

McVea v Honsaker
2024 NY Slip Op 35540(U)
March 29, 2024
Supreme Court, Orange County
Docket Number: Index No. EF002395-2020
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at 285 Main Street,
Goshen, New York 10924 on the 29th day of March 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

KELLI MCVEA et al.,

PLAINTIFFS,

-v-

ADAM HONSAKER et al.,

DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

To commence the statutory time for
appeals as of right (CPLR 5513 [a]),
you are advised to serve a copy of this
order, with notice of entry, on all
parties.

DECISION & ORDER

Index No. EF002395-2020
Motion date: 2/20/24
Motion Seq.# 2

The following papers were read on the motion of Defendants for summary judgment
pursuant to CPLR §3212 and for such and other further relief this Court deems just and proper:

Notice of Motion/Memo of Law/Affirmation/Ex. A-N..... 1-17
Opposition Affirmation/Memo of Law.....18-19
Reply Affirmation.....20

Summary of the Decision

Defendants failed to establish the absence of issues of fact with regard to the subject
motor vehicle accident. Testimony of the three persons in the two vehicles differ as to the
movement, speed and signal indicators of Defendants' vehicle as well as the respective positions
of the two vehicles immediately prior to impact. An issue of fact also exists as to whether
Defendant Honsaker was in the course of operating his vehicle at the time of the collision within
one of the four privileged driving regimes for emergency vehicles in VTL 1104(b)(4), to wit,
disregarding regulations "governing directions of movement or turning".

Even if Defendant Honsaker was doing so, an issue of fact exists as to whether he
operated with reckless disregard for the safety of Plaintiff, thereby vitiating any privilege he

enjoyed while responding to an emergency. Since Defendants cannot show as a matter of law that they are free of reckless disregard, *a fortiori* they cannot establish they were not negligent. These many factual disputes preclude summary judgment and the motion to dismiss the entire Complaint, or in the alternative to dismiss the negligence count alone, is DENIED.

The claims of Plaintiff in her Notice of Claim were sufficiently broad as to encompass the statutory claims pled in the Complaint. Thus, Plaintiff satisfied the requirements of the General Municipal Law. Therefore, the motion to dismiss her claims for statutory violations is DENIED. Nor are the parties co-employees for purposes of the General Obligations Law. Therefore, the motion to dismiss on that basis is also DENIED.

Facts Underlying the Claims and Defenses

At the time of this two-vehicle collision, Plaintiff Kelli McVea (“Plaintiff”)¹ was employed by the NY State Police as a trooper. She was operating a NY State Police vehicle (“V1”) in the course of her work. Defendant Honsaker was a Deputy employed by the Sheriff of Orange County. He was operating a vehicle (“V2”) in the course of his work that was owned by Defendant Orange County.

Some of the facts that concern the collision are not disputed. During the early morning hours of July 5, 2018 at approximately 2:00 a.m, a 911 telephone dispatcher communicated to law enforcement that a burglary was in progress in the Town of Hamptonburgh. Plaintiff responded to the call with her partner, Trooper Adrian Szlejter.

Plaintiff began driving in the direction of the address provided by the 911 dispatcher.

¹ Plaintiff Sean David McVea is the spouse of Plaintiff Trooper Kelli McVea and has asserted a derivative damages claim. For purposes of this Decision and Order only, which addresses liability issues, the Court will refer to Trooper Kelli McVea alone as “Plaintiff” because Mr. McVea has no involvement in liability issues.

This eventually placed her on State Route 207 westbound. V1 had illuminated emergency flashing lights as Plaintiff proceeded to the burglary address. Plaintiff was intending to turn left onto Shea Road (County Route 33) as a means to reach the location.

Defendant Honsaker was aware of this same 911 dispatched communication and asserts he was also responding. He was already proceeding on State Route 207 westbound when he saw Plaintiff approaching in his rear view mirror. He was also intending to turn left on Shea Road, which his GPS indicated was an available route.

V2 had no lights or siren deployed. V1 was moving faster than V2 when the two drivers saw each other. V2 did not increase its speed at any time after seeing V1 in the rear view mirror. As the two vehicles approached the intersection of Shea Road, V2 began to move around V1 into the center of the roadway, straddling the center line or perhaps even further into the eastbound lane.

Defendant Honsaker knew from the radio communications that V1 was proceeding to the burglary site. He also observed the flashing emergency lights of V1 and its high rate of speed that exceeded the limit for Route 207. Conversely, Plaintiff did *not* know whether V2 was proceeding to the burglary site. V2 had no lights illuminated other than headlights and brake lights.

As V1 began to make the left turn onto Shea Road, V2 also turned to the left and made contact with V1. Defendant Honsaker admits he did not yield to V1 as it approached him. The front left corner of V2 made contact with the rear right corner of V1. As a result of the collision, V1 was diverted from the roadway and struck a signpost at the juncture of Shea Road, eventually careening into a tree line beyond the signpost of the edge of Shea Road. Plaintiff alleges she sustained injuries as a result of the collision and subsequent impact with the signpost

and trees.

The testimony of the parties and non-party witness Trooper Szlejter differ as to whether V2 moved toward the right shoulder of Route 207 as V1 approached. Plaintiff and Trooper Szlejter attested to V2 showing brake lights, moving over and slowing. Defendant Honsaker asserts he did not brake, slow or move over. No dashcam, bodycam or other video exists of the accident sequence.

Lt. Erik Anderson of the NY State Police investigated the accident and provided a deposition. He reviewed Automated Vehicle Location data from each vehicle as to their respective speeds in the minutes leading up to the collision. Those “AVL” data printouts reflect that V1 was moving at 74 mph immediately prior to the collision at 2:13:34 a.m. and had decreased speed to no less than 66 mph in the preceding 20 seconds. Conversely, the AVL data for V2 shows it slowed from 60 mph to 34 mph in the 20 seconds preceding the collision. This reduction in speed of V2 is consistent with the testimony of Plaintiff and Trooper Szlejter.

The testimony also differs as to whether V2 had illuminated a left directional signal. Defendant Honsaker claims he turned on his directional for the approximately 20 seconds before he reached Shea Road. Plaintiff and Trooper Szlejter did not see any such directional signal. No vehicle data exists to resolve this discrepancy.

Defendant Honsaker claims he was in the process of beginning the left turn onto Shea Road when the collision occurred. Plaintiff disputes that version of events and asserts that V2 was moving straight and off to the right of the Route 207 westbound lane as she passed, when it abruptly turned to the left toward Shea Road, as Plaintiff was passing.

Procedural History

Plaintiff filed a Notice of Claim dated March 20, 2019 against the County of Orange and

the Orange County Sheriff. Plaintiff testified at a hearing pursuant to General Municipal Law 50-h on October 3, 2019.

Plaintiff filed this action on May 26, 2020 naming Defendant Honsaker, the County of Orange and the Orange County Sheriff. The Complaint alleges that the Defendants were negligent and also acted with reckless disregard for the safety of others. Defendants filed a joint motion to dismiss on July 7, 2020 in lieu of an Answer. In a Decision dated October 30, 2020, the Court granted the motion and dismissed the Complaint as to only the Orange County Sheriff. The remaining Defendants filed a joint Verified Answer on November 6, 2020.²

The Instant Summary Judgement Motion

CPLR §3212(b) states, in pertinent part, that 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 any party.” Section §3212(b) further states that “the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.” “Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a material and triable issue of fact” *Anyanwu v Johnson*, 276 A.D.2d 572 (2nd Dept. 2000). Issue finding, not issue determination, is the key to summary judgment. *Krupp v Aetna Casualty Co.*, 103 A.D.2d 252 (2nd Dept. 1984). In deciding the motion, the court must view the evidence in the light most favorable to the non-moving party. *Kutkiewicz v Horton*, 83 A.D.3d 904 (2nd Dept. 2011).

Defendants assert they are entitled to summary judgment on all claims, on several bases. First, they assert that Defendant must be adjudged by the standard of reckless disregard for

² Defendants filed what appears to be the identical joint Answer again on November 9, 2020.

safety, not simple negligence, because of his operation of V2 in the course of an emergency pursuant to VTL 1104. Defendants assert that the evidence establishes no reckless disregard as a matter of law. Second, Defendants assert that Plaintiff was the sole proximate cause of the accident as a matter of law. Third, General Obligations Law 11-106³ bars claims between “co-employees” and Plaintiff and Defendant Honsaker were allegedly co-employees for purposes of the statute.

Alternatively, Defendants assert that some of the claims must be dismissed. Defendants assert that the simple negligence claim must be dismissed because the reckless disregard standard of VTL 1104 applies. Lastly, the claims for statutory violations pursuant to General Municipal Law 205-e were not raised in the Notice of Claim and are therefore allegedly barred. If not barred, Defendants assert that those claims fail as a matter of law because Defendants did not violate any of the statutes alleged in the Complaint.

1. VTL 1104 – Reckless Disregard of Safety Standard

With regard to the defense that VTL 1104 provides a standard of care of reckless disregard for safety of others, Defendant must satisfy a number of elements in order to prevail. VTL 1104 provides in relevant part:

- a) The driver of an authorized emergency vehicle, when involved in an emergency operation, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
- (b) The driver of an authorized emergency vehicle may:
 - 1. Stop, stand or park irrespective of the provisions of this title;
 - 2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;
 - 3. Exceed the maximum speed limits so long as he does not endanger life or property;

³ Defendants erroneously cite to General “Municipal” Law 11-106, which does not exist.

4. Disregard regulations governing directions of movement or turning in specified directions.

(e) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

First, Defendants must establish that Defendant Honsaker was in the course of responding to an emergency when the collision occurred. He testified he was still responding even though he had shut his siren, shut his emergency lights, and was operating below the speed limit. With no contrary evidence that directly refutes his intentions at the time, the Court accepts for purposes of this motion only that he was still responding to the burglary call.

It is only when an emergency vehicle is exercising one of the four privileges in VTL 1104 that the reckless disregard standard applies. *Kabir v. County of Monroe*, 16 NY3d 217 (2011). The Court of Appeals explicitly rejected that argument that the reckless disregard standard applies to every accident where an emergency vehicle is responding and a person is injured by a collision. “Any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence”. *Moore v City of New York*, 220 AD3d 767, 769 (2d Dept 2023).

V2 was not stopped, proceeding through a red signal, or exceeding the speed limit, making VTL 1104(b)(1)-(3) inapplicable. Thus, the only privileged vehicle operation that has any possible relevance is VTL 1104(b)(4). If V2 was disregarding regulations related to direction of movement or turning, only then would Defendant Honsaker’s actions be judged by the reckless disregard standard.

However, the evidence -- including his own testimony -- establishes that V2 was about to make a routine left turn from Route 207 onto Shea Road. Defendant Honsaker alleges he had his blinker illuminated. The AVL data shows he had slowed as he approached Shea Road to operate

within the speed limit. He denies he was turning left from the westbound shoulder, asserting he was in the middle of the westbound lane as required and only began to cross the center line when he began a turn toward Shea Road.

Under these circumstances, accepting as true Defendant Honsaker's own testimony, he was not disregarding any regulations for movement or direction. To the contrary, his testimony is that he was operating precisely within the bounds of the VTL related to movement and turning. Thus, none of the privileges would apply and he would be judged by a simple negligence standard.

But assuming arguendo that VTL 1104(b)(4) does apply, Defendants must still establish no issue of fact remains as to whether Defendant Honsaker operated V2 with reckless disregard for the safety of others. VTL 1104(e); *Kabir*, 16 NY3d at 223-224. "reckless disregard" for purposes of VTL 1104 is defined as intentionally doing an "act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome". *Moore*, 220 AD3d at 769. Defendants have the burden on this motion to establish that Defendant Honsaker's conduct did not meet that standard.

Here, fact issues do exist in that regard. Defendant Honsaker knew that Plaintiff was responding to the burglary scene, knew that one route to reach the scene was Shea Road and knew V1 was moving faster than V2 was moving. By simple deduction and observation, he knew that V1 would momentarily overtake V2. He lacked information as to whether Plaintiff knew that he was responding to the same burglary (Plaintiff was not aware), making it speculation for him to assume that Plaintiff knew V2 would turn onto Shea Road (V2's illumination of a directional signal is contested).

Under these circumstances, Defendant Honsaker knew that Plaintiff might be turning onto Shea Road, because he too was turning there to reach the burglary scene. He also knew that Plaintiff was about to pass because V2 was moving much slower and he had seen V1 approaching in his mirror. Initiating a left turn exactly when an emergency vehicle is about to pass on the left could constitute reckless disregard for safety because of the very high likelihood of a collision, indeed virtual certainty of a collision depending on the proximity of the vehicles.

Defendants cite *Proce v Town of Stony Point*, 185 AD3d 975 (2d Dept 2020) as support for why Defendant Honsaker did not act recklessly. However, the facts in *Proce* differ significantly. The police officer in *Proce* was turning onto another street in a high speed response and in the process veered into oncoming traffic and struck a vehicle on the opposite side of the road that he had not noticed in time to avert a collision. The court in *Proce* found that the officer's urgent response and need to stray onto the opposite side of the road momentarily did not show reckless disregard. Here, Defendant was not moving in an urgent manner and did not strike a vehicle that he did not notice in his haste. Instead, he was operating within the speed limit, clearly saw V1, and simply exercised what a jury may conclude was reckless disregard for safety by turning into the passing of V1.

Defendants also submit the affidavit of an engineer who reviewed the speed data of the vehicles and the surrounding terrain. Even if qualified to issue opinions on sight distance, his opinions concern whether Plaintiff could have brought V1 to a stop before reaching Shea Road once Plaintiff could see the upcoming intersection. Whether Plaintiff could stop at Shea Road is not relevant to the causes of this accident because neither party asserts that Plaintiff either was planning to stop or had a duty to stop at the intersection of Shea Road. To the contrary, Plaintiff testified that she intended to turn at Shea Road without coming to a stop. Defendant Honsaker

stated he had no expectation of V1 ever stopping before the turn. Thus, the expert testimony has no bearing on the standard of care at issue for each driver.

2. Sole Proximate Cause

Defendants assert that no issue of facts exist as to whether Plaintiff was the sole proximate cause. For all the reasons discussed *supra*, issues of fact remain as to whether Defendant Honsaker was a cause (or the sole cause) of the accident. If Defendants were found even one percent liable, Plaintiff would not be the sole proximate cause. Therefore, judgment on this basis is DENIED.

3. General Municipal Law – Bar Against “Co-Employee” Lawsuits

Defendants assert that Plaintiff was a co-employee for purpose of General Obligation Law 11-106 and therefore that law bars this lawsuit. GOL 11-106 does not define “co-employee” nor do the preliminary sections of the GOL. Therefore, the Court must rely on case law to decide the scope of the term.

Defendants cite only one case in support, *Connery v City of Albany*, 73 AD3d 198 (3d Dept 2010). *Connery* involves different facts of a police officer who was working in close cooperation with another police agency for an ongoing drug interdiction, so much so that the officer wore the uniform of the other agency. Under those extreme facts, the Third Department held that the officer was a co-employee for purposes of GOL 11-016 with officers in the other agency. The parties did not cite, and the Court is not aware, of any Second Department decision on this precise issue.

Here, there was no joint task force between the NY State Police and Orange County. There is no evidence of a mutual aid agreement. The two officers were not working together in any way. They had never met as far as either can recall. Their only connection was they both

responded to the same 911 call, with no coordination of any kind prior to the collision. Under these circumstances, they cannot be considered “co-employees”. Therefore, that branch of the motion to dismiss is DENIED.

4. Simple Negligence Claims

The Court held *supra* that the claims of reckless disregard for safety cannot be adjudicated as matter of law on the current record. *A fortiori*, claims for a lesser degree of culpability -- for simple negligence -- cannot be dismissed as a matter of law.

5. General Municipal Law 205-e

Plaintiff pled that Defendants violated statutes and therefore are liable pursuant to General Municipal Law 205-e. Defendants assert on the instant motion that the Complaint pleads causes of action for which Plaintiff did not provide notice pursuant to General Municipal Law 50-e.

A claim filed pursuant to General Municipal Law 50-e “contemplates ‘actual knowledge of the essential facts constituting the claim,’ not knowledge of a specific legal theory” by the Defendant municipality. *Wally G v NYC Health and Hosp. Corp.*, 27 NY3d 672 (2016). Here, Plaintiff’s notice of claim provided ample notice of the essential facts of her claim. She stated in great detail the facts of the accident and enumerated her specific allegations of wrongdoing by the Defendants. While her Notice of Claim does not call out each statute by number in the VTL, Defendants knew from the Notice that they were accused of violating statutes that relate to operation of a vehicle interfering with an emergency vehicle, making a turn from a roadway from an area of the roadway that is not permissible (the right shoulder) and operating in a reckless manner.

Defendants also assert that the claims of violation of VTL 1225-c and 1225-d in the bill

of particulars were not referenced in any way in the Notice of Claim. Plaintiff does not mention unauthorized use of cell phones, etc. by Defendant. Plaintiff does not oppose that aspect of the motion. Therefore, the claims for those two statutory violations *only* are DISMISSED.

The relief in the motion of dismissing the derivative claim of Plaintiff Sean McVea, on the basis that all causes of action should be dismissed, is DENIED.

Upon the foregoing, it is hereby

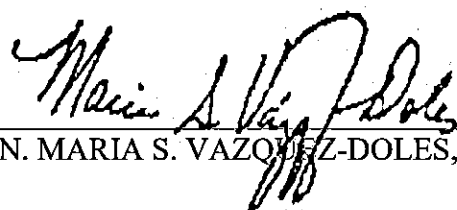
ORDERED the motion as it seeks to dismiss claims for violation of VTL 1225-c and 1225-d is **GRANTED** *only as to those claims*, which are **DISMISSED**, and it is further

ORDERED that the motion for summary judgment is **DENIED** in all other respects.

This Decision constitutes the Order of this Court.

Dated: March 29, 2024
Goshen, New York

ENTER:


HON. MARIA S. VAZQUEZ-DOLES, J.S.C.