

**Dalley v Gordy**

2021 NY Slip Op 33258(U)

August 2, 2021

Supreme Court, Orange County

Docket Number: Index No. EF008382-2018

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

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

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

SUPREME COURT : ORANGE COUNTY

-----X  
HEATHER N. DALLEY,  
Plaintiff,

- against -

FRANKLIN HUGH GORDY,  
Defendant.  
-----X

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. EF008382-2018

**DECISION and ORDER**

Motion Date: June 22, 2021

The following papers numbered 1 to 4 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- Dreyer Affirmation- Dalley Affidavit- Exhibits A-G ..... 1-4

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

**Introduction**

The Plaintiff Heather Dalley commenced this action to recover damages arising from a chain-reaction motor vehicle accident.

The Plaintiff moves for summary judgment on the issue of liability.

The motion is granted.

**Factual/Procedural Background**

According to the police report of the accident, the Plaintiff's vehicle was struck from the rear by a vehicle being driven by the Defendant Franklin Hugh Gordy, and pushed into the

vehicle in front of her, starting a chain reaction accident. According to the report, Gordy stated that he was "unable to stop his vehicle quick enough" and struck the Plaintiff's vehicle.

The Plaintiff submits an affidavit in which she avers as follows.

On October 5, 2017, at approximately 3:24 p.m., she was in her vehicle on Interstate Route 84 (hereinafter "I-84"). As she was traveling in the right-hand eastbound lane, adjacent to the on-ramp for Exit 7 and approaching the off-ramp for Exit 8 in the Town of Newburgh, her vehicle was suddenly, and without warning, struck from behind by a 2012 Ford pickup truck operated by the defendant, Franklin Hugh Gordy.

The weather was clear, and the roads were dry at the time.

Traffic had been flowing smoothly and normally when she entered I-84. However, as she passed Exit 7 and approached Exit 8, she noticed that traffic was slowing up ahead, and she saw brake lights. She began slowing by applying her brakes in a steady and gradual manner in order to reduce her speed and come to a stop, if necessary. As she was doing so, her vehicle was struck in the rear by the Gordy vehicle, which had been traveling behind her in the right hand eastbound lane. She did not see the Gordy vehicle behind her at any time prior to feeling the impact from behind.

Her vehicle was still moving at a speed between 30 and 40 mph when it was struck from behind. The force of the impact propelled her car forward and caused it to strike the rear of the vehicle in front of her. That car, in turn, was pushed forward into the rear of the vehicle in front of it.

At the time of impact, her vision was focused on the vehicles ahead of her.

### 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 [2<sup>nd</sup> Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2<sup>nd</sup> Dept. 2011].

Relevant to the case at bar, a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence. *Nikolic v. City-Wide Sewer & Drain Service Corp.*, 150 A.D.3d 754 [2<sup>nd</sup> Dept. 2017]; *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017]. A non-negligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017]. However, while a non-negligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017].

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 [2<sup>nd</sup> Dept. 2019].

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.

In opposition, the Defendant failed to raise a triable issue of fact. Indeed, the Defendant did not submit any opposition to the motion.

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

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

ORDERED, that the parties are directed to appear for a status conference on Tuesday, August 24, 2021, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York, to determine how the matter shall proceed on the issue of damages, if Courts are in session and open to the public. If the Courts are not open the public at that time, a virtual conference will be held on that date at a time designated by the Court at which time a date a trial date shall be established.

The foregoing constitutes the Decision and Order of the Court.

Dated: August 2, 2021  
Goshen, New York

ENTER

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

VIA NYSCEF

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