

Robinson v Garduno
2023 NY Slip Op 35178(U)
June 29, 2023
Supreme Court, Bronx County
Docket Number: Index No. 800083/2022E
Judge: Veronica G. Hummel
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 20**

WANDA ROBINSON and JUSTIN ROBINSON,

Plaintiffs,

-against-

JESSICA GARDUNO,

Defendant.

**Index No. 800083/2022E
HON. VERONICA G. HUMMEL, A.J.S.C.****DECISION & ORDER****Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF relevant to plaintiff WANDA ROBINSON's ("Plaintiff") motion (Seq. No. 1) seeking an order, pursuant to CPLR § 3212, granting summary judgment to Plaintiff¹ against defendant JESSICA GARDUNO ("Defendant") on the issue of liability.

This personal injury action arises out of a motor vehicle collision that occurred on November 9, 2020, at approximately 8:31 a.m. on Stillwell Avenue near its intersection with the Hutchinson River Parkway in Bronx County, New York ("the Accident"). A Chevrolet vehicle owned and operated by Plaintiff was struck in the rear by a Kia vehicle owned and operated by Defendant.

In support of her motion, Plaintiff submits an attorney affirmation, a statement of material facts, Plaintiff's certified examination before trial ("EBT") transcript, Defendant's certified EBT transcript, a certified police accident report, and copies of the pleadings.

In opposition to the motion, Defendant submits an attorney affirmation and responsive statement of material facts. In reply, Plaintiff submits an attorney affirmation, a Google Maps photo showing the general location of the accident, and an affidavit of service of Defendant's EBT transcript.

In her statement of material facts, Plaintiff sets forth the date and location of the Accident, the parties involved, and the circumstances surrounding the rear-end collision according to the parties' EBT statements. Plaintiff testifies that on the date of the Accident, both

¹ Per the movant's papers, the action has been discontinued as to plaintiff JUSTIN ROBINSON. Plaintiff is directed to file a stipulation of partial discontinuance or notice of partial discontinuance to NYSCEF as soon as possible and stipulate to amend the caption accordingly.

parties were traveling southbound on Stillwell Avenue. According to Plaintiff's EBT, the collision occurred after she stopped at a stop sign approaching Hutchinson River Parkway South, and that she remained stopped at the stop sign for "one, two minutes" while waiting for traffic to pass. While still at the stop sign, she testifies she felt the impact from the front of Defendant's vehicle to the rear of her own vehicle. (Robinson tr at 19)

Defendant avers in her own EBT that she was traveling on the road behind Plaintiff, but states that the impact occurred after both vehicles had fully passed the stop sign and were "somewhere in the middle of those ramps for the highway." According to Defendant, she had stopped for "two to five seconds" at the stop sign and proceeded forward behind Plaintiff's vehicle. Defendant testifies that Plaintiff's vehicle "was around two to three cars lengths past the stop sign" when Plaintiff's vehicle stopped again. (Garduno tr at 24-26)

A. She was, like I said, she was past the stop sign. She moved. She wasn't going that fast. She moved up so I moved up. [...]

Q. Immediately before the impact to the rear of plaintiff's vehicle where were you looking?

A. At impact I was looking forward.

Q. What did you observe as you looked forward?

A. I saw her car. I didn't know she was going to stop in the middle of the intersection. (tr at 27)

Defendant avers that she attempted to press on her brakes, which were working properly, but was unable to avoid the impact with Plaintiff's vehicle.

Because summary judgment is a drastic remedy, "[t]he 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 material issues of fact." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006).

A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dep't 2020). A plaintiff is not required to demonstrate his or her freedom

from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

It is well settled that “[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, non-negligent explanation for the accident.” *Urena v. GVC Ltd.*, 160 A.D.3d 467 (1st Dep’t 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 [1st Dep’t 2017]); *Santos v. Booth*, 126 A.D.3d 506 (1st Dep’t 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep’t 2006). Under Vehicle and Traffic Law (“VTL”) § 1129(a), “a driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and traffic upon the condition of the highway.” In other words, a driver must maintain a safe enough distance between their vehicle and the one in front of them, so to avoid a collision even if the front vehicle were to stop suddenly, see *Johnson v. Philips*, 261 A.D.2d 269 (1st Dep’t 1999).

Further, First Department case law is clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver. *Cabrera v. Rodriguez*, 72 A.D.3d 553 (1st Dep’t 2010); see also *Earl v. Hill*, 200 A.D.3d 518 (1st Dep’t 2021); *Giap v. Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep’t 2018); *Bajrami v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep’t 2017). Notably, in *Earl v. Hill*, the First Department held that a defendant’s claim that the front vehicle “stopped abruptly for no apparent reason” in an intersection did not constitute a non-negligent explanation for the accident, as the rear driver “could not reasonably have anticipated an unimpeded flow of traffic at the intersection.”

Based on the submissions, Plaintiff demonstrates *prima facie* entitlement to summary judgment. There is no dispute that this was a rear-end collision with Plaintiff’s stopped vehicle, which is sufficient to establish a presumption of Defendant’s liability in violation of VTL § 1129(a). The burden thus shifts to Defendant to provide a non-negligent explanation.

As an initial matter, a certified police report and the opposing party’s statements or statements against interest are generally admissible within hearsay exceptions, see *Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 (1st Dept 2019). However, even with no reliance on the police report, Plaintiff has established *prima facie* entitlement to summary judgment based on the parties’ EBT transcripts. Though Defendant argues in opposition that both transcripts were

unsigned by the deponents, Plaintiff's deposition need not be signed, as the party has implicitly "accepted its accuracy by submitting it in support of [their] motion for summary judgment." *Castono v. Wygand*, 122 A.D.3d 476 (1st Dep't 2014). Regarding Defendant's EBT transcript, Plaintiff submitted proof in their reply that it had been forwarded to the deponent more than 60 days prior to this motion. Moreover, the unsigned transcript is admissible because it was certified by a court reporter and the opposing party relied on portions of it in her own opposing papers. See *Morchik v. Trinity School*, 257 A.D.2d 534, 535 (1st Dep't 1999).

Defendant has failed to raise any triable issues of fact as to her liability. It is true that Plaintiff and Defendant present slightly different versions of the Accident. Plaintiff claims the impact occurred while she was *at* the stop sign where Stillwell Avenue meets Hutchinson River Parkway, and Defendant claims that both cars had already passed the stop sign and Plaintiff made an additional, unexpected stop. But even viewing the evidence in the most favorable light to the non-moving party, a second stop by the Plaintiff's vehicle is not sufficient to provide a non-negligent explanation for the rear-end collision. To clarify the location of the Accident, Plaintiff submitted a Google Maps photo in reply showing the "intersection" in question is not a four-way intersection, but rather a turn where Gun Hill Road becomes Stillwell Avenue and merges into traffic from the Hutchinson River Parkway. In Defendant's account of the Accident, both vehicles had just passed a stop sign to wait for oncoming traffic, the collision occurred near the highway's exit/entrance ramps, and Plaintiff's vehicle "wasn't moving fast" before stopping again. As in *Earl v. Hill*, Defendant should have anticipated the possibility of the front car slowing or stopping for traffic under these conditions. Even accepting Defendant's testimony that the collision occurred after the stop sign, an abrupt stop from Plaintiff would not excuse Defendant's liability.

Defendant also disputes the contention that she negligently took her eyes off Plaintiff's vehicle prior to the Accident. This does appear to be a mischaracterization of Defendant's testimony on Plaintiff's part; Defendant avers in her EBT transcript that she looked to her left for "three to five seconds" to check for traffic, but then looked back at Plaintiff's vehicle and observed her stop immediately before the Accident. The presumption of liability, however, is based on the defendant driver following Plaintiff's vehicle without adequate distance to prevent a rear-end collision. On that issue, there is no question of material fact.

Because a plaintiff seeking summary judgment on the issue of liability in a motor vehicle accident is not required to establish their own freedom from fault, and because Plaintiff's motion did not notice or address the issue of Defendant's affirmative defense of comparative negligence,

the Court need not determine whether there are issues of fact as to the plaintiff's comparative negligence.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the parties is not addressed by the Court, it is hereby denied.

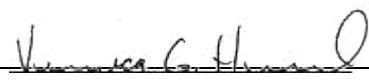
Accordingly, it is hereby:

ORDERED that Plaintiff's motion (Seq. No. 1) seeking an order, pursuant to CPLR § 3212, granting summary judgment on the issue of liability against Defendant, is **granted**; and it is further

ORDERED that the Clerk shall mark this motion (Seq. No. 1) decided in all court records.

This constitutes the decision and order of the Court.

Dated: June 29, 2023

Hon. 
HON. VERONICA G. HUMMEL, A.J.S.C.

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|------------------------------|---|---|
| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED | ☐ DENIED ☐ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |
| | ☐ CONVERT TO ELECTRONIC FILING | ☐ EDIT CAPTION |