

Davis v Brazee

2018 NY Slip Op 34197(U)

November 27, 2018

Supreme Court, Dutchess County

Docket Number: Index No. 2016-50465

Judge: Peter M. Forman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
CHRISTOPHER DAVIS,

Plaintiff,

-against-

CORINNE BRAZEE,

Defendant.

-----X
FORMAN, J., Acting Supreme Court Justice

The Court read and considered the following documents upon this application:

	<u>PAPERS NUMBERED</u>
NOTICE OF MOTION.....	1
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This is a personal injury action arising out of a rear-end motor vehicle accident that occurred on State Route 44, at its intersection with State Route 22, in the Town of Amenia at approximately 9:12 a.m. on April 3, 2015. Plaintiff now moves for partial summary judgment on the issue of liability.

On the date of the accident, Defendant was operating a vehicle that struck Plaintiff's vehicle from behind. Specifically, Plaintiff was stopped at a red light, behind an

uninvolved vehicle. Defendant was stopped in the vehicle behind Plaintiff.

When the light turned green, the vehicle in front of Plaintiff began to move forward. Plaintiff started to move forward as well, as did Defendant. When the car in front of Plaintiff stopped to allow oncoming traffic to pass before making a left hand turn from Route 44 onto Route 22, Plaintiff also stopped his vehicle. Defendant failed to stop her vehicle, and struck Plaintiff's vehicle from the rear.

The police accident report records Defendant as stating that she "became distracted prior to crash." However, during her deposition, Defendant testified that she saw Plaintiff come to a stop, and that she also attempted to stop, but that her vehicle slid on some gravel and struck Plaintiff's vehicle.

"The operator of a motor vehicle approaching another motor vehicle from the rear is obligated to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle." [Balducci v. Velasquez, 92 AD3d 626, 628 (2d Dept. 2012)]. See also Sehgal v. www.nyairportsbus.com, Inc., 100 AD3d 860 (2d Dept. 2012); Nsiah-Ababio v. Hunter, 78 AD3d 672, 672 (2d Dept. 2010)]. "Accordingly, a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation

for the collision." [Gibson v. Levine, 95 AD3d 1071, 1072 (2d Dept. 2012)]. See also Cortes v. Whelan, 83 AD3d 763, 763 (2d Dept. 2011; Plummer v. Nourddine; 82 AD3d 1069, 1069-70 (2d Dept. 2011)].

Plaintiff established his *prima facie* entitlement to judgment as a matter of law. Defendant has failed to come forward with evidence sufficient to rebut the inference of negligence by providing a non-negligent explanation for the collision.

"It is well-settled that 'a driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and the cars ahead of him so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions.'" [Francisco v. Schoepfer, 30 AD3d 275 (1st Dept. 2006), quoting Malone v. Morillo, 6 AD3d 324 (1st Dept. 2004)]. Defendant's assertion that she was unable to stop her vehicle because she skidded on some gravel was insufficient to raise a triable issue of fact because she failed to demonstrate that skidding on this known road condition was unavoidable. [Sayyed v. Murray, 109 AD3d 464 (2d Dept. 2013) (defendant who skidded on metal grating on the roadway failed to rebut the inference of negligence that attaches to a rear-end collision)]. Based on the foregoing, it is hereby

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is granted; and it is further

ORDERED, that counsel for the parties shall appear for a pretrial conference on January 9, 2019 at 9:30 a.m.

The foregoing constitutes the Decision and Order of this court.

Dated: November 27, 2018
Poughkeepsie, New York



Hon. Peter M. Forman
Acting Supreme Court Justice

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