

Bonesteel-Miranda v Estate of Gregory McAdam

2020 NY Slip Op 34631(U)

January 27, 2020

Supreme Court, Orange County

Docket Number: Index No. EF003800-2017

Judge: Sandra B. Sciortino

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
BRITTANY A. BONESTEEL-MIRANDA
and BRIAN MIRANDA,
Plaintiffs,

DECISION AND ORDER
INDEX NO.: EF003800-2017
Motion Date: 1/10/2020
Sequence No. 2

-against-

THE ESTATE OF GREGORY MCADAM AND
THE ESTATE OF EILEEN MCADAM, BY THEIR
EXECUTORS KIMBERLY S. MCADAM AND GILLON
J. MCADAM,
Defendants.

-----X
SCIORTINO, J.

The following papers numbered 1 to 19 were considered in connection with plaintiff's unopposed motion seeking an order granting partial summary judgment on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (Mainetti)/Exhibits A-O	1 – 19

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on April 3, 2017, on State Route 747 in the Town of Montgomery, Orange County, New York. Plaintiff commenced this action by filing a Summons and Complaint on or about May 22, 2017 (Exhibit B). Issue was joined with the filing of defendant's Answer on June 15, 2017 (Exhibit D).

The essential facts underpinning this action are not significantly disputed. On the date of the accident, plaintiff Brittany Miranda-Bonesteel was operating a motor vehicle in a southbound direction, when it was struck by a motor vehicle operated by Eileen McAdam with the permission of defendant-owner Gregory McAdam. Eileen McAdam, while traveling northbound, crossed over into the plaintiff's lane of travel. The collision is alleged to have caused severe and permanent injuries to plaintiff.

Current Motion

By Notice of Motion filed November 14, 2019, plaintiffs seek partial summary judgment on the issue of liability. In support of their motion, plaintiffs include affidavit of plaintiff Brittany Bonesteel-Miranda (Exhibit A) in which plaintiff avers that, on April 3, 2017, while operating her motor vehicle in a southbound direction, Eileen McAdam crossed over the double yellow painted line striking plaintiff's motor vehicle head on. Eileen McAdam died as the result of her injuries.

Appended to the moving papers as Exhibits E and F respectively are statements of witness Debra Spencer, dated April 11, 2017, and the transcript of her November 30, 2017 deposition. In both her statement and deposition, Ms. Spencer indicates that she was traveling directly behind plaintiff immediately before the accident. She observed the vehicle operated by Eileen McAdam quickly cross over from the opposite lane into plaintiff's lane, striking plaintiff's vehicle head on.

Appended to the moving papers as Exhibit G is a certified Police Accident Report. The report confirms that the round way was marked by a double yellow line. It also indicates that,

after investigation, it was concluded that the “point of impact” was in the plaintiff’s lane of travel.

Plaintiffs further append their attorney’s affirmation in which it is argued that a driver who crosses over a clearly marked roadway marking and enters into another’s lane of travel causing a collision without explanation is negligent as a matter of law. Plaintiff further argues that a driver in her proper lane of travel is not required to anticipate that a car going in the opposite direction will cross over into that lane, and a driver faced with a vehicle careening across the highway directly into his path is not liable for her failure to exercise the best judgment or for any errors of judgment on his part. In the instant matter, plaintiff Brittany Bonesteel-Miranda was injured when her car was struck head on by defendant’s vehicle traveling in her lane. Plaintiff argues that they have established as a matter of law that the sole proximate cause of the accident was Defendant McAdam’s conduct in crossing the road into plaintiffs lane of travel

The defendants have not filed any opposition papers to the instant motion.

Discussion

Summary judgment is a drastic remedy, appropriate only when there is a clear demonstration of the absence of any triable issue of fact. *Piccirillo v. Piccirillo*, 156 A.D.2d 748 (2nd Dep’t. 1989), citing *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The court’s function on such a motion is issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957). The court is not to engage in the weighing of evidence; instead, the Court must determine whether “by no rational process could the trier of facts find for the non-moving party.” *Jastrzebski v. N. Shore Sch. Dist.*, 232 A.D.2d 677, 678 (2nd Dep’t. 1996).

The Court is obligated to draw all reasonable inferences in favor of the non-moving party. *Rizzo v. Lincoln Diner Corp.*, 215 A.D.2d 546 (2nd Dep't. 2000). Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted. *Jastrzebski*, 223 A.D.2d at 678.

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. Veh. & Traffic Law §1128(a). When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings. Veh. & Traffic Law §1126(a). 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 drivers making. *Gadon v. Oliva*, 294 AD2d 397-398 (2nd Dep't 2002). As the instant motion is unopposed, defendants have failed to provide such an explanation.

In the matter at bar, plaintiff has established a *prima facie* entitlement to summary judgment, by the proffer of a sworn statement alleging that plaintiff Brittany Bonesteel-Miranda was traveling within the speed limit, when her vehicle was struck head on by Eileen McAdam's vehicle, in the plaintiff's lane of travel. Such a showing requires defendant to come forward with a non-negligent explanation for the accident. *Velazquez, citing Shamah v. Richmond County Ambulance Serv.*, 279 AD2d 564 (2nd Dep't 2001)

The denials and affirmative defenses in defendants' Answer do not suggest, much less

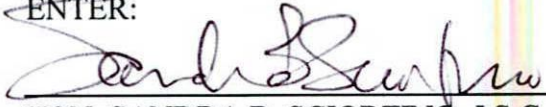
demonstrate, that there are any facts in dispute that would rebut the presumption of negligence established by Eileen McAdam crossing the double yellow line entering into oncoming traffic.

Accordingly, the motion for partial summary judgment on the issue of liability is granted.

The parties shall appear for a conference on February 3, 2020 at 10:30 a.m.

This decision shall constitute the order of the Court.

Dated: January 27, 2020
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*