

Mondello v Price

2020 NY Slip Op 35093(U)

November 16, 2020

Supreme Court, Orange County

Docket Number: Index No. EF005303-2019

Judge: Catherine M. Bartlett

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.

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

-----X
GEORGE L. MONDELLO,

Plaintiff,

-against-

RICHARD H. PRICE JR., WHEELS INC., and NEW
YORK STATE ELECTRIC AND GAS CORPORATION,

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. EF005303-2019
Motion Date: November 13, 2020

-----X

The following papers numbered 1 to 2 were read on Plaintiff's unopposed motion for
partial summary judgment on liability:

Notice of Motion - Affirmation / Exhibits 1-2

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

This is a personal injury action arising out of an accident that occurred at about 2:00 p.m.
on June 19, 2018 at the intersection of State Route 17A and Quarry Road in the Town of Goshen,
New York. Route 17A, at this intersection, is a through highway with one lane in each direction.
Quarry Road is governed at the intersection by a stop sign. Plaintiff George L. Mondello was
traveling northbound on Route 17A at a speed of approximately 25 miles per hour. Defendant
Richard H. Price Jr. was traveling eastbound on Quarry Road, stopped at the stop sign, and then
turned left onto Route 17A, whereupon the front passenger side of his vehicle struck the rear
driver's side of Mr. Mondello's vehicle.

A. Defendant Price 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.

Plaintiff established *prima facie* that Defendant was negligent as a matter of law by proving that he failed to yield the right of way to Plaintiff’s vehicle in violation of VTL §§ 1172(a) and 1142(a). The governing legal principles are concisely set forth in the New York Pattern Jury Instructions:

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 anticipate that a motorist facing a stop sign will yield the right of way [cit.om.].

[T]he 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 his liability if he subsequently fails to yield the right of way [cit.om.].

1A NY PJI 3d 2:80, at 509-510 (2020).

In *Miller v. County of Suffolk*, 163 AD3d 954 (2d Dept. 2018), the

A “driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law §1142(a) and is negligent as a matter of law” (*Fuertes v. City of New York*, 146 AD3d 936, 937...[cit.om.]. The driver with

the right-of-way is entitled to anticipate that the other motorist will obey traffic laws that require him to yield (*see Romero v. Brathwaite*, 154 AD3d 894...[cit.om.]....

In support of their motion for summary judgment, Gil and Hampton Outdoor established, prima facie, that Miller was negligent as a matter of law because she proceeded into the intersection without having a clear view of northbound traffic on Newtown Road and without yielding the right-of-way, and that her negligence was a proximate cause of the accident (*see Vehicle and Traffic Law §1142[a]*; *Aiello v. City of New York*, 32 AD3d 361, 362...; *Gonzalez v. Schupak*, 19 AD3d 367...; *McClelland v. Seery*, 261 AD2d 451, 452...).

Miller v. County of Suffolk, supra, 163 AD3d at 956-957. *See also*, *Murchison v. Incognoli*, 5 AD3d 271 (1st Dept. 2004); *Weiser v. Dalbo*, 184 AD2d 935 (3d Dept. 1992); *Pahler v. Daggett*, 170 AD2d 750, 751-752 (3d Dept. 1991); *Olsen v. Baker*, 112 AD2d 510, 511 (3d Dept.), *lv. denied* 66 NY2d 604 (1985).

Here, Defendant stopped at the stop sign on Quarry Road but entered Route 17A without yielding the right-of-way to Plaintiff's vehicle. He thereby violated VTL §1142(a), and consequently was negligent as a matter of law. This negligence was unquestionably a proximate cause of the collision between Plaintiff's and Defendant's vehicles. *See, Miller v. County of Orange*, supra; *Enriquez v. Joseph*, 169 AD3d 1008, 1009 (2d Dept. 2019) (operator violated VTL §1142[a] when "after stopping at the stop sign, she made a left turn into the path of oncoming traffic without yielding the right-of-way"). Defendants, having proffered no opposition to Plaintiff's motion, have failed to demonstrate the existence of any triable issue of fact on that score.

B. Plaintiff Was Not Contributorily Negligent

Since there may be more than one proximate cause of a motor vehicle accident, Defendant's negligent failure to yield the right-of-way does not preclude as a matter of law a

finding that negligence on Plaintiff'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, he may nevertheless be found to have contributed to the happening of the accident if he did not use reasonable care to avoid it. *See, 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*.

However, 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).

Here, Plaintiff was traveling within the speed limit, in his own lane, when Defendant struck the rear driver's side of his vehicle, and the testimony of both driver confirms that this accident happened so suddenly that Plaintiff had no meaningful opportunity to take evasive measures. Once again, Defendants, having proffered no opposition to Plaintiff's motion, have

failed to demonstrate the existence of any triable issue of fact. Under the circumstances presented, this case is governed by the rule, cited above, that 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.

C. Conclusion


In view of the foregoing, Plaintiff is entitled to partial summary judgment on liability as against Defendants.

It is therefore

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is granted.

The foregoing constitutes the decision and order of the Court.

Dated: November 16, 2020 ENTER
Goshen, New York


HON. CATHERINE M. BARTLETT, A.J.S.C.
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE