

Thompson v County of Nassau
2018 NY Slip Op 34484(U)
September 24, 2018
Supreme Court, Nassau County
Docket Number: Index No. 605883/16
Judge: Sharon M.J. Gianelli
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU – IAS / TRIAL PART 22
Present: HON. SHARON M.J. GIANELLI, J.S.C.**

-----X
NICOLE THOMPSON,

Plaintiff,

Index No. 605883/16

-against-

Mot. Seq. No. 02

**COUNTY OF NASSAU,
NASSAU COUNTY POLICE DEPARTMENT,
and HENRY KRAMER,**

Defendants.

-----X

Papers submitted:

Plaintiff's Notice of Motion-----X

Defendant's Affirmation in Opposition -----X

Plaintiff's Reply Affirmation -----X

Motion by Plaintiff Nicole Thompson, seeking an Order pursuant to CPLR §3212, granting her partial summary judgment on the issue of liability is GRANTED as provided herein.

Underlying Facts

This negligence action arises out of a motor vehicle accident which occurred on the night of November 26, 2014. On the date of the incident, Plaintiff was an employee of the Nassau County University Medical Center ("NUMC") on her way to work. Plaintiff, a pedestrian, had entered the roadway leading to the NUMC Emergency Room when she was struck by a police vehicle being operated by Defendant, Police Officer Henry Kramer. Deposition testimony of Plaintiff and Defendant confirm that the incident occurred when Defendant's police vehicle turned left off Perimeter road, crossing the southbound lane of traffic, and striking Plaintiff as she was walking in the roadway, resulting in injuries to her back and other areas of her body. Defendant Kramer apologized to Plaintiff following the incident. An expert affidavit was also submitted by Plaintiff,

which asserts that Defendant had ample time to engage his brakes to avoid hitting Plaintiff, and that he failed to yield the right of way to Plaintiff.

Procedural History

This action was commenced by the service of a Notice of Claim on February 22, 2015 (See Plaintiff's Exhibit "A"). A 50-H Hearing occurred on May 18, 2015. (See Exhibit "B"). On or about November 25, 2015, Plaintiff filed a Summons and Verified Complaint in Supreme Court, Queens County (See Exhibit "C"). Defendants served an Answer on or about December 23, 2015 (See Exhibit "D"). A motion to change venue was filed by Defendants (See Exhibit "E"). This action was thereafter transferred to Supreme Court Nassau County on or about August 2, 2016 (See Exhibit "F").

Analysis/Ruling

A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 [1985], *see also Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). Once such a *prima facie* showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986], *see also Zuckerman v. City of New York*, *supra*).

In 2018, the Court of Appeals ruled that comparative negligence is not a defense to any element of a negligence cause of action and is not an impediment to partial summary judgment on the issue of liability. See *Rodriguez v. City of New York*, 31 N.Y. 3d 312 (2018). In rendering this recent ruling, the *Rodriguez (id.)* court addressed prior cases which appeared to hold that comparative negligence was a factor to be considered in the determination of whether to grant a partial summary judgment motion. One such case involving a pedestrian who was struck by a vehicle, *Castiglione v. Kruse*, 27 N.Y. 3d 1018 [2016] bears noting, where the court denied summary judgment finding that there were issues of fact surrounding how the accident occurred. However, the *Rodriguez (supra)* court in specifically referencing *Castiglione (id.)* and clarifying the standard, noted that the Plaintiff therein failed to argue that it is unnecessary for Plaintiff to establish the absence of comparative negligence in order to obtain partial summary judgment. Likewise, the *Rodriguez (supra)* court referenced the case of *Thoma v. Ronai*, 82 N.Y. 2d 736 [1993], where like *Castiglione (id.)*, the plaintiff asserted that the gravamen of the case was the existence as a matter of law of any question of comparative negligence by Plaintiff. This led the *Rodriguez* court to hold that even assuming the existence of an issue of fact regarding Plaintiff's comparative fault, Plaintiff was nevertheless entitled to partial summary judgment on the issue of Defendant's liability.

In support of her motion for summary judgment, Plaintiff relies on the deposition testimony of both Plaintiff and Defendant; the Police Accident Report arising out of the subject accident; the summons and verified complaint; the answer; a non-party witness statement, as well as the unrefuted expert affidavit of John McManus, P.E.

Here, Plaintiff has established *prima facie* entitlement to judgment as a matter of law by submitting evidence which demonstrated that she was a pedestrian crossing the roadway when she was struck by Defendant's vehicle as he made a left turn.

In opposition to Plaintiff's motion, Defendant argues that Plaintiff has failed to prove, *prima facie*, her entitlement to judgment as a matter of law, that Defendant was not wholly responsible for the incident. This assertion misstates the standard for determining whether partial summary judgment is warranted in light of *Rodriguez (supra)*. Additionally, Defendant has failed to sufficiently refute Plaintiff's expert affidavit which opined that Defendant could have avoided striking Plaintiff.

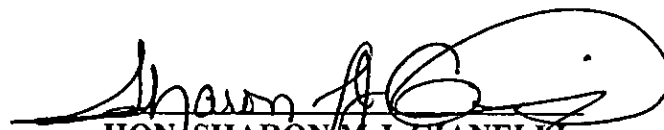
Upon consideration of all of the papers submitted herein, together with oral argument heard on September 24, 2018, as well as the applicable law, it is hereby

ORDERED, that Plaintiff's motion seeking an order pursuant to CPLR 3212, granting Plaintiff partial summary judgment on the issue of liability, is **GRANTED**.

All requests not specifically addressed herein are **DENIED**.

This constitutes the Decision and Order of the Court.

DATE: September 24, 2018
Mineola, New York



HON. SHARON M.J. GIANELLI,
Justice of the Supreme Court

ENTERED

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NASSAU COUNTY
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