

Zannat v Falley

2020 NY Slip Op 35255(U)

March 5, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 17-603937

Judge: Vincent J. Martorana

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.

SHORT FORM ORDER

INDEX No. 17-603937

CAL. No. 19-00858MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 23 - SUFFOLK COUNTY

PRESENT:

Hon. VINCENT J. MARTORANA
Justice of the Supreme Court

MOTION DATE 8-28-19
ADJ. DATE 12-5-19
Mot. Seq. # 001 - MD

-----X

ROZATUL ZANNAT,

Plaintiff,

- against -

SCOTT FALLEY and LAKELAND FIRE
DISTRICT,

Defendants.

-----X

GRUNBERG KELLY DELLA
Attorney for Plaintiff
700 Koehler Avenue
Ronkonkoma, New York 11779

KELLY, RODE & KELLY, LLP
Attorney for Defendants
330 Old Country Road, Suite 305
Mineola, New York 11501

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers filed by defendants, on August 28, 2019; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers filed by plaintiff, on October 17, 2019; Replying Affidavits and supporting papers filed by defendants, on December 2, 2019; Other ___; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion by defendants Scott Falley and Lakeland Fire District for summary judgment dismissing the complaint is denied.

This action was commenced by plaintiff Rozatul Zannat to recover damages for injuries she allegedly sustained on February 28, 2016, when her motor vehicle collided with a paramedic vehicle owned by defendant Lakeland Fire District (LFD), which was operated by defendant Scott Falley, at the intersection of Ocean Avenue and the Expressway Drive North, in Ronkonkoma, New York. Plaintiff alleges that Falley operated the LFD vehicle in a reckless manner, causing the accident.

Defendants now move for summary judgment in their favor, arguing that an emergency responder, acting within his official duties and responding to an emergency, can only be liable for injuries to a plaintiff if he acted with recklessness in the operation of his vehicle, and further argue that Falley, while responding to a medical emergency, did not operate the LFD vehicle in a reckless manner. In support of their motion, defendants submit, inter alia, transcripts of plaintiff's General Municipal Law § 50-h hearing testimony, transcripts of the deposition testimony of plaintiff and Falley, the affidavit of Falley, a "dispatch summary" for LFD on the date of the accident, a compact disk containing video footage, and photographs of the subject vehicles after the accident. Plaintiff opposes the motion, arguing that questions of fact exist with respect to whether Falley was operating an emergency vehicle as

Zannat v Falley
Index No. 603937/17
Page 2

defined by the Vehicle and Traffic Law, or, in the alternative, if Falley was operating an emergency vehicle, that questions of fact exist with respect to whether he operated the LFD vehicle in a reckless manner. Plaintiff submits, inter alia, the certified police report.

Initially, the Court notes that the video footage supplied in support of the motion was not authenticated and therefore was not considered in the determination of the motion (*see generally Torres v Hickman*, 162 AD3d 821, 79 NYS3d 62 [2d Dept 2018]; *Read v Ellenville Nat'l Bank*, 20 AD3d 408, 799 NYS2d 78 [2d Dept 2005]).

Plaintiff testified at both a General Municipal Law § 50-h hearing and at a deposition and her testimony was essentially the same. Plaintiff testified that on February 28, 2016, at approximately 9:30 p.m., she was traveling westbound on Expressway Drive North in Ronkonkoma. Plaintiff testified that Expressway Drive North is the one-way, westbound service road which runs parallel to the Long Island Expressway. She testified that she was traveling at approximately 35 miles per hour and that the road conditions were clear and dry. She testified that as she approached the intersection with Ocean Avenue, she intended to proceed straight through the intersection and continue westbound on Expressway Drive North. She testified that she observed the traffic light governing her lane of travel, and that the light was green. She testified that, after she entered the intersection, she saw Falley's vehicle "a split second" before the accident, and that she attempted to brake to avoid a collision. She testified that she did not hear any sirens or see any emergency lights before the collision.

Falley testified that on February 28, 2016, he was employed by LFD as a first responder paramedic. He testified that his duties included responding to emergency calls, and that he would utilize a LFD Chevy Tahoe to respond to emergencies ahead of ambulances. He testified that the truck is red, labeled with "paramedic," and is equipped with sirens and lights on all four sides, including the roof. Falley testified that the truck is equipped with a full complement of medical equipment which allows him to arrive on scene before an ambulance to begin medical interventions. He testified that he is stationed in the LFD headquarters, and responds with the paramedic truck ahead of an ambulance, as an ambulance crew has to first respond to the headquarters from their homes. He testified that on February 28, 2016, at approximately 9:25 p.m., he was dispatched to Michigan Avenue in Ronkonkoma for a medical emergency call. He testified that he engaged his lights and sirens and proceeded northbound on Ocean Avenue. He testified that as he approached the intersection of Ocean Avenue and the Long Island Expressway, he had to travel under the Long Island Expressway overpass. He testified he intended to continue northbound and observed that the traffic signal governing his lane of travel was red. He testified that he slowed his vehicle to "less than five miles per hour," increasing to "no more than ten miles per hour," as he proceeded through the intersection. He testified that while he was under the overpass, he checked for oncoming traffic as he proceeded through the intersection and did not see any westbound traffic on Expressway Drive North. While he was in the intersection, he observed plaintiff's vehicle approximately five feet away, for a "split second," before the impact. He testified that he does not recall taking any evasive maneuvers to avoid the collision.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The moving party has the initial burden of proving entitlement to summary judgment (*id.*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*id.*). Once the moving party has made the requisite showing, the burden then shifts to the opposing party, who is then required to present admissible evidence and facts sufficient to require a trial on any issue of fact (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). On such motion, the court is charged with determining whether issues of fact exist while

Zannat v Falley
Index No. 603937/17
Page 3

viewing any evidence in a light most favorable to the non-moving party; the court is not responsible for resolving issues of fact or determining issues of credibility (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar, supra; Benetatos v Comerford*, 78 AD3d 750, 911 NYS2d 155 [2d Dept 2010]).

Drivers of emergency vehicles have a primary obligation to respond quickly to preserve life and property and to enforce criminal laws (*Saarinen v Kerr*, 84 NY2d 494, 602 NYS2d 297 [1994]). Vehicle and Traffic Law § 1104 provides that a person operating an “authorized emergency vehicle” has the qualified privilege to disregard certain traffic laws during an emergency operation (*see* Vehicle and Traffic Law § 1104 [b] [1]-[4]; *Criscione v City of New York*, 97 NY2d 152, 736 NYS2d 656 [2001]; *Szczerbiak v Pilat*, 90 NY2d 553, 664 NYS2d 252 [1997]; *Saarinen v Kerr, supra; Carallo v Martino*, 58 AD3d 792, 873 NYS2d 102 [2d Dept 2009]; *Mouzakes v County of Suffolk*, 94 AD3d 829, 941 NYS2d 850 [2d Dept 2012]). An emergency operation includes “pursuing an actual or suspected violator of the law, or responding to, working or assisting at the scene of an accident, disaster, police call, alarm or fire, actual or potential release of hazardous material or other emergency” (Vehicle and Traffic Law § 114-b; *see Criscione v City of New York, supra; McGough v City of Long Beach*, 174 AD3d 698, 102 NYS3d 456 [2d Dept 2019]). Vehicle and Traffic Law § 1104 (b) (2) states “[t]he driver of an authorized vehicle may . . . [p]roceed past a steady red signal . . . but only after slowing down as may be necessary for safe operation.” However, the driver of an emergency vehicle is not relieved of his or her duty to drive with due regard for the safety of others and will not be protected when he or she recklessly disregards the safety of others (*see Mouzakes v County of Suffolk, supra*). Further, the exemption only applies when an authorized emergency vehicle sounds audible signals such as a siren and displays at least one red light (*see* Vehicle and Traffic Law § 1104 [e]; *Wynter v City of New York*, 173 AD3d 1122, 104 NYS3d 645 [2d Dept 2019]; *Bonafede v Bonito*, 145 AD3d 842, 43 NYS3d 523 [2d Dept 2016]).

The “reckless disregard” standard requires proof that the driver intentionally committed an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow (*Pollak v Maimonides Med. Ctr.*, 136 AD3d 1008, 1008-1009, 25 NYS3d 646 [2d Dept 2016], quoting *Ferrara v Village of Chester*, 57 AD3d 719, 720, 869 NYS2d 600 [2d Dept 2008]; *see also Frezzell v City of New York*, 24 NY3d 213, 997 NYS2d 367 [2014]; *Saarinen v Kerr, supra*). Further, “the reckless disregard standard of care in Vehicle and Traffic Law § 1104 (e) only applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law § 1104 (b). Any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence” (*Kabir v County of Monroe*, 16 NY3d 217, 220, 920 NYS2d 268 [2011]; *see Cioffi v S.M. Foods, Inc.*, 178 AD3d 1006, 2019 NY Slip Op 09251 [2d Dept 2019]; *McGough v City of Long Beach, supra*).

Defendants have failed to establish their prima facie burden on the motion as they have failed to eliminate all issues of fact with respect to whether Vehicle and Traffic Law § 1104 is applicable. Vehicle and Traffic Law § 1104 (c) states that for the exemption to apply, an authorized emergency vehicle must display audible signals and must display “at least one lightened lamp so that from any direction, under normal atmospheric conditions from a distance of five hundred feet from such vehicle, at least one red light will be displayed and visible” (*see Bonafede v Bonito, supra; Shalom v East Midwood Volunteer Ambulance Corp.*, 138 AD3d 724, 29 NYS3d 457 [2d Dept 2016]; *Ryan v Town of Riverhead*, 117 AD3d 707, 985 NYS2d 584 [2d Dept 2014]). Falley testified that he was operating a LFD first responder vehicle and that he was responding to a medical emergency, which was confirmed by the LFD dispatch records. Falley testified that his lights and sirens were activated, that he observed the red light


Zannat v Falley
Index No. 603937/17
Page 4

governing his lane of travel, and that slowed his vehicle to a speed of five to ten miles per hour before entering the intersection. Additionally, Falley testified that as he approached the subject intersection from under the overpass of the Long Island Expressway, his visibility of westbound traffic from Expressway Drive North was obscured by the overpass itself, until he was out from under the overpass and into the subject intersection. However, defendants also submit the testimony of plaintiff, which raises questions of fact with respect to whether Falley was operating the LFD first responder vehicle with visible lights and audible sirens. Plaintiff testified that she could neither see Falley's emergency lights, nor could she hear any sirens as she approached the subject intersection.

In light of plaintiff's testimony submitted in support of defendants' motion, defendants have failed to eliminate all issues of fact with respect to whether Falley's conduct was covered under the protections of Vehicle and Traffic Law § 1104, and whether his conduct constituted a reckless disregard for the safety of others (*see Kabir v County of Monroe, supra; Frezzell v City of New York, supra; Cioffi v S.M. Foods, Inc., supra*).

Accordingly, the motion by defendants Scott Falley and Lakeland Fire District for summary judgment dismissing the complaint is denied.

**Dated: Riverhead, New York
March 5, 2020**



VINCENT J. MARTORANA, J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION