

Mignano v Monda

2021 NY Slip Op 33493(U)

July 1, 2021

Supreme Court, Orange County

Docket Number: Index No. EF000961-2019

Judge: Maria S. Vazquez-Doles

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This opinion is uncorrected and not selected for official publication.

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 1st day of July, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

KERI MIGNANO,

Plaintiff,

-against-

RICHARD MONDA, NICOLE MONDA and
DANIELLE MONDA,

Defendants.

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 EF000961-2019
Motion date: 3/25/2021
Motion Seq. #1

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 10 were read on plaintiff's motion for summary
judgment against defendants on the issue of liability:

Notice of Motion/Affirmation in Support/Exhibits 1-9..... 1-11

Plaintiff's motion for summary judgment on the issue of liability is **GRANTED**.

Background and Procedural History

In this negligence action, plaintiff seeks to recover damages for personal injuries she
sustained as a result of a motor vehicle accident that occurred on July 10, 2017 where plaintiff
was a passenger in the vehicle operated by defendant Nicole Monda, which was owned by
defendants Richard Monda and Danielle Monda. Plaintiff alleges defendant Nicole failed to
control her vehicle and stay in the proper lane of travel. Plaintiff commenced this action by filing
a Summons and Verified Complaint on February 5, 2019 (Exhibit 2). Defendant filed an Answer
with Affirmative Defenses on March 8, 2019 (Exhibit 3). Plaintiff moves here for summary
judgment against defendant on the issue of liability.

Discussion

Plaintiff argues that defendant Nicole admitted to causing the accident in her deposition while attempting to switch from the right to left lane under congested traffic and failing to check her blind spot before switching lanes. Defendant has failed to file opposition to this motion.

Section 3212(b) of the Civil Practice Law & Rules states, in pertinent part, that a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." Section 3212(b) further states that "the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact."

"Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a material and triable issue of fact" (*Anyanwu v Johnson*, 276 AD2d 572 [2d Dept 2000]). Issue finding, not issue determination, is the key to summary judgment (*Krupp v Aetna Casualty Co.*, 103 AD2d 252 [2d Dept 1984]). In deciding the motion, the court must view the evidence in the light most favorable to the non-moving party (*See, Kutkiewicz v Horton*, 83 AD3d 904 [2d Dept 2011]).

The Court of Appeals has held that a plaintiff does not bear the burden of establishing the absence of his own comparative negligence in order to obtain partial summary judgment in a comparative negligence case (*Rodriguez v. City of New York*, 31 NY3d 312 [2018]). In *Rodriguez*, the Court of Appeals reversed the finding of the Appellate Division, First Department, that affirmed the denial of plaintiff's motion for partial summary judgment, on the basis that plaintiff failed to make a *prima facie* showing that he was free of comparative negligence (*See, Rodriguez v. City of New York*, 142 AD3d 778 [1st Dept 2016]).

The Court of Appeals held that Article 14-A of the Civil Practice Law & Rules provides

that comparative negligence does not *bar* recovery, but can act to diminish the amount of damages otherwise recoverable, in the proportion of the claimant's culpable conduct (Civ. Prac. Law & Rules §1411). Moreover, section 1412 provides that such culpable conduct shall be an affirmative defense to be pleaded and proved by the party asserting the same.

The majority thus reasoned that to place the burden on the plaintiff to show an absence of comparative fault is inconsistent with the language of section 1412 (2018 NY Slip Op. at 3). "Comparative fault is not a defense to the cause of action of negligence, because it is not a defense to any element (duty, breach, causation) of plaintiff's prima facie cause of action for negligence . . . but rather a diminishment of the amount of damages" (Id at 779).

According to the police report: ". . . V1 [defendant] then attempted to change lanes to the north east lane, and collided with V2 while crossing lanes. . . My investigation revealed that the driver of V1 was at fault, due to driver in attention. The driver of V1 was issued a summons for careless driving" (Exhibit 1). Defendant testified that she did not turn her head and look at the blind spot and that plaintiff did not tell her to move from the right to left lane (Exhibit 6, p 8, 9, 18, and 19). Defendant has failed to submit an opposition to the motion to raise a triable issue of fact (*see Grange v Jacobs*, 11 AD3d 582 [2d Dept 2004]). Upon view of the foregoing, plaintiff's motion for summary judgment against defendant on the issue of liability is granted.

Conclusion

Accordingly, it is hereby

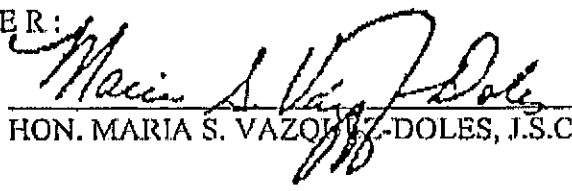
ORDERED that plaintiff's motion for summary judgment on the issue of liability is **GRANTED**, and

ORDERED that the remaining issues shall be limited to plaintiff's injuries and damages; and it is further,

ORDERED that a virtual conference shall be held in this matter before the undersigned
on SEPTEMBER 7, 2021. AT 2PM

The foregoing constitutes the Decision and Order of this Court.

Dated: July 1st, 2021
Goshen, New York

ENTER:

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