Fretz-Iversen v Bellsey
2018 NY Slip Op 34179(U)
April 30, 2018
Supreme Court, Westchester County
Docket Number: Index No. 67030/2016
Judge: Sam D. Walker

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, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER , J.S.C.

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ANNE FRETZ-IVERSEN,

Plaintiff,

-against-

DECISION & ORDER
Index No. 67030/2016
Seq# 1

ELIZABETH B. BELLSEY and WILLIAM P. BELLSEY,

Defendant.

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The following papers were considered on the defendant's motion pursuant to CPLR 3212, seeking summary judgment on the issue of liability:

Notice of Motion/Affirmation/Exhibits A-G	1-9
Memorandum of Law in Support	10

Based on the foregoing submissions the motion for summary judgment is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced the action on November 11, 2016, by filing a summons and complaint. This matter arises out of a motor vehicle collision that occurred on November 13, 2013, when the defendant Elizabeth B. Bellsey ("Bellsey") proceeding on Columbus Avenue toward the intersection at Lexington Avenue, in Mount Kisco, stopped at the stop sign and then turned left, colliding with the vehicle driven by the plaintiff, Anne Fretz-Iversen. Bellsey stated that she had a clear view of the intersection, without obstruction

and acknowledged that she was required to stop and yield to all traffic at the intersection. Bellsey testified that she thought the collision was her fault.

The plaintiff now files the instant motion seeking summary judgment on the issue of liability. The defendant did not oppose the motion.

DISCUSSION

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

In order to establish a prima facie entitlement to judgment as a matter of law, it is incumbent upon the movant to come forward with evidentiary proof, in admissible form, demonstrating the absence of any triable issues of fact on the issue of liability (*see Franks v G & H Real Estate Holding Corp.*, 16 AD3d 619 [2d Dept 2005], *citing*, *Welwood v Association for Children with Down Syndrome*, 248 AD2d 707, 708 [2d Dept 1998]).

In support of her motion, the plaintiff submits her deposition, Bellsey's deposition, an attorney's affirmation, copies of the pleadings, and a copy of the police report (uncertified).

The evidence demonstrates the plaintiff's prima facie entitlement to judgment as a matter of law on the issue of liability by establishing that Bellsey's vehicle proceeded into an intersection controlled by a stop sign without yielding the right of way to the approaching vehicle (see Vehicle and Traffic Law § 1142[a]), thereby shifting the burden to the

defendant to demonstrate the existence of a factual issue requiring a trial (*see Goemans*

v County of Suffolk, 57 AD3d 478, 479 [2d Dept 2008] ["the County established its prima facie entitlement to judgment as a matter of law by evidence that Sellers failed to yield the right-of-way upon entering the subject intersection in violation of Vehicle and Traffic Law § 1142(a) and thus was negligent as a matter of law."]; *Thompson v Schmitt*, 902 NYS.2d 606, 607 [2d Dept 2010] [Plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating "that the defendant driver, who was faced with a stop sign at the intersection ...negligently entered the intersection without yielding the right of way to his approaching vehicle and that this was the sole proximate cause of the accident".])

The fact that the defendant was required to stop her vehicle at a stop sign, while the plaintiff's route of travel was not encumbered by a requirement to stop, established that the defendant failed to yield the right of way to the plaintiff[1] (*Id.*; *see also*, *Szczotka v Adler*, 291 AD2d 444 [2d Dept 2002])[2]. "A driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" (*see Gergis v Miccio*, 39 AD3d 468, 468 [2d Dept 2007]; *see also Maliza v Puerto-Rican Transp. Corp.*, 50 AD3d 650 [2d Dept 2008]).

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[1] VTL §1142 specifically provides that "Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection." (VTL § 1142[a]).

[2] In Szczotka v. Adler, the plaintiff moved for summary judgment on the issue of liability asserting that the defendant failed to stop at the stop sign. In opposition, the defendant asserted that he did stop at the stop sign and that the plaintiff must have been speeding. The Second Department held that "[r]egardless of whether the defendant stopped at the stop sign, the plaintiff established that the defendant violated Vehicle and Traffic Law § 1142(a), by failing to yield the right of way to her". (*Id.*).

Furthermore, the defendant was obligated to see that which by the proper use of her senses she should have seen, "and the plaintiff, as the driver with the right-of-way, was entitled to anticipate that the defendant would obey traffic laws which required" her to yield (*see Moussouros v Liter*, 22 AD3d 469, 470 [2d Dept 2005]).

Accordingly, the plaintiff's motion for summary judgment on the issue of liability is granted. The foregoing constitutes the decision and order of the court.

Dated: White Plains, New York
April 30, 2018

HON. SAM D. WALKER, J.S.C.