

Junior v Meadows

2020 NY Slip Op 35144(U)

April 29, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 605688/2019

Judge: Martha L. Luft

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Short Form Order

Index No. 605688/2019

SUPREME COURT - STATE OF NEW YORK
L.A.S. PART 50 - COUNTY OF SUFFOLK

PRESENT:

Hon. Martha L. Luft
Acting Justice Supreme Court

DECISION AND ORDER

JOSEPH JUNIOR, x

Plaintiff,

-against-

STANLEY L. MEADOWS, SANDRA I.
MOBLEY and DEVO MOBLEY,

Defendants. x

Mot. Seq. No.: 001 - MG
Orig. Return Date: 10/01/2019
Mot. Submit Date: 11/26/2019

Mot. Seq. No.: 002 - MG
Orig. Return Date: 10/01/2019
Mot. Submit Date: 11/26/2019

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Upon the e-filed documents numbered 11 through 31, it is

ORDERED that the motion (#001) by the defendant Stanley L. Meadows for, *inter alia*, an order granting summary judgment in his favor and dismissing the complaint as asserted against him is granted; and it is further

ORDERED that the cross motion (#002) by the plaintiff Junior Joseph for, *inter alia*, an order granting partial summary judgment in his favor on the issue of liability is granted.

Junior v. Meadows, et al.
Index No. 605688/2019

LUFT, J.
Page 2

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff as a result of a motor vehicle accident that occurred on November 16, 2018, on Levey Boulevard, near the intersection with Little East Neck Road, in the Town of Babylon. The accident allegedly happened when a vehicle owned by the defendant Sandra Mobley and operated by the defendant Devon Mobley struck a vehicle owned and operated by the defendant Stanley Meadows in the rear, then struck the plaintiff's vehicle in the rear.

Mr. Meadows now moves for summary judgment dismissing the complaint as asserted against him, arguing that he was not negligent in the happening of the accident. In support, Mr. Meadows submits, among other things, a certified copy of a police report, and his own affidavit. The plaintiff cross-moves for summary judgment in his favor, arguing that Mr. Mobley's negligence was a proximate cause of the collision. In support, the plaintiff submits several documents, including his own affidavit. Sandra I. Mobley and Devon Mobley ("the Mobley defendants") oppose both motions, arguing, *inter alia*, that they are premature, as discovery has yet to be conducted, and that there are issues of fact as to whether the plaintiff contributed to the accident's occurrence by coming to a sudden stop. In opposition, the Mobley defendants submit an affirmation of their attorney. In reply, Mr. Meadows submits an affirmation of his attorney.

A defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident (*see Estate of Cook v Gomez*, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; *Boulos v Lerner-Harrington*, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; *Rungoo v Leary*, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see Estate of Cook v Gomez, supra*; *Jones v Vialva-Duke*, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; *Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011]).

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff, and that the defendant's negligence was a proximate cause of the alleged injuries (*see Rodriguez v City of New York*, 31 NY3d 312, 319, 76 NYS3d 898 [2018]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]). To be entitled to partial summary judgment, a plaintiff does not bear the burden of establishing the absence of his or her own comparative fault (*see Rodriguez v City of New York, supra*, at 324-325; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; *Poon v Nisanov, supra*). Further, a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the driver of the rearmost vehicle and imposes a duty on that driver to proffer a non-negligent explanation for the collision (*see Billis v Tunjian*, 120 AD3d 1168, 992 NYS2d [2d Dept 2014]; *Williams v Spencer-Hall*, 113 AD3d 759, 979 NYS2d 157 [2d Dept 2014]). This presumption of negligence arises from the duty of the driver of the vehicle behind to keep a safe distance and to not collide with the traffic ahead

Junior v. Meadows, et al.
Index No. 605688/2019

LUFT, J.
Page 3

(see Vehicle and Traffic Law § 1129 [a]; *Service v McCoy*, 131 AD3d 1038, 16 NYS2d 283 [2d Dept 2015]).

Here, Mr. Meadows's submissions establish, prima facie, that he was not at fault for the happening of the accident, and that Mr. Mobley's negligence was the sole proximate cause of the accident (see *Estate of Cook v Gomez, supra*; *Boulos v Lerner-Harrington, supra*; *Jones v Vialva-Duke, supra*). Mr. Meadow's affidavit establishes that, while his vehicle was completely stopped on Little East Neck Road behind, it was struck from behind by Mr. Mobley's vehicle, and that Mr. Meadows maneuvered his vehicle to the right, that his vehicle did not make contact with the plaintiff's vehicle, and that he observed Mr. Mobley's vehicle strike the plaintiff's vehicle in the rear. As such, Mr. Meadows has demonstrated that his actions were not a proximate cause of the accident (see *Estate of Cook v Gomez, supra*; *Jones v Vialva-Duke, supra*; *Kalland v Hungry Harbor Assoc., LLC, supra*).

In addition, by his affidavit, the plaintiff has sustained his burden of establishing a prima facie case that Mr. Mobley breached a duty owed to him, and that this breach was a proximate cause of his alleged injuries (see *Rodriguez v City of New York, supra*; *Lopez v Dobbins, supra*; *Poon v Nisanov, supra*). The plaintiff's affidavit establishes that, while his vehicle was attempting to make a left turn from Little East Neck Road on Levey Boulevard, it was struck from behind by Mr. Mobley's vehicle, creating a prima facie case of negligence (see Vehicle and Traffic Law § 1129 [a]; *Service v McCoy, supra*).

Mr. Meadows and the plaintiff having made the requisite prima facie showing of entitlement to summary judgment, the burden shifted to the Mobley defendants to submit evidentiary proof in admissible form giving a non-negligent explanation for the collision (see *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Billis v Tunjian, supra*; *Williams v Spencer-Hall, supra*). In opposition, the defendants argue that the summary judgment motions are premature, as depositions have not yet been conducted, and that there are questions of fact as to whether the plaintiff was also negligent in the happening of the accident. However, the affirmation from an attorney having no personal knowledge of the facts is without evidentiary value and, thus, is insufficient to raise a triable issue of fact (see *Zuckerman v City of New York, supra*). Further, because Mr. Mobley has personal knowledge of the relevant facts underlying the accident, the defendants' purported need to conduct discovery does not warrant denial of the motion (see *Turner v Butler*, 139 AD3d 715, 32 NYS3d 174 [2d Dept 2016]; *Deleg v Vinci*, 82 AD3d 1146, 919 NYS2d 396 [2d Dept 2011]; *Monteleone v Jung Pyo Hong*, 79 AD3d 988, 913 NYS2d 755 [2d Dept 2010]). Moreover, as the plaintiff is not required to establish the absence of his own comparative fault to be entitled to partial summary judgment (see *Rodriguez v City of New York, supra*; *Lopez v Dobbins, supra*; *Poon v Nisanov, supra*), it is not a basis to deny his cross motion. As the Mobley defendants' submissions fail to proffer a non-negligent explanation for the collision, they fail to rebut Mr. Meadow's establishment that he was not negligent in the happening of the accident (see *Estate of Cook v Gomez, supra*; *Jones v Vialva-Duke, supra*; *Kalland v Hungry Harbor Assoc., LLC, supra*), or the plaintiff's prima

Junior v. Meadows, et al.
Index No. 605688/2019


LUFT, J.
Page 4

facie showing that Mr. Mobley's negligence was a proximate cause of the accident (*see Rodriguez v City of New York, supra; Zuckerman v City of New York, supra; McLaughlin v Lunn, supra; Billis v Tunjian, supra*).

Accordingly, Mr. Meadows's motion is granted and the plaintiff's cross motion are granted.

ENTER

Date: April 29, 2020
Riverhead, New York


HON. MARTHA L. LUFT, A.J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION