

Davis v City of New York

2024 NY Slip Op 34976(U)

July 11, 2024

Supreme Court, Bronx County

Docket Number: Index No. 23614/2020E

Judge: Mitchell J. Danziger

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 3/33

-----X
DHAVON DAVIS, et. al.,

Index No. 23614/2020E

C
#006

-against-

Hon. Mitchell J. Danziger

THE CITY OF NEW YORK, et. al.,

Justice Supreme Court

-----X
The following papers were read on this motion (Seq. No. 5 &6) for summary judgment noticed for March 21, 2024, and submitted on May 2, 2024

Notice of Motion, Affirmation and Exhibits- Mot. Seq. 5	NYSCEF Doc. # 78-88
Affirmation in Opposition and Exhibits- Mot. Seq. 5	NYSCEF Doc. # 97-108
Reply Affirmation – Mot. Seq. 5	NYSCEF Doc. # 122
Notice of Motion, Affirmation and Exhibits- Mot. Seq. 6	NYSCEF Doc. # 91-95
Affirmation in Opposition and Exhibits- Mot. Seq. 6	NYSCEF Doc. # 109-120
Reply Affirmation- Mot. Seq. 6	NYSCEF Doc. # 121

Motion for an order pursuant to CPLR §3212, granting defendant, Warden El Sun Warren (“Warren”) summary judgment and dismissing all claims as against him, and motion by defendant, Shemique M. Jackson (“Jackson”), for an order pursuant to CPLR §3212, granting summary judgment and dismissing all claims as against her, are decided as follows:

This action stems from a two-vehicle accident that took place on August 31, 2019, in the intersection of Third Avenue and East 175th Street, Bronx, New York. On the date of the accident, defendant, Warren, was driving a Subaru owned by defendant, Jackson. Defendant, Jackson was a passenger in the Subaru. Plaintiff, Davis and self-represented plaintiff, Johnson were rear passengers in the Subaru.

According to the testimony elicited in this matter, defendant, Warren had the green light when the incident occurred. The accident occurred in the intersection with an NYPD SUV. The left driver’s and back-passenger side of the Subaru was impacted by the police car. Each deponent estimates the speed of the police car differently. Testimony differs as to whether the police vehicle had on lights and sirens.

Pursuant to Mr. Warren, he exited the Cross Bronx Expressway at the 3rd Avenue exit. He came to the intersection of East 175th Street. He had the green light. He was traveling at approximately 10-15 mph as he approached the intersection. He never heard the sound of sirens. Having the green light, he assumed it was safe to proceed. He was looking straight ahead. As he went through the intersection, he saw the police lights for the first time. There was no way to see them prior to the impact happening because of the way the intersection was constructed. Thereafter, the accident occurred. The front of the police car hit the driver’s side and rear passenger door. He attempted to swerve out of the way.

Plaintiff, Davis testified that they came off the expressway and had the green light to proceed through the intersection. He testified they had the right of way. Mr. Warren's hands were on the wheel. He did not see any phones. No GPS was on in the vehicle. He was looking to his left prior to the collision and he saw "a few seconds, took about two seconds, I saw what was about to happen." He saw the accident about to happen one to two seconds before but testified "it was really too late though." He attempted to make a noise but it all happened so fast. He did not think anyone was expecting a car to come from the left when they had the light. Mr. Warren was not going fast, more than 10 mph but less than 20 mph. Mr. Davis did not remember hearing sirens or seeing turret lights at the time of the accident.

Plaintiff, Johnson testified that Mr. Warren was driving the vehicle with his hands at 10:00 o'clock and 2:00 o'clock. They had exited the highway and the light for their vehicle was green. He did not see the accident about to happen. He first realized the accident was happening when their vehicle was impacted. Mr. Johnson testified that Mr. Warren attempted to ease the impact because he tried to swerve a little a split second before it happened. He estimated they were traveling 20-25 mph when the accident occurred. He did not hear sirens prior to the accident. He did not recall flashing lights but did notice them after the incident.

Ms. Jackson testified that she first saw the police vehicle after they passed the wall of the intersection. The overpass prevents you from seeing left until you immediately pass it. They had the green light and after they entered the intersection, she saw the other vehicle. She testified that the police vehicle was traveling fast. She noticed the vehicle from a car length away. She did not hear any sirens. She did see police lights prior to the incident occurring. She did not see the police vehicle slow down. Mr. Warren swerved to avoid getting hit in the front of the vehicle.

Defendant, Eric Byrd testified he was the operator of the police vehicle. He was in the vehicle with his partner, Officer Holmes. The intersection where the accident occurred was controlled by a traffic light. He did not recall what color it was as he approached. He was accelerating through the intersection and looking straight ahead. He did not see the other vehicle prior to accelerating. He was not able to hit the brake prior the incident occurring. It would have been hard for vehicles coming off the exit ramp to see on the left-hand side. There was a heightened need for awareness. He does not recall hitting the siren at the intersection, but it is his habit. The front of the police vehicle hit the middle-left side of the other vehicle more towards the left rear door. The other vehicle swerved.

Defendant, Warren submits he is entitled to summary judgment because he was not negligent in his operation of the vehicle he was driving and where a motorist is acting reasonably, he has the right to assume that the other motorist would obey traffic laws. Defendant, Jackson submits that as the owner and passenger of the vehicle, she is entitled to summary judgment if Mr. Warren was not the proximate cause of the accident.

Plaintiff opposes both applications on the grounds that the movants have failed to demonstrate that they were not negligent in causing the collision. Plaintiff alleges all defendants were culpable in causing the collision. The Court notes that the City defendants do not oppose either motion.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party. (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Once movant has met his initial burden on a motion for summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). It is well settled that issue finding, not issue determination, is the key to summary judgment. (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1st Dept. 1999]). When the existence of an issue of fact is even fairly debatable, summary judgment should be denied. (*Stone v. Goodson*, 8 N.Y.2d 8, 12 [1960]). However, to defeat a motion for summary judgment, the non-moving party must establish the existence of triable issues of fact that are, “real, not feigned since a sham or frivolous issue will not preclude summary relief. (*Kornfeld v. NRX Technologies, Inc.* 93 A.D.2d 772 [1st Dept. 1983]). “It is well established that before a defendant may be held liable for negligence it must be shown that the defendant owed a duty to the plaintiff.” (*Pulka v. Edelman*, 40 N.Y.2d 781, 781 [1976]). “In the absence of a duty, there is no breach and without a breach there is no liability. (Id., see also, *Daubert v. Flyte Time Regency Limousine*, 1 A.D. 3d 396, 396 [2d Dept. 2003]).

Here, defendant, Warren has met his prima facie burden. There is no evidence that he negligently operated the vehicle. On the contrary, the plaintiffs testify in his favor. Further, there is no evidence presented that he did not exercise reasonable care to avoid the collision. Every person in the car testified that he swerved to ease the impact or to avoid the impact. While plaintiff submits that Mr. Davis testified that Mr. Warren had three seconds to avoid the collision, he also testified it was one or two seconds and “it was really too late though.” Warren testified he saw the police lights at the time of the impact and that there was no way to see them prior. As a matter of fact, neither of the plaintiffs saw the police lights prior to the incident. Lastly, the parties did not have “wildly different approximations for the speed of the Jackson vehicle,” despite plaintiff’s counsel saying so. Warren testified he was traveling 10-15 mph. Plaintiff, Davis testified they were traveling more than 10 mph and less than 20 mph and possibly less than 15 mph. Plaintiff, Johnson testified Warren was

going 20-25 mph. Defendant, Jackson was not asked. Defendant, Eric Byrd, testified that “there was no way either one of us could avoid anything.” Plaintiff’s speculation that defendant, Warren could have done something different with the mere seconds he had to react, is insufficient to defeat the defendants’ motions for summary judgment. Mere conclusions, expressions of hope, or unsubstantiated allegations will not create an issue of fact sufficient to defeat a motion for summary judgment. (*Zuckerman v. New York City Transit Auth.*, 49 N.Y.2d 557 [1980], *Itingen v. Weinstein*, 260 A.D.2d 440 [2nd Dept. 1999]). Plaintiff has failed to provide some proof from which negligence can be inferred. (*Marsch v. Catanzaro*, 40 A.D.3d 941 [2d Dept. 2007]).

Accordingly, both defendant, Warren and defendant, Jackson’s motions are granted. The Clerk of the Court is directed to remove them from the caption. Defendants, Warren and Jackson are directed to serve a copy of this order with Notice of Entry within 30 days of its upload to NYSCEF.

This constitutes the decision and order of the Court.

Dated: 7/12/24

Hon. 
Mitchell J. Danziger, J.S.C.

-
- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY X CASE STILL ACTIVE
 - 2. MOTION IS.....5..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. MOTION IS.....6..... GRANTED DENIED GRANTED IN PART OTHER
 - 4. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT