Brust v McDaniel
2017 NY Slip Op 31978(U)
September 18, 2017
Supreme Court, Tompkins County
Docket Number: 2016-0136
Judge: Eugene D. Faughnan

At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 21st day of July, 2017.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

CAROL A. BRUST, Individually and as Administrator of the Estate of LINDSEY J. POU, deceased,

Plaintiff,

-vs-

DARRYL D. McDANIEL,

Defendant.

DECISION

Index No. 2016-0136
RJI No. 2017-0128-J

APPEARANCES:

COUNSEL FOR PLAINTIFF:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon the motion filed by Darryl D. McDaniel ("Defendant") dated April 5, 2017, seeking Summary Judgment pursuant to CPLR §3212. Carol A. Brust, individually and as administrator of the estate of Lindsey J. Pou (collectively "Plaintiffs") oppose the motion.

The facts are not in significant dispute except where specifically noted. On November 26, 2015, at approximately 7:35 PM, Defendant was driving and traveling north on State Route 13 (SR13) in the Town of Lansing, Tompkins County, New York. Defendant had three passengers in his car. Although some, or all, of Defendant's passengers were intoxicated, Defendant was not. SR13 is a four lane divided highway with a posted speed limit of 55MPH in the relevant area. For several minutes, Defendant and non party witness Jeffrey Monroe ("Monroe") were traveling roughly side by side at 55 or 60 MPH[1] with Defendant in the passing lane and Monroe in the driving lane. Defendant would begin to pull slightly ahead of Monroe and then Monroe would pull ahead. The road was dark and unlighted. The weather was clear and the road was dry.

At approximately 7:40, Monroe was still in the driving lane and approximately a car length behind Defendant who was in the passing lane. Monroe saw the car Driven by Lindsey Pou ("Pou") in the median and perpendicular to SR13. Monroe testified that Pou backed onto SR13 and remained perpendicular to the road and across the passing lane. At that time, Defendant was approximately fifty yards from Pou. Monroe was approximately two car lengths from Pou when he applied his brakes and moved to the right as he was concerned Defendant would pull into his lane. Monroe saw Defendant's vehicle strike Pou's vehicle on the driver's side in the passing lane. He drove past the accident and then backed up to offer assistance. He further testified that the accident could not be avoided as Defendant was either going to hit Pou, or Monroe. Pou passed away as a result of the accident.

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[1]Non party witness and Monroe passenger, Stephanie Batty, estimateed Defendant's speed as 70 MPH.

Non party witness Stephanie Batty ("Batty") testified at a New York State Department of Motor Vehicle hearing. She estimated Defendant's speed at 70 MPH. She testified that Pou's car was dark colored and was difficult to see on the road since any headlights or tail lights were pointing perpendicular to the road. She estimated that it was a few seconds between the time Pou began backing onto SR13 and the time Defendant struck her vehicle.

Defendant testified that he first saw Pou and believed her to be a slow moving vehicle. He checked his speed and noted he was traveling between 55 and 60 MPH. He started to apply his brakes and came into contact with Pou's vehicle.[2] Defendant testified that his passengers were either asleep or otherwise occupied and quiet at the time leading to the accident.

Defendant argues that he was presented with an emergency situation of Pou's creation and had little or no time to react. Plaintiffs assert that Defendant was negligent in traveling as fast as 70 MPH in a posted 55 MPH zone and was distracted by intoxicated passengers in Defendant's vehicle.

"On a motion for summary judgment, the movant must establish its prima facie entitlement to judgment as a matter of law by presenting competent evidence that demonstrates the absence of any material issue of fact." *Lacasse v. Sorbello*, 121 AD3d 1241, 1241 (3rd Dept. 2014) [*citing Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Walton v. Albany Community Dev. Agency*, 279 AD2d 93, 94-95 (3rd Dept. 2001)]. If the movant fails to make this showing, the motion must be denied. *Alvarez, supra*. Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact. *Zuckerman v. City of New York,* 49 NY2d 557, 562 (1980). In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as

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[2]Defendant believed that Pou collided with the side of his vehicle. This account is contradicted by Monroe, Batty and the police investigation.

to the existence of a material issue of fact. *Branham v. Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 (2007).

"Motorists generally have a duty to operate their vehicles 'with reasonable care taking into account the actual and potential dangers existing from weather, road, traffic and other conditions.'" *Ranaudo v. Key*, 83 AD3d 1315, 1316 (3rd Dept. 2011) *citing* PJI 2:77. "This duty includes seeing what should be seen and taking ordinary care under the circumstances to avoid an accident" *Id.* As relevant here, motorists are also obligated to comply with posted speed limits. V&T Law §1180-a.

"It is well settled that the emergency doctrine serves to relieve a defendant of liability 'if he or she was faced with an emergency situation not of his or her own making and responded in a manner that was 'reasonable and prudent in the emergency context'" *Foster v. Kelly*, 119 AD3d 1250, 1251 (3rd Dept. 2014), *citing Cahoon v. Frechette*, 86 AD3d 774, 775 (3rd Dept. 2011), *quoting Rivera v. New York City Tr. Auth.*, 77 NY2d 322, 327 (1991).

Defendant points to testimony which supports the conclusion that Pou's vehicle was not readily visible, and actually positioned across the Defendant's lane of travel. Further, he argues that Defendant only had a few seconds to react and could not avoid the accident in light of Monroe's vehicle being in the driving lane.

Further, Defendant argues that the only evidence of him being distracted is from Tompkins County Sheriff's Deputy Scott Walters. In this respect, Walters speculates that since two of Defendant's passengers were intoxicated, he was likely distracted. However, there is no direct evidence to support Deputy Walter's supposition. Defendant also points to testimony from Defendant and Monroe to support the conclusion that he was driving at, or near, the posted speed limit.

The Court concludes that the Defendant has set forth a prima facie showing for summary judgment. There is evidence that the Defendant was lawfully traveling in his lane of travel when

confronted by Pou's vehicle across his lane of travel and had little or no time to react prior to the collision.

In opposition to the summary judgment motion, Plaintiffs point to Batty's testimony in which she estimates Defendant's speed at 70 MPH; 15 MPH in excess of the posted speed limit and in violation of V&T Law §1180-a. Additionally, they point to testimony of Deputy Walters supporting the conclusion that Defendant was distracted by intoxicated passengers in his car.

The "unexcused violation of the Vehicle and Traffic Law constitutes negligence *per se*" *Holleman v. Miner*, 267 AD2d 867, 869 (3rd Dept. 1999). The Plaintiffs have submitted evidence which supports the conclusion that Defendant was driving in excess of the posted speed limit and therefore was negligent. However, where "'the evidence conclusively establishes that there was an intervening act which was so extraordinary or far removed from the defendant's conduct as to be unforeseeable', proximate cause may be determined as a matter of law." *Ranaudo* at 1318, *citing Decker v. Forenta LP*, 290 AD2d 925, 926 (3rd Dept. 2002) (internal quotation marks and citation omitted).

In *Ranaudo*, Defendant was passing vehicle in which Plaintiff was a passenger on a four lane highway and failed to return to the driving lane when he was unable to overtake the vehicle, in alleged violation of V&T Law §1124. Both vehicles were confronted with a vehicle traveling in the wrong direction on the highway which struck the vehicle in which Plaintiff was traveling. The Court concluded that the vehicle traveling in the wrong direction was an intervening act so removed from the defendant's alleged negligence that it relieved defendant of any liability. *See Ranaudo* at 1318.

Similarly, in this case, the Court concludes that Pou's negligent action of backing onto a highway with her car perpendicular to the driving lane was so attenuated from any claimed negligence on the part of Defendant so as to constitute an extraordinary intervening act relieving Defendant from any liability. Whether Defendant was traveling at 55MPH, 60MPH, or 70MPH, there is no evidence that any slight deviation from the posted speed limit was a proximate cause of this

accident. See *Stinehour v. Kortright*, 157 AD2d 899, 900 (3rd Dept. 1990). All witnesses testified that Pou's vehicle was visible for only seconds before the collision. The Court finds, as a matter of law, that Pou's own actions, in light of the location and conditions at the time of the accident, are the sole proximate cause of the accident.

This constitutes the **DECISION** of the Court. Defendant is to submit a Proposed Order, on notice to Plaintiffs, within 30 days of the date of this Decision. The transmittal of copies of this Decision by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: September 18, 2017
Ithaca, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice