

Bryant v Gulnick

2021 NY Slip Op 33436(U)

November 3, 2021

Supreme Court, Ulster County

Docket Number: Index No. EF2019-1123

Judge: James P. Gilpatric

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**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

CARLA BRYANT,

DECISION AND ORDER

Plaintiff,

Index No.: EF2019-1123

- against -

**BURTON GULNICK, JR., as Administrator of
the Estate of BARBARA A. HYDE, and JEWISH
FAMILY SERVICES OF ULSTER COUNTY, INC.,**

Defendants.

Supreme Court, Ulster County

Present: James P. Gilpatric, J.S.C.

Appearances:

O'CONNOR & PARTNERS, PLLC
Attorneys for Plaintiff
255 Wall Street
Kingston, New York 12401
By: Regina Fitzpatrick, Esq.

LAW OFFICES OF BRIAN D. RICHARDSON
Attorneys for Burton Gulnick, Jr., as Administrator of the Estate of
Barbara A. Hyde
210 Washington Avenue, Ext, Suite 104
Albany, New York 12203
By: Brian Richardson, Esq., of Counsel

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Attorneys for Defendant Jewish Family Services of Ulster County
100 Madison Street
Syracuse, New York 13202
By: John Murad, Esq.

Gilpatric:

This action arises from a two-vehicle motor vehicle accident which occurred on January 8, 2018 at approximately 2:18 p.m., on State Route 28 in the Town of Shandaken, County of Ulster, State of New York. It is alleged that at the time of the accident the 65-year-old plaintiff, Carla

Bryant, was the driver of a 2004 Ulster County Transit bus, which was owned and operated by Ulster County, and traveled east, when a 2002 Kia motor vehicle being driven by decedent Barbara Hyde was traveling west on Route 28 and crossed over into the opposing snow-covered lane of travel and collided with the bus being operated by the plaintiff.

Alleging that she suffered a serious injury as defined by the New York Insurance Law, plaintiff commenced the instant personal injury action on April 4, 2019. In her complaint, and, later in her bill of particulars, plaintiff alleges that she suffered: (1) a permanent consequential limitation of use of a body function or system, including but not limited to right shoulder, right arm, and lumbar spine; (2) a significant limitation of use of a body function or system; and (3) a medically determined injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than ninety (90) days during the hundred eighty (180) days immediately following the injury. Following joinder of issue and discovery, the plaintiff moves, pursuant to CPLR § 3212, for summary judgment on the issue of liability. The defendant Burton Gulnick, Jr., as Administrator of the Estate of Barbara A. Hyde (hereinafter “Hyde Estate”) opposes plaintiff’s motion and cross-moves, pursuant to CPLR 3211 and Worker’s Compensation Law Section 11 and 29[6], for dismissal of the plaintiff’s complaint. Plaintiff Bryant opposes defendant Hyde Estate’s cross-motion. Additionally, defendant Jewish FS moves, pursuant to CPLR § 3212, for summary judgment dismissing the plaintiff’s complaint as against them. Plaintiff Bryant opposes defendant JFS’s motion.

To obtain summary judgment, a movant must establish his or her position “sufficiently to warrant the court as a matter of law in directing judgment” in his or her favor (Friends of Fur Animals, Inc. v Associated Fur Mfrs., Inc., 46 NY2d 1065, 1067 [1979], quoting CPLR 3212 [b]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any genuine material issues of fact from the case (see Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). The failure to make such a showing mandates denial of the motion, regardless of the sufficiency of the opposing papers (see Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

Where a *prima facie* showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof, in admissible form, to establish the existence of material issues of facts which require a trial (see Zuckerman v City of New York,

49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied.

As to the plaintiff's motion for summary judgment on the issue of liability, the plaintiff alleges, *inter alia*, that the decedent driver was negligent in that she unlawfully failed to maintain her vehicle in her lane and failed to yield the right of way to the plaintiff and her conduct was the sole proximate cause of the accident. Additionally, plaintiff also alleges that decedent Barbara Hyde was acting at the direction and in furtherance of her work as a volunteer, employee, shareholder, member, or partner of defendant Jewish Family Services of Ulster County, Inc. (hereinafter "JFS"). The plaintiff alleges that the defendants were negligent, careless and reckless in the ownership, operation, management, maintenance, supervision, use and control of the aforesaid motor vehicle and the defendants were otherwise negligent, careless and reckless under the circumstances then and there prevailing.

Here, the plaintiff submits, *inter alia*, her sworn affidavit, dated July 9, 2020, a copy of the pleadings, a copy of the Police Accident Report, a copy of her deposition testimony, a copy of the video from the bus camera of the accident as it occurred and, a copy of the deposition testimony Joyce Northacker, plaintiff in another action involving this accident. The plaintiff avers that on January 8, 2018 she was in the course of her employment operating a full-size bus for the Ulster County Area Transit and on her route, from Kingston Plaza to Bel Air Mountain with a return trip from Bel Air Mountain back to Kingston Plaza, at the time that the accident happened (Plaintiff's Affidavit). She further averred that at the time of the accident she was headed to Boiceville and was due there for a 3:20 p.m. stop (Plaintiff's Affidavit). On her return from Bel Air Mountain, the plaintiff avers that it began to rain and eventually it turned to snow (Plaintiff's Affidavit). The plaintiff further averred that she was unconcerned with the snow and felt comfortable with the operation of her bus (Plaintiff's Affidavit). She also averred that the stretch of roadway where the accident occurred is a flat straight road with one lane in either direction (Plaintiff's Affidavit). Ms. Bryant further averred that she observed the decedent's subject vehicle in the opposite lane of travel and then it came into her lane sliding sideways towards her (Plaintiff's Affidavit). Ms. Bryant also stated that there was no evasive action that she could have taken and that she was required to submit to a mandatory drug and alcohol test immediately after the accident that came back clear with no alcohol or drugs in her system (Plaintiff's Affidavit). Ms. Bryant's affidavit states that the video from the bus of the accident is an accurate depiction of the accident as it

happened (Plaintiff's Affidavit). As such, the plaintiff argues that the facts support that the plaintiff had the right of way and the defendant's failure to yield to her vehicle was the sole proximate cause of the accident.

In opposition to the motion, defendant Hyde Estate argues in her cross-motion that the decedent Barbara Hyde was faced with an emergency situation and acted reasonably under the circumstances. Additionally, said defendant asserts that both Carla Bryant and Barbara Hyde worked for Ulster County at the time of the accident and, therefore, Ms. Bryant can only seek remedies from Worker's Compensation Law §29(6). Here, the defendant relies upon the Decision and Order of the Honorable Lisa M. Fisher, J.S.C., dated May 1, 2019, that found that both Ms. Bryant and decedent Hyde were within the same employ and acting within the scope of employment at the time the alleged injuries occurred and that Workers' Compensation Law § 29 (6) barred plaintiff Bryant previous motion to file a late notice of claim. Additionally, the defendant JFS adopts and incorporates the arguments of co-defendant Hyde Estate.

Based upon review of all of the submissions, the Court determines that the plaintiff has established a *prima facie* showing that defendant JFS is vicariously liable for the actions of decedent Barbara Hyde. Here, the Court determines the submissions clearly establish that defendant JFS has considerable connections and responsibility for the Neighbor to Neighbor Program and that decedent Hyde was acting in her capacity as a driver for the program.

However, the Court finds that it is also evident that Judge Fisher's May 1, 2019 Decision and Order is now the law of the case in this action as to defendant Hyde Estate. The law of the case is a doctrine that when a decision is finally reached by a court in a dispute between two parties, it is binding on those parties for the remainder of the action, unless some extraordinary circumstance would allow the court to alter the decision as a matter of discretion. Each party is bound by that decision once it becomes final and the party is barred from attempting to relitigate that issue at another stage of the litigation. There have been no extraordinary circumstances that have been shown by either defendant which would allow this Court to alter Judge Fisher's decision.

Most notable to this Court is that the Honorable Judge Fisher's Decision and Order, dated May 1, 2019, involved facts of the very same automobile accident brought by this plaintiff against Ulster County. Judge Fisher noted in her decision that the affidavit of Dorraine Whitney, an Ulster County insurance officer, indicated that Ulster County Area Transit and Ulster County OFA are both directed by the County Executive and County Legislature and that both Ms. Bryant and

decendent Hyde were entitled to Workers' compensation benefits from Ulster County. It is also noted by this Court that at the time of the action before Judge Fisher, the County's attorney submitted an affirmation stating that both Ms. Bryant and Ms. Hyde were Ulster County employees and that Ms. Hyde, as a volunteer employee, was acting within the scope of her volunteer employment in furtherance of Ulster County's business and that Ms. Hyde was a co-employee of Ms. Bryant. Therefore, co-defendant Hyde Estate is entitled to dismissal of the plaintiff's complaint as the plaintiff is not entitled to bring an action against Ms. Hyde as a co-employee and is only entitled to Worker's Compensation as to that part of her recovery.

However, co-defendant JFS is not entitled for dismissal based upon the aforementioned reasoning. A decision of a court becomes law of the case as to the parties before it at the time of the decision. A party added is not bound to the decision under this doctrine. A review of Judge Fisher's May 1, 2019 Decision and Order does not mention co-defendant JFS in any manner, nor were they a party to that action when decendent Hyde was declared by Judge Fisher to be a co-employee of the plaintiff. Therefore, co-defendant JFS's motion for dismissal must be denied.

Consequently, in view of the Court's findings in the submissions set forth hereinabove, the Court grants plaintiff's motion for summary judgment for liability against defendant JFS and grants co-defendant Hyde Estate's cross-motion for summary judgment dismissing the plaintiff's complaint and any cross-claims against them. Additionally, co-defendant JFS motion for summary judgment granting judgment dismissing the plaintiff's complaint in its entirety, along with all cross claims by any co-defendant is denied (*see generally* Linton v Nawaz, 14 NY3d 821, 822 [2010]). Otherwise, the Court has considered any remaining arguments and finds them either unavailing or unnecessary to reach.

Accordingly, it is

ORDERED, that plaintiff's motion for summary judgement as to liability against the co-defendant Hyde Estate is denied and as to co-defendant JFS is granted, and, it is further

ORDERED, that the co-defendant Hyde Estate's cross-motion for summary judgment dismissing the plaintiff's complaint as against them is granted, and it is further

ORDERED, that the co-defendant JFS motion for summary judgment is denied.

This shall constitute the decision of the Court. The signing of this decision shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED!

Dated: November 3, 2021
Kingston, New York

ENTER,



JAMES P. GILPATRIC, J.S.C.

Papers considered: Notice of motion, dated July 22, 2020; affirmation in support of Joseph E. O'Connor, Esq., dated July 22, 2020, with exhibits; affidavit of Carla Bryant, dated July 9, 2020; notice of cross-motion, dated September 21, 2020; affirmation in opposition of Brian D. Richardson, Esq., dated September 21, 2020, with exhibits; notice of motion, dated April 7, 2021; affirmation of John L. Murad, Esq., dated April 7, 2021, with exhibits; affirmation in opposition of Regina Fitzpatrick, dated April 21, 2021, with exhibits; reply affirmation of John L. Murad, dated April 27, 2021, with exhibits.