

Hopkins v Terwilliger
2021 NY Slip Op 33446(U)
October 13, 2021
Supreme Court, Orange County
Docket Number: Index No. EF010408-2018
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 the 285 Main Street,
Goshen, New York 10924 on the 13th day of October, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ATHENA HOPKINS as administratrix of the Estate of
CLORISA HOPKINS, deceased,
Plaintiff,

-against-

JAMES J. TERWILLIGER,
Defendant.

JAMES J. TERWILLIGER,
Third-Party Plaintiff,

-against-

KENNETH HOPKINS and BEN L. HOPKINS,
Third-Party Defendants.

KENNETH HOPKINS,
Plaintiff,

-against-

JAMES TERWILLIGER,
Defendant.

JAMES J. TERWILLIGER,
Third-Party Plaintiff,

-against-

BEN L. HOPKINS,
Third-Party Defendant.

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 & ORDER

INDEX #EF010408-2018

Motion Date: 5/28/2021

Motion #2

Action #1

Index No. EF010408-2018

Action #2

Index No. EF008933-2017

The following papers were read on this motion by defendant James Terwilliger for
summary judgment, pursuant to CPLR §3212:

Notice of Motion/Affirmation in Support/Exhibits A-P;
Affirmation in Opposition (Kenneth Hopkins);

Affirmation in Opposition (Plaintiff)/Memorandum of Law/Exhibits 1-10;
Affirmation in Opposition (Estate of Clorisa Hopkins);
Reply Affirmations (Terwilliger)/Exhibit A;
Supplemental Affirmation in Opposition (Plaintiff)/Exhibits 1-2;
Supplemental Affirmation in Opposition (Clorisa Hopkins);
Supplemental Reply Affirmation (Terwilliger)/Exhibit A;

This action arises out of a motorcycle accident that occurred on July 30, 2017 when the motorcycle operated by Kenneth Hopkins, with his wife Clorisa Hopkins as a passenger, came in contact with the motorcycle operated by Ben Hopkins. Plaintiffs allege that the van operated by Terwilliger came into contact with Kenneth's motorcycle, causing it to strike Ben's motorcycle. Terwilliger moves here for summary judgment, dismissing all claims asserted against him.

The thrust of Terwilliger's argument is that this action is barred by res judicata and collateral estoppel, in that it was adjudicated before Administrative Law Judge Regina A. Rinaldi at hearings before the Department of Motor Vehicles, in which "Findings and Disposition" was submitted, dated April 25, 2019, that the instant accident did not involve Terwilliger's vehicle (Exhibit 8). Kenneth and plaintiffs aver that the issues raised in the hearings held on October 17, 2018 and March 26, 2019 were not identical to those in the instant matter, in which the former were limited to determine whether a motorist accident report was filed by respondents Kenneth and Ben, and the suspension or revocation of their registration, license, and driving privileges. In addition, an issue of fact exists regarding Terwilliger's liability.

"Pursuant to the doctrine of res judicata, a final judgment precludes reconsideration of all claims which could have or should have been litigated in the prior action or proceeding against the same party" (*Wisell v. Indo-Med Commodities, Inc.*, 74 AD3d 1059 [2d Dept 2010]).

"Collateral estoppel, or issue preclusion, is 'a component of the broader doctrine of res judicata' which provides that, 'as to the parties in a litigation and those in privity with them, a judgment on

the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action” (*Highlands Ctr., LLC v. Home Depot U.S.A., Inc.*, 149 AD3d 919 [2d Dept 2017]).

“The doctrine of collateral estoppel bars relitigation of an issue which has necessarily been decided in a prior action and is determinative of the issues disputed in the present action, provided that there was a full and fair opportunity to contest the decision now alleged to be controlling. The party seeking the benefit of the doctrine of collateral estoppel bears the burden of establishing that the identical issue was necessarily decided in the prior action, and ‘the party to be estopped bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination’” (*Leung v. Suffolk Plate Glass Co.*, 78 AD3d 663 [2d Dept 2010]). “Collateral estoppel applies when (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits” (*Alamo v. McDaniel*, 44 AD3d 149 [1st Dept 2007]).

“At the outset, it should be made clear that the doctrines of res judicata and collateral estoppel are applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies, when rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals employing procedures substantially similar to those used in a court of law . . . Among the specific factors to be considered are the nature of the forum and the importance of the claim in the prior litigation, the incentive and initiative to litigate and the actual extent of litigation, the competence and expertise of counsel, the availability of new

evidence, the differences in the applicable law and the foreseeability of future litigation.” (*Ryan v. New York Tel. Co.*, 62 NY2d 494 [1984]).

This Court finds collateral estoppel proper in this matter, since the (1) the issue before ALJ Rinaldi is identical to that before this Court, which is regarding defendant’s liability, (2) the issue was fully litigated and decided in the DMV hearings, (3) plaintiff had a full and fair opportunity to litigate the issue of liability at the hearings, and (4) the issue litigated was necessary to support the DMV determination (See *Alamo*, 44 AD3d at 154). According to the “Findings and Disposition” of ALJ Rinaldi, dated April 25, 2019, hearings were held, pursuant to VTL §510(3) and §605¹, to inquire into the instant accident and determine whether Kenneth and Ben Hopkins filed an accident report, where the following disposition was made (Exhibit 8, p 6):

Kenneth L. Hopkins, Jr.

Fatal accident: No action shall be taken against said Respondent’s license and/or driving privileges as the Respondent tragically suffered the loss of his wife as a result of the crash and no purpose would be served in penalizing him further.

Failure to file an accident report: Respondent filed an accident report related to this incident during the hearing (Exhibit 14). Though it was not filed within 10 days of the date of accident as required by VTL §605, any timeliness issues are set aside and the report is accepted. No action will be taken against Respondent’s driving privileges.

Ben L. Hopkins

Fatal accident: Close case.

Failure to file an accident report: Respondent filed an accident report related to this incident during the hearing (Exhibit 11). Though it was not filed within 10 days of the date of accident as required by VTL §605, any timeliness issues are set aside and the report is accepted. No action will be taken against Respondent’s driving privileges.

¹ The sections are titled, respectively, “Suspension, revocation and reissuance of licenses and registrations” and “Report required upon accident” (N.Y. Veh. & Traf. Law § 510 and §605 [McKinney]).

Although the disposition focused on respondents driving privileges and failure to file an accident report, the Court concluded prior to such that “Respondent drove to left of pavement markings in violation of VTL section 1126(a), was speeding 48-53 m.p.h. in a 40 m.p.h zone in violation of VTL section 1180D, and failed to use designated lane in violation of VTL section 1128(c). These violations were the sole cause of the collision. James J. Terwilliger’s van never made contact with Respondent’s motorcycle. I further conclude that Respondent Ben L. Hopkins did not violate any Vehicle and [Traffic] Law, and did not contribute to this collision in any manner” (Id. at p 5). The issue before ALJ Rinaldi is identical to that of this action, considering the ALJ’s outcome resulting from the DMV hearings and the following evidentiary basis.

The hearings entailed the testimonies of witness Jared Kozachuk, Terwilliger and Investigator Brian Hunter, as well as, amongst others, the statements of witnesses Donald Corbett and Donald McBride and a Police Accident Report by Shannon M. Britsky of the Ulster County Sheriff’s Office. The ALJ provided that Kozachuk testified that “he saw a white van traveling in the opposite direction . . . this van crossed the double yellow line and struck Respondent Kenneth L. Hopkins, Jr. causing his motorcycle to do a ‘death slap’ and slide into the motorcycle of Respondent Ben L. Hopkins. He stated that the van then came toward him and he had to swerve to the right . . . he did not see Respondent Kenneth L. Hopkins, Jr. drive to the left of the ‘pack’ of motorcycles to get to the front” (Id. at p 2). Terwilliger also testified that “suddenly and without warning Respondent Kenneth L. Hopkins, Jr. . . crossed over the double yellow line into his lane of travel . . . traveling toward him at ‘top speed’ in his lane. Mr. Terwilliger stated that he swerved to the right to avoid being struck by Respondent’s motorcycle. He testified that his van and Respondent’s motorcycle never made contact . . .” (Id. at p 3). In addition, Investigator

Hunter testified to viewing video footage “that clearly showed Respondent Kenneth L. Hopkins, Jr. traveling south on Burlingham Road and passing into the northbound lane in a no passing zone in excess of the 40 mile per hour posted speed limit . . . The Collision Reconstruction Unit found conclusive proof that Mr. Terwilliger’s van never made contact with Respondent’s motorcycle and it was in fact Respondent, not Mr. Terwilliger, that passed into the oncoming lane of travel in a no passing zone” (Id. at p 5).

In addition, although Kenneth and Ben appeared at the DMV hearings, both had chosen not to provide their testimonies on the subject accident. The deposition of Kenneth was held for this matter on September 15, 2020, where Kenneth’s testimony, with respect to Terwilliger crossing the double yellow line, was based on Kozachuk’s account, which the ALJ had already considered when reaching its decision. Kenneth also indicated in the deposition that he had crossed the double line at one point (Exhibit G, p 39 - 53):

Q. Do you ever have a recollection that day of driving your motorcycle in the oncoming lane or across the double yellow line?

A. When I was doing - - the only time I did that is when I was letting the bikes go through, and then I came out a little bit to get back in my formation. . .

Q. And to get back into position, did your vehicle ever cross over the yellow double yellow line into oncoming traffic?

A. For a quick minute and that was it. . .

Q. . . . Was it halfway down, a quarter of the way or something else?

A. When I left the firehouse. . .

Q. How long would you estimate you were back in your side of the double yellow line when you say that your highway peg was struck by the white van? . . .

A. I don’t know.

The deposition of Athena Hopkins, the daughter of Kenneth was held on the same date, who presented testimony from a family friend named Frank Maiori that a van had hit Kenneth’s bike (Exhibit H, p 10). However, Athena later stated, “Frank Maiori did tell me that my dad was

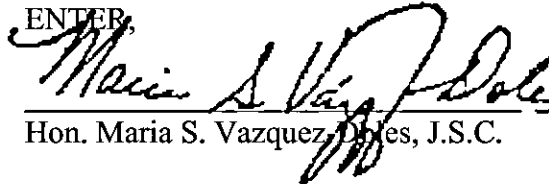
slightly over the double yellow, because he was trying to get back into formation” (Id. at p 12).

Furthermore, according to Deputy Britsky at her deposition held on March 24, 2021, she was not aware of any physical evidence that showed Terwilliger crossed the double yellow line (Exhibit 2, p 61). Upon view of the foregoing, this action is barred by res judicata and collateral estoppel. Plaintiffs had a full and fair opportunity to litigate the issues of defendants liability of the instant accident at the DMV hearings before the ALJ prior to its “Findings and Disposition” (see *Leung v. Suffolk Plate Glass Co.*, 78 AD3d 663 [2d Dept 2010]).

ORDERED that defendant James Terwilliger’s motion for summary judgment, dismissing all claims against him, is **GRANTED**.

The foregoing constitutes the Decision and Order of the Court.

Dated: October 13th, 2021
Goshen, New York

ENTER,

Hon. Maria S. Vazquez, J.S.C.