

Ohl v Smith

2021 NY Slip Op 33905(U)

December 10, 2021

Supreme Court, Chenango County

Docket Number: Index No. 2019-5390

Judge: Joseph A. McBride

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District, Chenango County, on the 10 day of December 2021.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : CHENANGO COUNTY

NICHOLAS OHL,

Plaintiff,

-vs-

RANDOLPH L. SMITH,

Defendant.

DECISION AND ORDER

Index No. 2019-5390

APPEARANCES:

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JOSEPH A. MCBRIDE, J.S.C.

The case before the Court follows a complaint filed by Plaintiff Nicholas Ohl against Defendant Randolph L. Smith. Plaintiff alleges that Defendant negligently operated a motor vehicle and thereby caused Plaintiff severe and serious personal injuries. Defendant now moves for summary judgment pursuant CPLR §3212 seeking to dismiss the complaint as a matter of

law. Plaintiff filed an affidavit in opposition to which Defendant replied. After reviewing the moving papers, the Court decides as follows.¹

FACTS

There is no dispute that on June 18, 2017, near the intersection of State Highway 12 and Lindy's Lane in the City of Norwich, an automobile accident occurred involving vehicles operated by Amber Ryan and Defendant. Plaintiff, Ryan's front seat passenger, was seriously injured during the accident. The following facts are established by the police reports and sworn depositions provided to the Court.

At around 7:12 p.m., Ryan was driving southbound on Route 12, a two-lane highway, on the way to Lindy's Ice Cream Stop. The weather was dry and sunny and there were no obstructions in the roadway. Plaintiff's two children were also in Ryan's vehicle. Ryan intended to turn left into the first entrance Lindy's parking lot but changed her mind and "snail crawled up to the second entrance" to make the turn. She did not check for northbound traffic and during her turn, Defendant's truck struck the passenger side of her vehicle. Ryan later pleaded guilty to failure to yield the right of way and admitted that she was at fault. Plaintiff had no recollection of the accident.

Defendant's wife, Robin Smith, and two children were in Defendant's vehicle. Defendant testified that he only saw Ryan's vehicle once it was in his lane and slammed on the brakes before the collision. According to Defendant, the time from when he saw Ryan's vehicle to the collision was less than ten seconds. The day after the accident, Defendant observed skid marks in front of the ice cream shop in the northbound lane. Defendant's wife remembered only looking

¹ The Court relies on papers #19 - #33, #40 and #41 as filed on NYSCEF.

out the window at the ice cream shop and hearing Defendant exclaim, “Oh my God!” before her head hit the air bag.

A non-party witness, Heather LePage a/k/a Heather Jacobs was driving behind Ryan and provided a statement regarding the accident. She observed Ryan slow down and signal a left turn. LePage stated that Ryan then “turned right into the path of a pick-truck.” LePage could not recall hearing screeching tires or brakes.

On these facts the Court makes the following conclusions of law.

LEGAL DISCUSSION AND ANALYSIS

Pursuant to CPLR §3212(b), 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 either party. When seeking summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact.

Amedure v. Standard Furniture Co., 125 AD2d 170 (3rd Dept. 1987); citing Winegrad v. N.Y. Univ. Med. Ctr., 64 N.Y.2d 851, 853 (Ct. of App. 1985). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (Ct. of App. 1986); Winegrad, 64 N.Y.2d 851, 853. “When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination (see, Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [Ct. of App. 1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact.” Boston v. Dunham, 274 AD2d 708, 709 (3rd Dept. 2000); see, Boyce v. Vazquez, 249 AD2d 724, 726 (3rd Dept. 1998). The motion “should be denied if any significant doubt

exists as to whether a material factual issue is present or even if it is arguable that such an issue exists.” Haner v. DeVito, 152 AD2d 896, 896 (3rd Dept. 1989); Asabor v. Archdiocese of N.Y., 102 AD3d 524 (1st Dept. 2013). It “is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact.” Vega v. Restani Constr. Corp., 18 NY3d 499, 505 (Ct. of App. 2012) (citation omitted).

Defendant’s motion is premised on two arguments. First, he was not negligent as a matter of law because Ryan’s failure to yield the right of way was the sole proximate cause of the accident and there are no triable issues of fact. Second, and in the alternative, he argues that he was confronted with an emergency situation or unavoidable accident not of his own creation and acted reasonably under the circumstances.

An “unexcused violation of the Vehicle and Traffic Law constitutes negligence per se.” Holleman v. Miner, 267 AD2d 867, 869 (3rd Dept. 1999). Given Ryan’s guilty plea to failure to yield a right of way, Defendant has established that she was negligent as a matter of law. A motorist with the right-of-way is entitled to anticipate that other motorists will obey traffic laws requiring them to yield. Matt v Tricil (N.Y.) Inc., 260 AD2d 811, 812 (3^d Dept. 1999). Nonetheless, a motorist may still be comparatively at fault if he could have used reasonable care to avoid a collision. See Lopez-Viola v Duell, 100 AD3d 1239, 1242 [3^d Dept 2012]. Entitlement to summary judgment based on the emergency doctrine is subject to defendant’s demonstration, as a matter of law, that the emergency situation he was confronted with was not of his own making and that he acted reasonably such that there was nothing he could have done to avoid the accident (*Id.*).

Defendant’s evidence establishes that he was travelling the speed limit with the right-of-way on State Highway 12 when Ryan’s vehicle turned left in front of him. Defendant applied the

brakes but was unable to avoid a collision given that he had no more than 10 seconds to react. Under these facts, Defendant has made a *prima facie* showing that he acted reasonably and the burden shifts to Plaintiff to establish a triable issue of fact.

Considering the evidence in the light most favorable to the Plaintiff, there are obvious issues of fact. First, the only evidence that Defendant applied his brakes is his own testimony. No other witnesses indicated they heard brakes being applied. Indeed, when asked whether she heard horns or screeching tires, Defendant's wife said that she only remembered Defendant making an exclamation.

Second, Defendant's testimony concerning skid marks offers little corroboration that he applied his brakes. There was no proof that the skid marks were not there before the accident. There is no evidence Defendant was trained in accident reconstruction, nor did he offer any expert testimony. There is also no explanation for why the marks would appear between the two driveways rather than before the driveway where the accident occurred.² Defendant simply concludes that the skid marks were caused by him because they were the only marks in the road. The Court may not draw the same conclusion given that the evidence must be viewed in the light most favorable to the Plaintiff.

Finally, there is an issue as to whether Defendant saw what should have been seen and could have avoided the accident. See Debra F. v New Hope View Farm, 155 AD3d 1491, 1493 (3d Dept 2017). Ryan testified that she engaged her left turn signal, a fact corroborated by LePage. Defendant testified that he saw Ryan's car when it turned in front of him and offered no

² The sole diagram offered by either party appears in the police report. The diagram shows that the accident occurred at the intersection of State Highway 12 and Lindy's Lane. There is no indication where either driveway was located or whether one could be considered "Lindy's Lane." Although the Court is familiar with this area, it declines to take judicial notice to resolve questions of proof created by both parties.


testimony that he saw it before then. Although Defendant did not need to anticipate that Ryan would make a sudden left turn, he should have seen her signaling given the amount of traffic, time of day and road conditions. Defendant by his own words had up to ten seconds to react. Although the Court declines to engage in mathematical calculations suggested by Plaintiff, whether Defendant acted reasonably in given the time he had to react is a matter of disputed fact.

CONCLUSION

Based on all the foregoing, the Court finds that Defendant's motions for summary judgment must be DENIED.

This constitutes the DECISION AND ORDER of the Court. The transmittal of copies of this DECISION AND ORDER by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 12/10, 2021
Norwich, New York



JOSEPH A. MCBRIDE
Supreme Court Justice