

Wright v Town of Hempstead
2025 NY Slip Op 35561(U)
January 24, 2025
Supreme Court, Nassau County
Docket Number: Index No. 614507/2021
Judge: Sarika Kapoor
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. SARIKA KAPOOR
Acting Justice of the Supreme Court

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JOSEPH WRIGHT, as Proposed Administrator of the
Estate of JOMANI WRIGHT, Deceased, JOSEPH WRIGHT,
Individually, and MAKISHA PARROTT Individually,

Plaintiff,

v

TOWN OF HEMPSTEAD, INCORPORATED VILLAGE
OF HEMPSTEAD, GUILLERMO DAZA, CLEON McCOY,
ZOILA FRANCO-DeLEON, and MICHAEL GALLAGHER,

Defendants.
-----X

TRIAL/IAS PART 32
Index No. 614507/2021

DECISION & ORDER

Motion Seq. No. 004

Motion Submission Date:
01/21/2025

NYSCEF document numbers 119-122, 124-127 were read and considered in deciding this motion.

Relief Requested

The defendant Town of Hempstead moves pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it and for summary judgment dismissing the complaint insofar as asserted against it (motion seq. 004).

Background

Jomani Wright (hereinafter Jomani) was killed in a three-vehicle accident that occurred on January 27, 2021, at the intersection of Front Street and Maple Avenue in Uniondale. The accident occurred when a vehicle driven by the defendant Cleon McCoy, in which Jomani and nonparty Nathaniel M. Gregory were passengers, collided with a vehicle driven by the defendant Guillermo Daza. The impact of the McCoy and Daza vehicles caused McCoy's vehicle to strike a nearby utility pole, and then strike Gallagher's parked, unoccupied vehicle.

Joseph Wright, as the Proposed Administrator of Jomani's estate, and individually, and Makisha Parrott, individually, commenced this action, inter alia, to recover damages for wrongful death. This action is joined for discovery and trial with two other actions arising out of the same accident.

Motion Sequence 004

The Town moves pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it and for summary judgment dismissing the complaint insofar as asserted against it. In an attorney affirmation submitted in support of the motion, counsel for the Town argues that the Town owes no duty pertaining to any traffic control devices at the intersection where the accident occurred. Counsel for the Town further contends that even if it had a duty to install a stop sign at the location of the accident, i.e., on Maple Avenue at its intersection with Front Street, the installation of a traffic control signal where it had not previously existed is a discretionary governmental function that does not give rise to municipal liability. Further, counsel for the Town argues that there is no basis for a finding that the absence of a stop sign caused Daza to do anything other than what he would have done, and did do, had it been present. Counsel for the Town contends that, as seen on video of the accident and as testified by Daza at his deposition, Daza came to a full stop and waited before crossing Front Street. Therefore, the Town contends, the absence of a traffic control device on Maple Avenue did not contribute to the accident.

In support of its motion, the Town submits party deposition transcripts; videos of the accident; an affidavit of Sheila Dauscher of the Highway Department of the Town of Hempstead; and an affidavit of Thomas Reed, Acting Director of the Town of Hempstead Department of General Services, Traffic Control & Street Lighting Division. Reed states in his affidavit that Front Street is a New York State Highway and the decision whether to install a traffic control light on Front Street at the intersection with Maple Avenue is solely within the jurisdiction of the State. Additionally, Reed states that while Maple Avenue is a Town road, pursuant to Vehicle and Traffic Law §§ 1621(a)(1) and 1681(a), for the purposes of traffic control and signage, the first 100 feet of Maple Avenue south and north of Front Street is under the sole jurisdiction of the State. Further, Reed maintains, based on his personal search of the records, that the Town did not perform any affirmative acts, i.e., replace or install signs, to Maple Avenue at the accident location, and did not repair, construct, inspect, or replace any portion of the roadway at the accident location or within 100 feet of Front Street for 5 years prior to January 27, 2021.

In opposition, the plaintiffs and Daza (hereinafter together the opposing parties) separately assert that the Town's records, along with the deposition testimony of Reed, reveal that the Town engaged in traffic safety activities at the Front Street and Maple Avenue intersection. The opposing parties argue that this evidence demonstrates that Town exercised jurisdiction over the subject intersection and thus assumed a duty of care over traffic safety. The opposing parties base this on Reed's deposition testimony that the Town had changed signs on Maple Avenue and other town roads, within 100 feet of Front Street. The opposing parties claim that Reed's deposition testimony contradicts the Town's position and, as such, the Town has not eliminated all triable issues of fact concerning whether the Town assumed a duty of care over the intersection. The opposing parties further argue that there were available studies, from the State of New York, performed by Michael Baker International and by Stantec Consulting Services, and despite the availability of this information, the Town undertook no efforts to study or assess the subject intersection to provide for the safety of vehicular traffic. The opposing parties contend that if the Town had installed a right turn only sign on Maple Avenue and Front Street, Daza would have been directed to turn right rather than cross the intersection. The opposing parties conclude that

the Town failed to provide for vehicular safety at an intersection where it had undertaken a duty but failed to act.

Discussion

“In order to establish a prima facie case of negligence, the plaintiff must first demonstrate the existence of a duty owed by the town to the plaintiff” (*Bauer v Town of Hempstead*, 143 AD2d 793, 794 [2d Dept 1988]). “[A] municipality has no duty to maintain in a reasonably safe condition a road it does not own or control unless it affirmatively undertakes such a duty” (*Ernest v Red Cr. Cent. School Dist.*, 93 NY2d 664, 666 [1999]). “A municipality is not the insurer of the safety of its roads, and no liability will attach unless the ascribed negligence of the municipality in maintaining its roads in a reasonable condition is a proximate cause of the accident. Moreover, without evidence that the failure to provide a traffic control device was a proximate or concurring cause of an accident, municipal liability may not be found. Such proximate cause may be found only where it is shown that it was the very absence of the stop sign [or other traffic control device] which rendered the driver[] unaware of the need to stop before proceeding across the intersection. Where, however, the driver had all the warning, all the notice of danger, that a stop sign would have afforded, there is no basis for finding that the absence of a sign caused the driver to do anything other than [he or] she would have done had it been present” (*Noller v Peralta*, 94 AD3d 830, 831-832 [2d Dept 2012] [citations and internal quotation marks omitted]; see *Rivera v Town of Wappinger*, 164 AD3d 932 [2d Dept 2018]).

Here, the Town established, prima facie, that it did not assume a duty with respect to the subject intersection and therefore cannot be liable (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). In opposition, the opposing parties failed to raise a triable issue of fact. The opposing parties’ assertion that the Town assumed a duty for the first 100 feet of Maple Avenue is unavailing. Moreover, even if Town had assumed a duty of care, it is undisputed that Daza came to a full stop at the intersection before entering and attempting to cross the intersection. Daza had all the warning that a stop sign would have provided. There is no evidence to support the assertion that Daza would have turned right had there been a right turn only sign at the intersection. Additionally, no expert affidavits were submitted in opposition opining that even if the Town had a duty to place a sign at the intersection, that it deviated from good and accepted engineering practice in not installing a stop sign/traffic light at the intersection. Furthermore, the Stantec study referenced by the opposition parties concluded Maple Avenue at Front Street did not require any changes to the configuration of the traffic control devices. The Baker study referenced was published in December 2021, after the subject accident. Based on the foregoing, the opposing parties failed to raise a triable issue of fact.

Conclusion

It is hereby,

ORDERED that the branch of the Town’s motion which is for summary judgment dismissing the complaint insofar as asserted against it is **GRANTED**; and it is further,

ORDERED that the branch of the Town's motion which is pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it is **DENIED AS ACADEMIC**.

The parties' remaining contentions have been considered and do not warrant discussion.

Any request for relief not specifically granted herein is **DENIED**.

This shall constitute the decision and order of this Court.

Dated: January ²⁴, 2025
Mineola, New York

ENTER:

ENTERED

Jan 28 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE



HON. SARIKA KAPOOR, A.J.S.C.