

Northacker v County of Ulster
2021 NY Slip Op 33741(U)
November 3, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2019-568
Judge: James P. Gilpatric
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**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

JOYCE A. NORTHACKER,

DECISION AND ORDER

Plaintiff,

Index No.: EF2019-568

- against -

**COUNTY OF ULSTER, JEWISH FAMILY SERVICES of
ULSTER COUNTY, and CARLA F. BRYANT,**

Defendants.

JOYCE A. NORTHACKER,

Plaintiff,

Index No.: EF2019-1389

-against-

**BURTON GULNICK, JR., as Administrator of
The Estate of BARBARA HYDE,**

Defendant.

Supreme Court, Ulster County

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

Appearances:

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Gilpatric:

This action arises from a two-vehicle motor vehicle accident which occurred on January 8, 2018 at approximately 2:15 p.m., on State Route 28 in the Town of Shandaken, County of Ulster, State of New York. At the time of the accident the plaintiff was a passenger in a 2001 Kia automobile, which was owned and operated by Barbara Hyde. Ms. Hyde's vehicle was traveling west on Route 28, when the vehicle crossed over into the opposing lane of travel, on a snow-covered roadway, and collided with a 2004 Ulster County Transit bus operated by defendant Carla F. Bryant. Ms. Hyde died as a result of the accident, while plaintiff Northacker sustained serious personal injuries, requiring several surgeries and a protracted hospital stay. The plaintiff alleges that her ride with Ms. Hyde was under a program, operated by defendants Jewish Family Services of Ulster County and Ulster County Office of the Aging, by which transportation was provided for senior citizens to and from doctor's offices or other medical appointments. Following joinder of issue and discovery the plaintiff moves for summary judgment granting judgment, pursuant to CPLR § 3212, on all issues of liability in the above-entitled actions and dismissing any affirmative defenses which assert that the plaintiff's own culpable conduct was a causative factor in the accident. The co-defendant Burton Gulnick, Jr., as Administrator of the Estate of Barbara Hyde (hereinafter "Hyde Estate"), opposes the motion.

Co-defendants County of Ulster and Carla Bryant respond by cross-moving for summary judgment, pursuant to CPLR § 3212, dismissing the plaintiff's complaint in its entirety. Additionally, co-defendant Jewish Family Services of Ulster County, Inc. (hereinafter "JFS") also cross-moves for summary judgment granting judgment, pursuant to CPLR § 3212, dismissing the plaintiff's complaint in its entirety, along with all cross claims by any co-defendant. The plaintiff opposes both cross-motions.

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.

Summary judgment should be granted when it is clear that no triable issues of fact exist on a critical issue necessary for the plaintiffs' case (see Zuckerman v City of New York, 49 NY2d 557 [1980]). 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 demonstrate the absence of any material issue of fact (Alvarez v Prospect Hospital, 68 NY2d 320 [1987]). In order to meet this burden when seeking dismissal of a cause of action, a party must submit evidence which negates any meritorious cause of action encompassed by the pleadings (see Franceschi v Consolidated Rail Corp., 142 AD2d 915 [3rd Dept 1988]). Once the movant has made a showing, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of any material issue of fact requiring a trial of the action (Zuckerman v City of New York, 49 NY2d 557 [1980]). Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (see Smalls v AJI Industries, 10 NY 3d 733 [2008]). The evidence must be viewed in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference in order to determine whether there is any triable issue of fact outstanding (see Boyce v Vazquez, 249 AD2d 724 [3rd Dept 1998]). Where different conclusions can reasonably be drawn from the evidence, the motion should be denied (see Sommer v Federal Signal Corp., 79 NY2d 555 [1992]).

Plaintiff's Motion for Summary Judgment

As to the plaintiff's motion for summary judgment on the issue of liability, the plaintiff

alleges that the decedent driver, Barbara Hyde was negligent, as the operator of the vehicle in which said plaintiff was a passenger, and that decedent Hyde's negligence was the primary cause of the collision in that decedent Hyde failed to maintain control of her vehicle, on a snow-covered roadway, and crossed into the opposing lane of travel causing her vehicle to slide sideways into the front of the vehicle bus being driven by defendant Carla Bryant. The plaintiff further alleges that co-defendant Bryant was also negligent in that she was unable to avoid striking the Hyde vehicle in the driver's side with the front end of the bus, causing serious injuries to the plaintiff and the death of Ms. Hyde. While the plaintiff alleges that there may be triable issues of fact with respect to the levels of negligence between the two drivers involved, the plaintiff asserts that there is no question of fact that the plaintiff, as a passenger in the Hyde vehicle, was free of any negligence which caused or contributed to the accident. Additionally, the plaintiff alleges that the County of Ulster and Jewish Family Services, as employers of the drivers, are vicariously liable for the negligent actions of both Ms. Hyde and Ms. Bryant in causing the plaintiff's serious injuries.

In support of her motion for summary judgment on all issues of liability in the above-entitled actions and dismissing any affirmative defenses, the plaintiff submits, *inter alia*, a copy of the Police Accident Report, a copy of the pleadings, a copy of the affidavit of Carla Bryant, undated and unsigned, a partial copy of her deposition testimony, a partial copy of the deposition testimony of Carla F. Bryant, a copy of the deposition testimony of Patrick McDonough, on behalf of Ulster County, a copy of the deposition testimony of Sharon Murray-Cohen, on behalf of Jewish Family Services of Ulster County (hereinafter "JFS"), a copy of the Professional Services Agreement between the Ulster County Office of the Aging (hereinafter "OFA") and a copy of the application form for volunteers who wishes to participate in the Neighbor to Neighbor Program.

Here, the plaintiff testified that the trip which resulted in the subject accident was the first time she had ever requested a ride through OFA (Plaintiff's Exhibit "I", p. 10). Ms. Northacker testified that she had called the OFA to notify them of her need for transportation from Pine Hill to Kingston Hospital and her return, and she was then transferred to decedent Hyde, to whom she gave the date and time of her appointment (Plaintiff's Exhibit "I", pp. 40-41). The plaintiff further testified that on the morning of the accident, she had a telephone conversation with Ms. Hyde in which she expressed some concern due to a weather forecast for snow and decedent Hyde replied that she had keys in her hand and was on her way (Plaintiff's Exhibit "I", p. 12). The plaintiff also

testified that she had no memory of the accident itself (Plaintiff's Exhibit "I", p. 14). Ms. Northacker further testified that she accepted the ride from Ms. Hyde because the OFA had referred her (Plaintiff's Exhibit "I", p. 42-4312).

The plaintiff also submits the deposition testimony of defendant Carla Bryant as evidence of the defendants' culpability. Ms. Bryant testified that the impact between the Hyde vehicle and her bus was completely within her lane of travel and came at her sideways (Plaintiff's Exhibit "J" pp.28-32). She also testified that she had slowed her bus to some degree after she had applied the brakes but, she did not have time to sound her horn or steer in any other direction prior to impact (Plaintiff's Exhibit "J" pp.32-33). Additionally, Ms. Bryant testified she did not believe there was anything else that she could have done to avoid the accident as the accident occurred in her lane of travel (Plaintiff's Exhibit "J", p.33).

Additionally, plaintiff submits the deposition testimony of Patrick McDonough as evidence that Ulster County is vicariously liable for the conduct of decedent Hyde's negligence. Mr. McDonough testified that he is employed as a Senior Services Resource Aide by OFA and that his full-time job involved helping to supervise the Office's volunteer programs (Plaintiff's Exhibit "K", p. 5). He further testified that the OFA is overseen by a committee of the Ulster County Legislature (Plaintiff's Exhibit "K", p. 8). Mr. McDonough testified that the program had previously been run by the Ulster County Community College and the County Executive decided to bring it in-house once the College was no longer interested in running the program (Plaintiff's Exhibit "K", pp. 8-9). Mr. McDonough testified that one of the volunteer programs offered by OFS is the Neighbor to Neighbor Program by which seniors volunteer to drive other seniors to their medical appointments (Plaintiff's Exhibit "K", pp. 19-25). He also testified that the funding for the brochure for the program is provided by Ulster County (Plaintiff's Exhibit "K", p. 31-32). Mr. McDonough also identified a form which bears the names of both the OFA and JFS, as well as the Neighbor to Neighbor Program, and stated that it was an application form used to recruit volunteers for the program (Plaintiff's Exhibit "K", p. 32-33). He also testified that OFA contracted with JFS to administer the program for the County (Plaintiff's Exhibit "K", p. 33). Mr. McDonough testified that he was personally involved in recruiting volunteers for the Neighbor to Neighbor Program and that JFS would cut the checks to the volunteers, make sure the volunteers had valid licenses, would carry liability insurance for the program and would be reimbursed by the County (Plaintiff's Exhibit "K", pp. 34-35). Mr. McDonough also testified that decedent Hyde was

not only a driver for the Neighbor to Neighbor Program, but also one of the volunteers who answered the phone for that program (Plaintiff's Exhibit "K", p. 103, 121-122).

In addition, plaintiff submits the deposition testimony of Sharon Murray-Cohen, Executive Director of JFS, as evidence that JFS is vicariously liable for the conduct of decedent Hyde's negligence. Ms. Murray-Cohen testified that JFS became involved with the Neighbor to Neighbor Program in 2016, as Ulster County was looking for a new administrator for the program (Plaintiff's Exhibit "L", pp. 9-10). Based upon her discussions with a prior director of OFA, she signed a contract anticipating that it would operate the Neighbor to Neighbor Program for OFA (Plaintiff's Exhibit "L", pp. 23-24). It was after she signed the contract that she discovered that the County had hired someone to run the program (Plaintiff's Exhibit "L", p. 24). She also testified that JFS processes the reimbursements for the volunteer drivers and carries a liability insurance policy which covers volunteer in its own programs as well as those in the Neighbor to Neighbor Program (Plaintiff's Exhibit "L", pp. 24-25). Ms. Murray-Cohen testified that JFS is paid an administrative fee by the County (Plaintiff's Exhibit "L", p. 33). She also stated that the volunteers' reimbursement checks were written against a JFS account (Plaintiff's Exhibit "L", p. 38). Ms. Murray-Cohen also testified that successor contracts were signed in 2018 and 2019 and that Schedule A to the contract between OFA and JFS listed the various duties which JFS would perform in running the program, but that, in practice, it had never performed any services other than processing the volunteer reimbursements and maintaining liability insurance for the program (Plaintiff's Exhibit "L", pp. 68-69).

The plaintiffs also submit a copy of the Professional Services Agreement between OFA and JFS and a copy of the application form which must be completed by volunteers who wish to participate in the Neighbor to Neighbor Program (Plaintiff's Exhibit "M" and "N"). Here, the plaintiff argues that the terms of the agreement, which both OFA and JFS signed, were not followed or enforced as the duties and obligations of JFS under said agreement as testified by Ms. Murray-Cohen (Plaintiff's Exhibit "M" and "L", pp.68-69). Additionally, plaintiff submits that the application form is entitled "Ulster County Office of the Aging, Neighbor to Neighbor Program with Jewish Family Services of UC", and that it bears the logo of both OFA and JFS (Plaintiff's Exhibit "N").

As such, the plaintiff argues that the aforementioned submissions indicate that the negligence of the drivers were responsible for the accident and injuries of the plaintiff.

Additionally, plaintiff submits that OFA and JFS are responsible for the negligence of decedent Hyde and the County of Ulster is ultimately liable for the negligence of both drivers involved in the motor vehicle accident.

Opposition to Plaintiff's Motion by Defendant Hyde Estate

In opposition to the plaintiff's motion, defendant Hyde Estate argues that there are material issues of fact as to whether the defendant was faced with an emergency situation and acted reasonably under the circumstances. Here, said defendant submits that decedent Hyde did nothing unreasonable with respect to the operation of her vehicle when it unexpectedly began to slide in inclement weather. Further, said defendant asserts that the plaintiff has produced no evidence to establish that Decedent Hyde was negligent in the operation her vehicle.

Nonetheless, the defendant Hyde Estate's argument against plaintiff's summary judgment on the issue of liability against them, must fail. After review of the submissions, the Court finds that it is uncontroverted that the plaintiff was a passenger in Ms. Hyde's vehicle and that the plaintiff had no ability to control either the Hyde vehicle or the Bryant bus. Additionally, the Court finds that it has been established that the accident occurred solely within Ms. Bryant's lane of travel when Ms. Hyde's vehicle slid into the Bryant bus. Additionally, the Court does not find that the "emergency doctrine" as argued by the Hyde Estate defendant applies. The "emergency doctrine" applies when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought that the actor must make a speedy decision without weighing alternative course of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in an emergency context (Rivera v New York City Transit Authority, 77 NY2d 322, [1991]). As to the "emergency doctrine", the Court determines that the plaintiff testified that she had called Ms. Hyde earlier on the day of the accident to ask if she should reschedule due to pending snow and that fact clearly establishes that the threat of bad weather had been known by both Ms. Hyde and the plaintiff prior to her scheduled pick-up of the plaintiff. Furthermore, said defendant has not submitted any evidence that would establish any emergency situation that would find that Ms. Hyde's sliding into the Bryant bus was a reasonable and prudent act to avoid the accident, rather than the cause.

Defendants County of Ulster and Carla Bryant Cross-Motion in Opposition

In opposition to the plaintiff's motion for summary judgment, defendants County of Ulster and Carla Bryant cross-move for summary judgment, pursuant to CPLR §3212, for an order

dismissing the complaint and any cross-claims against them on the grounds that the action has no merit against said defendants. Initially, the defendant asserts that personal jurisdiction has never been acquired over the County of Ulster because the action was originally commenced against the Ulster County Office of the Aging. Nonetheless, an Amended Complaint was filed and served upon said defendants' attorney who had appeared for the OFA and agreed to accept service of the amended complaint. Based upon the Court's review of the history involving this action and the conduct of the attorneys in this matter, the Court determines that the defendant County of Ulster has been served, and is a party to the action. In further support of their cross-motion said defendants submit a copy of the plaintiff's deposition testimony, a copy of the deposition testimony of Carla Bryant, a copy of the Police Accident Report, a copy of the deposition testimony of Patrick McDonough, for Ulster County, a copy of the deposition testimony of Sharon, Murray-Cohen for JFS and a copy of the Professional Services Agreements between the County of Ulster and JFS, dated June 26, 2015 and February 9, 2016, respectively. Said defendants reiterate the aforementioned testimony of Carla Bryant to establish that Bryant's actions were not negligent on the date and time of the accident (Defendants Ulster and Bryant's Exhibit "F"). Additionally, said defendants submit a copy of that Patrick McDonough testimony that stated that he would never make the decision with respect to whether or not a person should be given a ride, leaving that judgment to the volunteer (Defendants Ulster and Bryant's Exhibit "I", p. 42-43). Said defendants also assert that Ms. Murray-Cohen's testimony is contradicted by the terms of the contract between Ulster County and JFS (Defendants Ulster and Bryant's Exhibit "J" and "K"). Moreover, said defendants argue that the terms of said contract explicitly make defendant JFS responsible for the Neighbor to Neighbor Program and that the County had no control or supervision over the manner in which the program was operated (Defendants' Exhibit "I"). Said defendants further argue that the sole proximate cause of the accident was Ms. Hyde and that neither the County, nor Ms. Bryant, were negligent in any manner and, as such, there can be no vicarious liability found against them.

In opposition to defendants County of Ulster and Carla Bryant's cross-motion, the plaintiff argues that said defendants were properly served the Amended Complaint when the attorney for said defendants stated that he would accept service on behalf of the County of Ulster. Plaintiff's attorney submits an email sent on April 10, 2019 (Plaintiff's Opposition Exhibit "A"). A follow-up email was submitted by Counsel for the County, dated July 8, 2020 stating the counsel was still awaiting authorization from his client and the insurance carrier (Defendants County of Ulster and

Carla Bryant's Reply Exhibit "O").

Additionally, plaintiff asserts that the submissions establish that defendant County of Ulster, through OFA, *inter alia*, operated the Neighbor to Neighbor Program, advertised the program, promoted the program, recruited and screened the volunteers, promulgated policies and procedures for the volunteers, provided office space, telephones and office equipment for the program and provided insurance coverage for volunteer drivers and their passengers. The plaintiff also submits that the Honorable Lisa Fisher, in a decision dated May 21, 2019, held that Ms. Carla Bryant's sole remedy was Worker's Compensation because she was injured through the negligence of a co-employee, Barbara Hyde. Counsel for defendants asserts that Judge Fisher's decision was based, in part, upon a misinterpretation of the affidavit of Dorraine Whitney, that did not mention Barbara Hyde.

Defendant JFS Cross-Motion for Summary Judgment in Opposition

Additionally, in opposition to the plaintiff's motion for summary judgment, defendant JFS submits their cross-motion for summary judgment, pursuant to CPLR §3212, seeking an order dismissing the plaintiff's complaint and any cross-claims against them. Defendant JFS submits a copy of a brochure prepared by OFA, soliciting volunteers, a copy of an OFA brochure offering transportation services to the elderly, a copy of an OFA brochure detailing services provided under the Neighbor to Neighbor Program, a copy of an OFA volunteer program procedures for volunteers who assist in OFA programs, including transportation services, a copy of a daily log kept by OFA, a copy of an abstract showing decedent Hyde's hours from software maintained by OFA, a copy of Hyde's December 2017 travel log created by OFA, a copy of November 2017 hourly tally for volunteers in Neighbor to Neighbor Program maintained by OFA, a copy of Hyde's signed monthly volunteer log submitted to OFA, a copy of the volunteer enrollment form for Hyde, dated May 9, 2016, and forwarded to OFA and a copy of a letter from Patrick McDonough, Director of OFA and Neighbor to Neighbor Program Supervisor, to JFS for driver re-imbusement.

Here, defendant JFS contends that it cannot be liable for the conduct of a volunteer whom they did not control or supervise. Defendant JFS argues that Ulster County's course of conduct waived the no-waiver provision contained in the Contract between JFS and OFA. Said defendant submits that that Barbara Hyde worked as a volunteer at OFA's main office as evidenced by the testimony of Patrick McDonough and the enrollment form of Ms. Hyde (Plaintiff's Exhibit "K" and Defendant JFS's Exhibit "K"). The JFS defendant asserts that Mr. McDonough did not testify

as how JFS participated in the scheduling for the Neighbor to Neighbor Program (Plaintiff's Exhibit "K"). It is further submitted by the JFS defendant that Mr. McDonough testified that as to the day-to-day operations of said program, defendant JFS did not play much of a role as far as he knew (Plaintiff's Exhibit "K" p. 41).

In furtherance of its cross-motion, JFS defendant submits the testimony of Sharon Murray-Cohen, Executive Director of Jewish Family Services of Ulster County (Plaintiff's Exhibit "L"). Here, defendant JFS relies upon Ms. Murray-Cohen's testimony that despite the language contained in the contract between OFA and JFS, the parties never went by the terms as OFA took over the operation (Plaintiff's Exhibit "L" p. 68-69). Ms. Murray-Cohen also testified that JFS's role was for administrative duties and that she never received a complaint as to its role (Plaintiff's Exhibit "L" p. 70, 72, 81). Furthermore, JFS defendants assert that Ms. Murray-Cohen testified that the services rendered by JFS were detailed in bills sent to the County monthly (Plaintiff's Exhibit "L" p.98 and Defendant JFS's Exhibit "L"). As such, the Defendant JFS argues that it is not liable for the conduct of Ms. Hyde.

In addition, defendant JFS opposes defendants County of Ulster and Carla Bryant's cross-motion arguing the doctrine of res judicata and/or collateral estoppel bars their argument that the County had no control or supervision over the manner in which the Neighbor to Neighbor Program was operated. Here, again the Decision and Order of the Honorable Lisa M. Fisher, dated May 1, 2019 is submitted as evidence that Carla Bryant and decedent Barbara Hyde were co-employees of the County. Defendant JFS submits that an action brought suit against Ulster County and Ulster County OFA stemming from the same facts as the instant action. Judge Fisher found that it was undisputed that Carla Bryant was operating an Ulster County bus at the time of the accident and that decedent Hyde was transporting a passenger for OFA (Defendant JFS Exhibit "M"). Defendant JFS argues that Judge Fisher held, and the County asserted, that the subject accident occurred during and within the scope of Ms. Hyde's volunteering for OFA (Defendant JFS Exhibit "M"). Additionally, said defendant submits the Affidavit of Dorraine Whitney by the County, that states that OFA and Ulster County Area Transit are directed and controlled by Ulster County Executive Michael Hein and the Ulster County Legislature, that both derive their budgets from the common budget of the County, both are provided the same insurance through the same policies, both are employees of Ulster county and are afforded the same Workers' Compensation Benefits (Defendant JFS Exhibit "N"). Defendant JFS also submits the affirmation submitted by the

attorneys for the County, dated February 5, 2019, that stated Ms. Bryant and Ms. Hyde were both Ulster County employees, claimant Bryant's exclusive remedy is Workers' Compensation benefits (Defendant JFS Exhibit "O"). Defendants County of Ulster and Carla Bryant assert that defendant JFS's argument that the doctrine of res judicata and or collateral estoppel is misplaced and that the issue had not been actually litigated and determined.

In addition, and in opposition to defendant JFS cross-motion, the plaintiff argues that said defendant's argument that OFA had more control than JFS does not absolve said defendant from liability. The plaintiff further argues that it remains a question of fact as to how much liability should be asserted to each of the defendants which cannot be determined by this Court in a summary judgment motion.

Court Findings and Conclusions

Initially, as to the plaintiff's motion for summary judgment, as to liability against the defendant Hyde Estate, defendants County of Ulster and defendant JFS, the Court's function is issue finding and not issue determination (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1956]). However, after reviewing all of the evidence presented by the plaintiff in the light most favorable to the opponents of the summary judgment motion (*see Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]), the Court hereby determines that the plaintiff has established a *prima facie* showing that Ms. Hyde's negligent actions were the proximate cause of the accident and liability against the Hyde Estate must be granted. After review of the submissions, the Court finds that it is uncontroverted that the plaintiff was a passenger in Ms. Hyde's vehicle and that the plaintiff had no ability to control either the Hyde vehicle or the Bryant bus. Additionally, the Court finds that it has been established that the accident occurred solely within Ms. Bryant's lane of travel when Ms. Hyde's vehicle slid into the Bryant bus. As such, the Court finds that the "emergency doctrine", as argued by the Hyde Estate defendant, must fail. The "emergency doctrine" applies when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought that the actor must make a speedy decision without weighing alternative course of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in an emergency context (*Rivera v New York City Transit Authority*, 77 NY2d 322, [1991]). In this regard to said argument, the Court finds that the plaintiff's testimony that she had called Ms. Hyde earlier on the day of the accident to ask if she should reschedule due to pending snow is determinative that the threat of bad weather had been known by both Ms. Hyde and the

plaintiff prior to her scheduled pick-up of the plaintiff. Furthermore, defendant Hyde Estate has not submitted any evidence to establish any other emergency situation that would find that Ms. Hyde's sliding into the Bryant bus was a reasonable and prudent act to avoid the accident, rather than the cause.

However, the Court also finds that the plaintiff's submissions do not establish the negligence of Carla Bryant as a proximate cause of the accident. The Court finds that there is not sufficient evidence submitted to permit this Court to conclude that defendant Bryant under the circumstances presented and as a matter of law did not contribute or create, even in some small way, to the accident. As such, the Court finds that there remains a question of fact as to Ms. Bryant's culpability, if any, in the accident (Johannsdittir v Kohn, 90 AD2d 842 [2nd Dept 1982]).

As to the issue as to whether or not the defendant Ulster County was served with the plaintiff's Amended Complaint, the Court's review of the submissions clearly indicate that it has. There are no submissions by either attorney that would lead this Court to believe service upon the attorney for Ulster County was insufficient. Moreover, the answering email by the attorney for the County, as to this issue, was sent a year after plaintiff's counsel had reached out to him and this correspondence still did not clearly indicate that service would not be accepted. It would be improvident for this Court to allow the defendant Ulster County to challenge, at this juncture, the jurisdiction issue when the extensive discovery process has proceeded and said defendant participating in each step. Therefore, the Court finds that the defendant Ulster County has been served a copy of the Amended Complaint and jurisdiction over them has been obtained.

Additionally, based upon review of all of the submissions, the Court determines that the plaintiff has established a *prima facie* showing that defendant County of Ulster and defendant JFS are vicariously liable for the actions of decedent Barbara Hyde. There is no doubt that if Ms. Bryant is found liable in any way, the County, as her employer, would be vicariously liable for her actions. Additionally, the submissions by the plaintiff establish sufficient evidence that both the defendant County of Ulster and defendant JFS are vicariously liable to the plaintiff for the actions of decedent Hyde. Here, the Court determines the submissions clearly establish that both of said defendants have considerable connections and responsibility for the Neighbor to Neighbor Program. Despite a contract between the OFA and JFS, the submissions by all parties call into question the actions of said defendants as to who is responsible for the actions of decedent Hyde and, therefore, that remains a question of fact to be decided by a jury and not this Court.

Moreover, the Court finds that it is clear that Judge Fisher's May 1, 2019 Decision and Order is now the law of the case in this action. 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 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 Carla Bryant 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 decedent 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 the 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.

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 Hyde Estate, defendant County of Ulster and defendant JFS and denies the defendant County of Ulster and Carla Bryant's cross-motion for summary judgment dismissing the plaintiff's complaint and any cross-claims against them. Additionally, co-defendant JFS's cross-motion for summary judgment dismissing the plaintiff's complaint in its entirety, along with all cross claims by any co-defendants 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 judgment granting liability against the

defendants Burton Gulnick, Jr., as Administrator of the Estate of Barbra Hyde, County of Ulster and Jewish Family Services of Ulster County is granted, and it is further

ORDERED that plaintiff's motion for summary granting liability against defendant Bryant is denied, and it is further

ORDERED that defendants County of Ulster and Carla Bryant's cross-motion for summary judgment dismissing the plaintiff's complaint and all cross claims is denied, and it is further

ORDERED that defendant Jewish Family Services of Ulster County's motion for summary judgment dismissing the plaintiff's complaint and all cross claims 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:

- 1.) Notice of motion dated December 1, 2020;
- 2.) Affirmation in Support by Joel S. Finkelstein, Esq., with exhibits, dated December 1, 2020;
- 3.) Notice of Cross-Motion, dated December 8, 2020;

- 4.) Affidavit in Support by Eric M. Kurtz, Esq., with exhibits, dated December 8, 2020;
- 5.) Notice of Cross-Motion, dated January 6, 2021;
- 6.) Affirmation in Support of Cross-Motion by John L. Murad, Esq., with exhibits, dated January 6, 2021;
- 7.) Affirmation in Opposition of Plaintiff's Motion by Brian D. Richardson, Esq., dated January 15, 2021;
- 8.) Affirmation in Opposition and Reply by Joel S. Finkelstein, Esq., with exhibits, dated January 15, 2021;
- 9.) Affirmation in Opposition and Reply by Joel S. Finkelstein, Esq., with exhibits, dated January 15, 2021;
- 10.) Affidavit in Reply and in Opposition to Cross-Motion by Eric M. Kurtz, Esq., with exhibit, dated January 15, 2021;
- 11.) Affidavit in Reply to Opposition to Cross-Motion by Eric M. Kurtz, Esq., with exhibit, dated January 20, 2021;
- 12.) Reply Affirmation of John L. Murad, Esq., dated January 21, 2021;
- 13.) Transcript of Oral Argument, dated June 4, 2021, received September 30, 2021.