

McVea v Honsaker
2020 NY Slip Op 35779(U)
October 29, 2020
Supreme Court, Orange County
Docket Number: Index No. EF002395-2020
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at 285 Main Street,
Goshen, New York 10924 on the **29** day of October, 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

KELLI R. MCVEA and SEAN DAVID MCVEA,

PLAINTIFFS,

-AGAINST-

ADAM HONSAKER, COUNTY OF ORANGE and
ORANGE COUNTY SHERIFF,

DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

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, on all
parties.

DECISION AND ORDER

INDEX #EF002395/2020

Motion date: 10/6/20

Motion Seq. #1

The following papers numbered 1 - 7 were read on defendants' motion to dismiss the
complaint pursuant to CPLR §3211(a)(4) and §3211(a)(7):

Notice of Motion/Affirmation (Pierce)/Exhibits A-D/Memo of Law. 1 - 4
Affirmation in Opposition (Kohl)/Exhibits A-F. 5 - 6
Reply Affirmation (Pierce). 7

This is an action for injuries sustained as a result of a motor vehicle accident on July 5,
2018. Plaintiff, Kelli R. McVea, a NYS Trooper, alleges she was headed to a burglary in
progress when she was hit in the rear of her car by defendant, Adam Honsaker, an Orange
County Deputy Sheriff, who alleges he was headed to an emergency. The complaint further
alleges negligent hiring by the Sheriff and County.

Defendants move to dismiss the complaint in its entirety pursuant to CPLR §3211(a)(4).
Plaintiffs had filed a prior action against the same defendants claiming nearly identical
allegations under Index No. EF005115/2019. The defendants in the prior action moved to
dismiss the complaint pursuant to GML §50-e and §50-i which was granted by Decision and

Order dated January 6, 2020 and the case was marked off the calendar. On January 24, 2020, plaintiffs filed a Notice of Appeal to the Appellate Division, Second Department. Defendants argue that pursuant to the pending appeal, there is another action pending between the same parties for the same cause of action therefore the current action should be dismissed. In opposition to defendants' motion, plaintiffs withdrew their appeal which has been granted by the Appellate Division thus, defendants acknowledge that their argument under CPLR §3211(a)(4) is now moot.

Alternatively, defendants move to dismiss the complaint in its entirety against defendant, Orange County Sheriff pursuant to County Law §54. They argue it is well settled that a Sheriff is not personally liable for the acts or omissions of his deputies citing *Barr v Albany County*, 50 NY2d 247 (1980). While plaintiffs do not oppose such argument, they contend that the Court should permit their negligent hiring, supervision and instruction claims to stand as against the defendants.

With respect to defendant, County of Orange, there can be no cognizable claim made against it as the County may not be held liable for the acts of a County Sheriff or his/her deputies absent an express assumption of such liability (*Santiamagro v County of Orange* 226 AD2d 359 [2d Dept 1996]). In *Santiamagro v County of Orange*, the Court held that since Orange County has not adopted a local law expressly assuming responsibility for the acts of the Sheriff and his deputies, it cannot be held liable for any alleged negligence by the Sheriff or his deputies. Orange County has not adopted such a local law. However, with that said, **the County of Orange remains vicariously liable as owner of the vehicle that was being operated by defendant, Honsaker.**

Plaintiffs allege in their complaint that defendants, Orange County Sheriff and County of Orange, were further negligent in improperly hiring and continuing the employ of defendant, Honsaker. Defendants allege plaintiff has failed to state a cause of action.

Accepting as true the facts alleged in the complaint, as we must on a motion to dismiss pursuant to CPLR §3211 (a) (7), and according plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83 [1994]); plaintiffs have failed to allege facts constituting negligent hiring or retention sufficient to survive defendants' motion to dismiss. A complaint must contain facts essential to give notice of a claim or defense (*DiMauro v Metropolitan Suburban Bus Authority*, 105 AD2d 236, 2039 [2d Dept 1984]). Vague and conclusory allegations will not suffice (*id.*); *Sheriff v Murray*, 33 AD3d 688 [2d Dept 2006]), and dismissal for failure to state a cause of action is warranted (*Schuckman Realty, Inc. v. Marine Midland Bank, N.A.*, 244 AD2d 400, 401 [2d Dept 1997]).

Although, under the circumstances of this case, the County defendants cannot be held vicariously liable for the negligent acts of defendant Honsaker, they still can be held liable under theories of negligent hiring, negligent retention and negligent supervision (*see Pickett v County of Orange*, 62 AD3d 848 [2d Dept 2009]). A necessary element of a cause of action to recover damages for negligent hiring, retention, or supervision is that the employer "knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept 1997]; *see Kelly G. v Board of Educ. of City of Yonkers*, 99 AD3d 756, 757 [2d Dept 2012]).

Here, the complaint fails to state causes of action to recover damages for negligent hiring and retention against the County defendants since it failed to sufficiently allege that the

defendants knew or should have known of a propensity on the part of defendant, Honsaker, to commit the alleged wrongful acts (*Shu Yuan Huang v St. John's Evangelical Lutheran Church*, 129 AD3d 1053 [2d Dept 2015]).

Accordingly, it is hereby

ORDERED that defendants' motion is granted to the extent that the complaint is dismissed against defendant, ORANGE COUNTY SHERIFF, in its entirety; and it is further

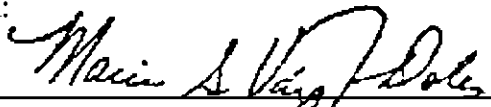
ORDERED that as to Defendant, COUNTY OF ORANGE, only the negligent hiring claim in plaintiff's First Cause of Action is dismissed, and the other claims remain as the County is the owner of the vehicle being driven by Honsaker, and it is further

ORDERED that this matter is scheduled for a virtual **preliminary conference on December 15, 2020 at 11:15am**. A link will be sent by the part clerk.

The foregoing constitutes the Decision and Order of this Court.

Dated: October **29** , 2020
Goshen, New York

ENTER:


HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of record via NYSCEF