691 (2d Dept. 2014); *Bennett v. Granata*, 118 AD3d 652, 653 (2d Dept. 2014); *Barbato v. Maloney*, 94 AD3d 1028, 1030 (2d Dept. 2012); *Socci v. Levy*, 90 AD3d 1020, 1021 (2d Dept. 2011). The evidence here shows that Ms. Moran had no meaningful opportunity to take effective measures to avoid the Adkins vehicle when it suddenly failed to yield the right-of-way. *See*, *Riccuiti v. Porcu*, 124 AD3d 616, 617 (2d Dept. 2015); *Socci v. Levy*, *supra*; *Mateiasevici v. Daccordo*, 34 AD3d 651, 652 (2d Dept. 2006).

In view of the foregoing, defendant Anahi Moran established her *prima facie* entitlement to judgment as a matter of law dismissing the claims against her. The other parties have failed to demonstrate the existence of any triable issue of fact. Accordingly, defendant Moran's motion for summary judgment is granted.

C. There Are Triable Issues Of Fact Whether The Catling/Grossi Vehicle Was Illegally Parked Too Close To The Intersection And Whether Their Negligence In Thus Obstructing The Vision Of Motorists At The Intersection Was A Proximate Cause Of The Accident

A defendant may be held liable for a motor vehicle accident if his illegally parked vehicle obstructed the vision of other motorists at an intersection and thereby proximately caused the accident. *See, Rosado v. Bou*, 55 AD3d 710, 713 (2d Dept. 2008); *O'Connor v. Easyride, Inc.*, 26 AD3d 263, 264 (1st Dept. 2006). *See generally, Curtis v. Solonchak*, 99 AD3d 849, 850 (2d Dept. 2012) (recognizing potential liability for creating a sight obstruction which contributed to the happening of an accident).

The evidence here shows that the police who responded to the scene of the accident ticketed the Catling/Grossi vehicle for illegally parking (a) too close to a fire hydrant, and (b) too far from the curb. Both Ms. Moran and Ms. Adkins testified that their line of sight was obstructed by the presence of the Catling/Grossi vehicle, and on the facts of record the visual obstruction caused by the vehicle's presence may well have contributed to the occurrence of the accident. If, on account of the fire hydrant, the Catling/Grossi vehicle was illegally parked adjacent to the intersection and should not have been there at all, these defendants may be subject to liability for the accident here.² At this juncture, however, the purported violation in parking too close to the hydrant has not been proved or disproved. Under the circumstances, there are triable issues of fact which require the denial of both Plaintiff's motion for partial summary

²If, on the other hand, it was legal to park the Catling/Grossi vehicle in the space where it was parked, and they violated the law only in parking too far from the curb, such violation, as Ms. Catling and Mr. Grossi argue, cannot have been a substantial factor in causing the accident.

judgment against defendants Catling and Grossi, and of said Defendants' motion to dismiss the claims against them.

D. Conclusion

In view of the foregoing, Plaintiff is entitled to partial summary judgment on the issue of defendant Kaitlyn Adkins' negligence, and defendant Anahi Moran is entitled to summary judgment dismissing all claims against her. However triable issues of fact with respect to (a) whether defendants Jill Catling and Jon Grossi were negligent, (b) whether the negligence of defendant Adkins, or of defendants Catling and Grossi, or both, was a proximate cause of the accident, and (c) the comparative fault of defendants Adkins, Catling and Grossi, require that the pending motions for summary judgment be in all other respects denied.

It is therefore

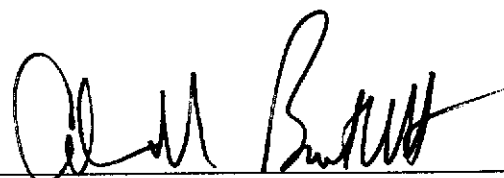
ORDERED, that plaintiff Jessica DeJesus' motion for partial summary judgment is granted to the limited extent that defendant Kaitlyn Adkins is deemed negligent as a matter of law, and the motion is otherwise denied, and it is further

ORDERED, that defendant Anahi Moran's motion for summary judgment is granted, and all claims asserted as against defendant Moran are hereby dismissed, and it is further

ORDERED, that the motion of defendants Jill Catling and Jon Grossi for summary judgment is denied.

The foregoing constitutes the decision and order of the Court.

Dated: March 17, 2020 ENTER
Goshen, New York



HON. CATHERINE M. BARTLETT, A.J.S.C.

* UNIFIED TRIAL
Sept. 21, 2020