Doyle v Grass
2018 NY Slip Op 34316(U)
October 26, 2018
Supreme Court, Orange County
Docket Number: Index No. EF008267-2016
Judge: Catherine M. Bartlett

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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JAMES DOYLE,

Plaintiff,

-against-

JASON J. GRASS,

Defendant.

To commence the statutory time period 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.

Index No. EF008267-2016
Motion Date: October 16, 2018

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The following papers numbered 1 to 4 were read on Plaintiff's motion for partial summary judgment on the issue of Defendant's liability:[1]

Notice of Motion - Affirmation / Exhibits 1-2

Affirmation in Opposition 3

Reply Affirmation 4

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This an action to recover for injuries sustained by Plaintiff in a motor vehicle accident that occurred on June 20, 2016 at the intersection of Route 17A and Coates Drive in Goshen, New York.

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[1]Although the Court previously granted Plaintiff's motion as unopposed, the parties stipulated to vacatur of that decision to allow Defendant an opportunity to respond. Accordingly, this Court's prior Decision and Order dated September 17, 2018 is vacated, and Plaintiff's motion is decided as set forth herein.

The Parties' Testimony

Plaintiff testified at his deposition that he was traveling westbound on Route 17A at approximately 40 miles per hour. About 100 to 150 feet from Coates Drive, he started to slow down and signaled a left turn. He came to a complete stop for 10 to 15 seconds, with his wheels facing straight ahead, and waited for a break in oncoming traffic. Defendant's vehicle struck his vehicle on the rear passenger side. The impact lifted his vehicle up, spun it and pushed it across into oncoming traffic, where it was struck again by a vehicle approaching from the opposite direction.

Defendant testified as follows:

Q ...Approximately how long in either distance of time were you following behind the vehicle that was in front of you ?

A Thirty seconds to my knowledge, I guess, thirty seconds.

....

Q ...Do you remember when you first saw the other vehicle ?

A When we were crossing over 17 towards the stoplight.

Q Okay. Both the vehicle in front of yours and your vehicle proceeded through the green light ?

A Correct.

Q At any time, did you see the vehicle in front of you put on their blinker ?

A No.

Q Did you observe any brake lights ?

A No.

Q Can you tell me what happened next ?

A I was looking to merge over to the right and then I looked back and they were coming to a stop, almost stopped and I tried to move over and I didn't get over quite in time.

Q And there was an impact ?

A Yes.

....

Q Which part of your vehicle was involved in the impact ?

A The front driver's side.

Q Which part of the other vehicle was involved in the impact ?

A Rear passenger side.

Q After the impact with your vehicle and the other vehicle, were there any other impacts that you were aware of ?

A The oncoming traffic, I guess, hit the car that I hit.

Plaintiff's Motion

Plaintiff moves for partial summary judgment on the issue of Defendant's liability. Defendant in opposition asserts that there are triable issues of fact with respect to the comparative negligence of (1) Plaintiff, in allegedly failing to signal a left turn and turning his wheels to the left prior to impact, and (2) the driver of the oncoming vehicle, in failing to avoid the second impact to Plaintiff's vehicle.

Legal Analysis

"[T]he elements of a cause of action sounding in negligence are: (1) the existence of a duty on the defendant's part as to the plaintiff; (2) a breach of this duty; and (3) an injury to the plaintiff as a result thereof." *Stukas v. Streiter,* 83 AD3d 18, 23 (2d Dept. 2011). Thus,

> [A] plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*see Rodriguez v. City of New York*, 31 NY3d 312, 321-22...[2018]; *see Stukas v. Streiter*, 83 AD3d at 23...). "To be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his own comparative fault" (*Rodriguez v. City of New York*, 31 NY3d at 324-25...).

Poon v. Nisanov, 162 AD3d 804, 807 (2d Dept. 2018)

> Vehicle and Traffic Law §1129(a) provides:
>
> The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

Section 1129(a) requires that "[a] driver of a vehicle approaching another vehicle from behind is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Cajas-Romero v. Ward*, 106 AD3d 850, 851 (2d Dept. 2013); *Gleason v. Villegas*, 81 AD3d 889, 890 (2d Dept. 2011). Consequently, "[a] rear-end collision with a stopped or stopping vehicle 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." *Martinez v. Allen*, 163 AD3d 951 (2d Dept. 2018). *See, Edgerton v. City of New York*, 160 AD3d 809, 810 (2d Dept. 2018); *Le Grand v. Silberstein*, 123 AD3d 773 (2d Dept. 2014); *Gleason v. Villegas, supra.*

Plaintiff's testimony that he properly signaled a left turn, slowed down and stopped for 10 to 15 seconds before he was struck in the rear by Defendant's vehicle established his *prima facie* entitlement to partial summary judgment on the issue of Defendant's liability, and cast on Defendant the burden of coming forward with a non-negligent explanation for the collision and demonstrating the existence of a triable issue of fact.

The Second Department has recognized that "[n]ot every rear-end collision is the exclusive fault of the rearmost driver. The frontmost driver also has the duty not to stop suddenly or slow down without proper signaling as to avoid a collision." *Martinez v. Allen, supra* (quoting *Tutrani v. County of Suffolk*, 64 AD3d 53, 59-60). *See, Gleason v. Villegas, supra*, 81 AD3d at 890; *Klopchin v. Masri*, 45 AD3d 737, 738 (2d Dept. 2007); *Chepel v. Meyers*, 306 AD2d 235, 236-237 (2d Dept. 2003); *Niemiec v. Jones*, 237 AD2d 267, 268 (2d Dept. 1997).

In this regard, VTL §1163 provides:

> (a) No person shall...turn a vehicle to enter a private road or driveway...unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.
>
> (b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.
>
> (c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Thus, in *Martinez v. Allen, supra* (where the plaintiff, not the defendant, was the rearmost driver), the Second Department wrote:

> In opposition [to defendant's motion for summary judgment], the plaintiff averred that the defendant made a sudden stop and failed to give proper signals, as required by Vehicle and Traffic Law §1163. The plaintiff's affidavit was sufficient to raise a triable issue of fact as to whether the defendant negligently cause or contributed to the accident.

Similarly, in *Gleason v. Villegas, supra*, where the defendant rear ended the plaintiff as she stopped to make a left turn, the Court held:

> The affidavit of the defendant driver raised a triable issue of fact as to whether the plaintiff, as the driver of the lead vehicle, contributed to the accident by making a sudden stop and/or by failing to give a proper left-turn signal in compliance with Vehicle and Traffic Law §1163 [cit.om.]. Accordingly, the plaintiff's motion for summary judgment on the issue of liability should have been denied.

Gleason v. Villegas, 81 AD3d at 890. The Second Department, in analogous circumstances, has consistently so held. *See, e.g., Ortiz v. Welna,* 52 AD3d 709, 711 (2d Dept. 2017); *Costa v. Eramo,* 76 AD3d 942, 942-943 (2d Dept. 2010); *Klopchin v. Masri, supra,* 45 AD3d at 738; *Maschka v. Newman,* 262 AD2d 615, 615-616 (2d Dept. 1999); *Crowley v. Acampora,* 144 AD2d 330, 330-331 (2d Dept. 1988).

Here, however, Defendant does not contend that Plaintiff suddenly stopped. Neither has Defendant shown that Plaintiff failed to give a proper left-turn signal in compliance with VTL §1163. In the face of Plaintiff's testimony that he signaled the left turn starting 100 to 150 feet from Coates Drive, Defendant testified only that he did not see a brake light or a blinker. However, he also testified that he was not looking straight ahead at Plaintiff's vehicle, but rather, that he was "looking to merge over to the right" and looked back too late to avoid a collision.

A driver's inattentiveness in not looking in the direction he was driving is in itself negligence. *See, Hauswirth v. Transcare New York, Inc.,* 97 AD3d 792, 793 (2d Dept. 2012); *Giangrasso v. Callahan,* 87 AD3d 521, 522 (2d Dept. 2011). Additionally, the Second Department has consistently held that the rearmost driver's failure to recall seeing brake lights or other illumination on the vehicle in front of him prior to the collision is insufficient to raise a triable issue of fact. *See, e.g., Cortese v. Pobejimov,* 136 AD3d 635, 636 (2d Dept. 2017); *Bene v. Dalessio,* 135 AD3d 679, 680 (2d Dept. 2016); *Balducci v. Velasquez,* 92 AD3d 626, 629 (2d Dept. 2012); *Cortes v. Whelan,* 83 AD3d 763, 764 (2d Dept. 2011); *Macauley v.Elrac, Inc.,*

6 AD3d 584, 585 (2d Dept. 2004). Finally, the Court takes judicial notice that a vehicle traveling at 30 to 40 miles per hour would cover the 100 to 150 feet during which Plaintiff testified he was braking and signaling in about three seconds or less, so Defendant's having taken his eyes off the road in front of him could well account for his failure to see brake lights and blinker before the collision. Under the circumstances, Defendant's threadbare deposition testimony is insufficient to demonstrate the existence of a triable issue of fact whether Plaintiff contributed to the accident by failing to give a proper left-turn signal in violation of VTL §1163.

Finally, Defendant has adduced no evidence whatsoever that (1) Plaintiff's wheels were turned to the left at the time of the collision, (2) that his so turning the wheels would in any event constitute negligence, or (3) that the driver of the oncoming vehicle was in any way negligent in failing to avoid contact with Plaintiff's vehicle when it was suddenly propelled into his lane as a result of Defendant's negligence in causing a rear-end collision.

Plaintiff having established *prima facie* entitlement to partial summary judgment on the issue of Defendant's liability, and Defendant in opposition having failed to demonstrate the existence of any triable issue of fact, it is

ORDERED, that this Court's prior Decision and Order dated September 17, 2018 is vacated, and Plaintiff's motion for partial summary judgment on the issue of Defendant's liability is granted on the opinion set forth hereinabove.

The foregoing constitutes the decision and order of this Court.

Dated: October 26, 2018
Goshen, New York

ENTER

HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE

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