

Toby v Mancini

2020 NY Slip Op 35039(U)

March 2, 2020

Supreme Court, Orange County

Docket Number: Index No. EF004631/19

Judge: Robert A. Onofry

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

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

CAROLINE TOBY,

Plaintiff,

- against -

LOUIS M. MANCINI,

Defendant.

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. EF004631/19

DECISION and ORDER

Motion Date: January 8, 2020

The following papers numbered 1 to 7 were read and considered on a motion by the Plaintiff, pursuant to CPLR §3212, for summary judgment on the issue of liability.

Notice of Motion- Crowley Affirmation- Toby Affidavit- Exhibits A-D- Memorandum of Law.....	1-5
Affirmation in Opposition- Gomez	6
Affirmation in Reply- Crowley	7

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied.

Introduction

The Plaintiff Caroline Tobey commenced this action to recover damages arising from a motor vehicle accident. She moves for summary judgment on the issue of liability. The motion is denied.

Factual/Procedural Background

According to the police report of the accident, a vehicle being driven by the Plaintiff

Caroline Tobey struck a vehicle being driven by the Defendant Louis Mancini after Mancini pulled out from a private driveway and into the road in violation of Tobey's right of way.

In support of her motion for summary judgment, Tobey avers as follows.

On January 4, 2019, at approximately 9:00 a.m., she was driving her vehicle on Route 296 just north of its intersection with Goshen Street, in Greene County, New York. The weather was clear and sunny, and the road was dry.

Route 296 is a two-way street with one lane of travel in either direction. The speed limit is 55 miles per hour. She was traveling at approximately 45 miles per hour. She was attentive to her surroundings and had no passengers in her vehicle. Further, in the moments leading up to accident, and at the time of the accident, she was not using her cellular telephone, and was not eating or drinking.

While she was proceeding straight on southbound Route 296, "a vehicle suddenly pulled out from a private driveway from my righthand side and our vehicles collided. I saw the vehicle stopped in the driveway about 2 seconds prior to the incident. The impact was sudden, and I did not have time to avoid the collision. There was no indication that the defendant was going to suddenly pull out in front of my vehicle. In an attempt to avoid the collision, I pressed on my breaks and veered to the right. The front driver's side of my vehicle came into contact with the front driver's side of the defendant's vehicle. There were no horns sounded prior to the collision."

In opposition to the motion, the Defendant Louis M. Mancini avers as follows.

At the time of the accident, she was in her vehicle with her two children, ages 7 and 9.

Just prior to the accident, her intention was to exit a driveway located at 892 Route 296 in

Jewett, New York, and make a left turn.

She was aware that there was a curve in the road to her left as she was stopped facing Route 296, and that there was a cautionary sign to alerting drivers approaching the curve to decrease their speed to 35 mile per hour.

When she came to a stop at the end of the driveway, she looked both ways and saw that the roadway was clear. Upon seeing no vehicles approaching in either direction, she began to enter the roadway. As soon as she entered the roadway, she saw a vehicle coming around the curve on her left at a "very high rate of speed." All she could do was apply her brakes. Her vehicle was impacted very hard on the front driver's door and rear driver's side door.

On November 4, 2019, she appeared in Traffic Court in the Town of Jewett to answer a ticket she was issued arising from the accident for failure to yield. The ticket was dismissed.

Appended to the Defendant's motion papers are, *inter alia*, photographs of the curve in the road and the cautionary speed sign.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

There can be more than one proximate cause of an accident. *Adobea v. Junel*, 114

A.D.3d 818 [2nd Dept. 2014]. This is because each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. An operator of a motor vehicle traveling with the right-of-way has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles. *Fried v. Misser*, 115 A.D.3d 910 [2nd Dept. 2014]. Thus, a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. However, 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. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault. *Davis v. Commack Hotel, LLC*, 174 A.D.3d 501 [2nd Dept. 2019].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. The driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014].

Vehicle and Traffic Law §1143 provides that “the driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.”

Vehicle and Traffic Law §1162 requires that “no person shall move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable

safety.”

It does not appear that advisory speed limit signs are binding on drivers. *Scheemaker v. State*, 125 A.D.2d 964 [4th Dept. 1986].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that the Defendant was negligent in the happening of the accident.

However, in opposition, the Defendant raised a triable issue of fact as to contributory negligence of the Plaintiff.

Thus, the Plaintiff’s motion is denied.

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is denied; and it is further,

ORDERED that the parties are directed to, and shall, appear, through respective Counsel, for a Status Conference on Tuesday, April 7, 2020, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York.

The foregoing constitutes the decision and order of the court.

Dated: March 2, 2020
Goshen, New York

ENTER



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