

Rogers v County of Suffolk

2024 NY Slip Op 34857(U)

September 13, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 610323/2022

Judge: Linda Kevins

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 610323/2022

CAL. No. _____

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY**

P R E S E N T:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION SUBMIT DATE: 07/02/24
MOT. SEQ. # 4 -MG
MOT SEQ. # 5 -Mot. D

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SEAN A. ROGERS,

Plaintiff,

- against -

COUNTY OF SUFFOLK, SUFFOLK COUNTY
POLICE DEPARTMENT, BRANDON
PICARELLO, DELLIE M WRIGHT,

Defendants.

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Upon the following papers e-filed (documents # 54 through # 79), it is,

ORDERED that defendant Dellie M Wright’s motion (seq.#4) for summary judgment and plaintiff’s cross-motion (seq. # 5) for summary judgment are consolidated for the instant determination; and it is further

ORDERED that defendant Dellie M Wright’s motion (seq. #4) for an order granting her summary judgment dismissing the complaint and cross claims as against her, is **GRANTED**; and it is further

ORDERED that plaintiff’s cross-motion (seq. #5) for an order granting him summary judgment on the issue of liability, is **GRANTED to the extent that** he is granted summary judgment on the issue of liability against all remaining defendants excluding defendant Dellie M Wright; and it is further

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ORDERED that the Court, on its own motion, amends the caption to remove as defendant Dellie M Wright (*see* CPLR §1003), and plaintiff is directed to take all necessary steps to effectuate same; and it is further

ORDERED that upon payment of any required fees, the Suffolk County Clerk shall amend the caption as stated below to effectuate this Court's Order; and it is further

ORDERED that the plaintiff is directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

ORDERED that upon Entry of this Order, the plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

This action arises from a July 14, 2021 three car motor vehicle accident resulting in alleged personal injuries. The following is alleged. The three car motor vehicle rear-end accident occurred on Great Neck Road at or near its intersection with Albany Avenue, County of Suffolk, New York. While fully stopped, plaintiff's motor vehicle was rear-ended in a chain-reaction collision involving two other vehicles. The middle vehicle, directly behind plaintiff was owned and operated by defendant Dellie M Wright. The rear vehicle was a police car operated by defendant police officer Brandon Picarello. Defendant Dellie M Wright moves (seq. #4) for summary judgment dismissing the complaint and cross claims against her. Plaintiff cross moves (seq. # 5) for partial summary judgment in his favor on the issue of liability against the remaining defendants arguing that they are negligent as a matter of law and are the sole proximate cause of the accident.

In support of the motion (seq. #4), defendant Dellie M Wright submits copies of the pleadings; a copy of the September 7, 2022 decision and Order (Baisley, J.) in a related action for the same accident entitled *Dellie Wright v County of Suffolk, Suffolk County Police Department and Brandon Picarello*, Sup Ct, Suffolk County, Sept. 7, 2022, Baisley, J., index No. 601722/2022 (e-filed document # 57); an affidavit of defendant Dellie M Wright and a copy of plaintiff's deposition transcript. By partial stipulation of discontinuance dated June 6, 2024 (e-filed document # 75) the attorney for plaintiff and the attorney for defendant Dellie M Wright discontinued this action only against defendant Dellie M Wright.

In support of the cross-motion (seq.#5), plaintiff submits copies of the pleadings, an unreadable certified police accident report, and the affidavit of plaintiff. Initially, the Court notes that although the police accident report submitted by plaintiff and defendant Dellie M Wright is certified, such police accident report is unreadable. Consequently, the police report constitutes hearsay and is, thus, inadmissible (*see e.g. Jiang-Hong Chen v Heart Tr., Inc.*, 143 AD3d 945, 39 NYS3d 504 [2d Dept 2016]; *Allstate Ins. Co. v Ramlall*, 132 AD3d 617, 17 NYS3d 308 [2d Dept 2015]; *Lacagnino v Gonzalez*, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]).

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It is well settled that a party moving (seq. #4 and seq.#5) for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion who must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The court's function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see Barbieri v Vokoun*, 72 AD3d 853, 900 NYS2d 315 [2d Dept 2010]; *Coogan v Torrisi*, 47 AD3d 669, 849 NYS2d 621 [2d Dept 2008]; *Dalal v City of New York*, 262 AD2d 596, 692 NYS2d 468 [2d Dept 1999]). Vehicle and Traffic Law Section 1129 (a) provides: "The 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 vehicles and the traffic upon and the condition of the highway."

When the driver of a vehicle approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Catanzaro v Ederly*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]; *Tumminello v City of New York*, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; *Brothers v Bartling*, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; *Gutierrez v Trillium USA, LLC*, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]). A rear-end collision with a stopped vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; *Nowak v Benites*, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; *Le Grand v Silberstein*, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]).

Moreover, in a chain reaction three car motor vehicle accident, and with respect to motion (seq. #4), the operator of the middle vehicle, defendant Dellie M Wright establishes prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle. (*Sougstad v Capuano*, 215 AD3d 776, 187 NYS2d 93 [2d Dept 2023]; *Bardizbanian v Bhuiyan*, 181 AD3d 772, 121 NYS3d 299 [2d Dept 2020]; *Chuk Hwa Shin v Correal*, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]). Under such

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circumstances, the driver of the middle vehicle has established a nonnegligent explanation for contacting the vehicle in front of it and bears no liability (*Id.* at 772, 299). It is the rearmost driver in a chain reaction collision that bears the presumption of responsibility (*Sougstad v Capuano*, 215 AD3d 776, 187 NYS2d 93, *supra*; *De La Cruz v Ock Wee Leong*, 16 AD3d 199, 791 NYS2d 102 [1st Dept 2005])

With respect to motion sequence #4, defendant Dellie M Wright's submissions are sufficient to establish her prima facie entitlement to summary judgment dismissing the complaint and cross claims against her. The burden, therefore, shifts to the parties opposing the motion (seq.#4) to proffer evidence in admissible form sufficient to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]).

With respect to motion sequence #5, plaintiff's submissions are sufficient to establish his prima facie case of entitlement to summary judgment in his favor on the issue of liability against defendants County of Suffolk, Suffolk County Police Department and police officer Brandon Picarello (*Resnick v Wainwright*, 192 AD3d 1054, 141 NYS3d 322 [2d Dept 2021]; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Singh v Avis Rent A Car Sys., Inc.*, 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; *Markesinis v Jaquez*, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). Therefore, the burden shifts to defendants County of Suffolk, Suffolk County Police Department, and police officer Brandon Picarello to submit proof in admissible form sufficient to rebut the inference of negligence by providing a nonnegligent explanation for the accident (*see Arslan v Costello*, 164 AD3d 1408, 84 NYS3d 229 [2d Dept 2018]).

In opposition to motion (seq. #4) and the cross-motion (seq. #5), defendants County of Suffolk, Suffolk County Police Department and police officer Brandon Picarello submit an affirmation by counsel. However, it is well settled that an affirmation of an attorney who lacks personal knowledge of the facts has no probative value (*see Cullin v Spiess*, 122 AD3d 792, 997 NYS2d 460 [2d Dept 2014]). As no affidavit has been submitted by defendants County of Suffolk, Suffolk County Police Department and police officer Brandon Picarello, defendants have failed to proffer sufficient proof to raise a triable issue of fact and defeat defendant Dellie M Wright's motion (seq. #4) and plaintiff's cross-motion (seq. #5).

Further, with respect to motion (seq. #4) and the cross-motion (seq. #5), the issue of the remaining defendants' negligence has already been determined in a related action for the same accident entitled *Dellie Wright v County of Suffolk, Suffolk County Police Department and Brandon Picarello*, Sup Ct, Suffolk County, Sept. 7, 2022, Baisley, J., index No. 601722/2022 (e-filed document # 57) where the Court found that the defendants County of Suffolk, Suffolk County Police Department and police officer Brandon Picarello were negligent as a matter of law and the sole proximate cause of this accident.

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Considering all of the above, the motion (seq. #4) by defendant Dellie M Wright for summary judgment dismissing the complaint and cross claims against her, and the cross-motion (seq. #5) by plaintiff for summary judgment on the issue of liability are granted as stated herein.

The caption is amended to read as follows:

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SEAN A. ROGERS,

Plaintiff,

- against -

COUNTY OF SUFFOLK, SUFFOLK COUNTY
POLICE DEPARTMENT, and BRANDON
PICARELLO,

Defendants.

-----X

Anything not specifically granted herein is hereby denied.

The foregoing constitutes the decision and **Order** of the Court.



LINDA KEVINS, JSC

Dated: 9.13.24

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION