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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THOMAS RYAN and CHRISTINE RYAN,

Plaintiffs,

-against-

MARK MAZZARELLI, ALEX MAZZARELLI, and TAMI MAZZARELLI,

Defendants.

----------x

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. EF002355-2019
Motion Date: June 8, 2020

The following papers numbered 1 to 4 were read on Plaintiffs' motion for partial summary judgment on liability:

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 is a personal injury action arising out of an accident that occurred at about 2:00 p.m. on June 9, 2018 at the intersection of State Route 300 and Deer Run Road in the Town of Newburgh, New York. Route 300, at this intersection, is a through highway with one lane in each direction. Deer Run Road terminates at Route 300 and is governed by a stop sign. Defendant Alex Mazzarelli, then 18 years of age, resided on Deer Run Road near Route 300 with his parents, defendants Mark and Tami Mazzerelli, and was familiar with this intersection.

Plaintiff Thomas Ryan testified that he was traveling eastbound on Route 300 at a speed of 45 miles per hour in a 45 mph zone. He saw the Defendants' vehicle approaching Route 300 on Deer Run Road. That vehicle briefly slowed down, but then proceeded into the intersection without coming to a full stop. Plaintiff barely had time to hit the brake, and within a second he struck the driver's side front quarter panel of Defendants' vehicle.

Defendant Alex Mazzarelli drove his parents' vehicle from their home on Deer Run Road to the intersection, intending to turn left onto Route 300. He stopped, and looked left, right and left again before proceeding. There was a bush, two feet wide and three-to-four feet tall, on the left hand corner which obstructed his view of traffic for about 15 to 20 feet down Route 300. As he pulled out on to Route 300 he saw Plaintiff's vehicle a split second before impact.

A. Defendant Mazzarelli Was Negligent As A Matter Of Law

Vehicle and Traffic Law ("VTL") §1172(a) provides in pertinent part:

> ...every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection...and the right to proceed shall be subject to the provisions of section 1142.

VTL §1142(a) provides in pertinent part:

> ...every driver of a vehicle approaching a stop sign shall stop as required by section 1172 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.

Plaintiff established *prima facie* that Defendant was negligent as a matter of law by proving that he failed to yield the right of way to Plaintiff's vehicle in violation of VTL §§ 1172(a) and 1142(a). The governing legal principles are concisely set forth in the New York Pattern Jury Instructions:

> The failure of a motorist to yield the right of way in violation of the statute is negligence as a matter of law and cannot be disregarded by the jury [cit.om.].
>
> A driver is entitled to anticipate that a motorist facing a stop sign will yield the right of way [cit.om.].
>
> The fact that the view of a motorist properly stopped is obscured does not exculpate the motorist; the motorist is under a common-law duty to see what is there to be seen [cit.om.].
>
> Further, the fact that the motorist may have initially stopped at the stop sign does not negate his liability if he subsequently fails to yield the right of way [cit.om.].

1A NY PJI 3d 2:80, at 509-510 (2020).

In *Miller v. County of Suffolk,* 163 AD3d 954 (2d Dept. 2018), the facts were as follows:

> [Defendant Kiesha] Miller testified at her deposition that she was driving westbound on Holzman Lane when she stopped at a stop sign governing her direction of travel a the subject intersection. She testified that she looked left and right, and that her view of the northbound lane of travel on Newtown Road was obstructed by a train trestle. The trestle was located over Newtown Road, and to the south of Holzman Lane. Miller testified that she "crept" into the intersection in order to get a clear view of the northbound lane on Newtown Road. As she did so, the driver's side of her vehicle was struck by a truck operated by the defendant Daniel Gil, and owned by the defendant Hampton Outdoor, Inc....

Id., at 955. Applying the basic legal principles set forth above, the Second Department held that defendant Miller was negligent as a matter of law for failing to yield the right-of-way even though her vision was obstructed by the railroad trestle:

> 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" (*Fuertes v. City of New York,* 146 AD3d 936, 937...[cit.om.]. The driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws that require him to yield (*see Romero v. Brathwaite,* 154 AD3d 894...[cit.om.]....
>
> In support of their motion for summary judgment, Gil and Hampton Outdoor established, prima facie, that Miller was negligent as a matter of law because she proceeded into the intersection without having a clear view of northbound traffic on Newtown Road and without yielding the right-of-way, and that her negligence was a proximate cause of the

> accident (*see* Vehicle and Traffic Law §1142[a]; *Aiello v. City of New York,* 32 AD3d 361, 362...; *Gonzalez v. Schupak,* 19 AD3d 367...; *McClelland v. Seery,* 261 AD2d 451, 452...).

Miller v. County of Suffolk, supra, 163 AD3d at 956-957. *See also, Murchison v. Incognoli,* 5 AD3d 271 (1st Dept. 2004); *Weiser v. Dalbo,* 184 AD2d 935 (3d Dept. 1992); *Pahler v. Daggett,* 170 AD2d 750, 751-752 (3d Dept. 1991); *Olsen v. Baker,* 112 AD2d 510, 511 (3d Dept.), *lv. denied* 66 NY2d 604 (1985).

Here, Plaintiff testified that Defendant entered the intersection without ever having come to a full stop at the stop sign. While Defendant testified to the contrary that he came to a full stop and looked both ways before entering the intersection, he acknowledged that he proceeded without having a clear view of eastbound traffic on Route 300 and without yielding the right-of-way to Plaintiff's vehicle. He thereby violated VTL §1142(a), and consequently was negligent as a matter of law. This negligence was unquestionably a proximate cause of the collision between Plaintiff's and Defendant's vehicles. *See, Miller v. County of Orange, supra; Enriquez v. Joseph,* 169 AD3d 1008, 1009 (2d Dept. 2019) (operator violated VTL §1142[a] when "after stopping at the stop sign, she made a left turn into the path of oncoming traffic without yielding the right-of-way"). In opposition, defendant Mazzarelli failed to demonstrate the existence of any triable issue of fact on that score.

B. Plaintiff Was Not Contributorily Negligent

Since there may be more than one proximate cause of a motor vehicle accident, Defendant's negligent failure to yield the right-of-way does not preclude as a matter of law a finding that negligence on Plaintiff's part also contributed to the accident. *See, Romano v. 202 Corp.,* 305 AD2d 576, 577 (2d Dept. 2003). *See also, Gezelter v. Pecora,* 129 AD3d 1021, 1023

(2d Dept. 2015); *Arias v. Tiao,* 123 AD3d 857, 859 (2d Dept. 2014); *Espiritu v. Shuttle Express Coach, Inc.*, 115 AD3d 787, 789 (2d Dept. 2014). Although a driver with the right of way is entitled to anticipate that the other vehicle will obey the traffic laws requiring it to yield, he may nevertheless be found to have contributed to the happening of the accident if he did not use reasonable care to avoid it. *See, Rabenstein v. Suffolk County Dept. of Public Works,* 131 AD3d 1145 (2d Dept. 2015); *Gezelter v. Pecora, supra*; *Arias v. Tiao, supra*; *Romano v. 202 Corp., supra.*

However, as the Second Department has repeatedly observed, "[a]lthough a driver with the right-of-way has a duty to use reasonable care to avoid a collision,...a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision." *See, Enriquez v. Joseph, supra,* 169 AD3d at 1009; *Yu Mei Liu v. Weihong Liu,* 163 AD3d 611, 612 (2d Dept. 2018); *Shashaty v. Gavitt,* 158 AD3d 830, 831 (2d Dept. 2018); *Giwa v. Bloom,* 154 AD3d 921, 921-922 (2d Dept. 2017); *Fuertes v. City of New York, supra*; *Smith v. Omanes,* 123 AD3d 691 (2d Dept. 2014); *Bennett v. Granata,* 118 AD3d 652, 653 (2d Dept. 2014); *Barbato v. Maloney,* 94 AD3d 1028, 1030 (2d Dept. 2012); *Socci v. Levy,* 90 AD3d 1020, 1021 (2d Dept. 2011). Here, Plaintiff testified without contradiction that he was traveling within the speed limit; and the testimony of both driver confirms that this accident happened so suddenly that Plaintiff had no meaningful opportunity to take evasive measures.

Defendant relies on *Miller v. County of Orange, supra.* Complementing the facts recited above from the perspective of the other driver, the Second Department wrote:

> Gil testified at his deposition that, prior to the accident, he was driving north on Newtown Road. Vehicles traveling north on Newtown Road were not subject to any traffic control devices at the subject intersection. Gil testified that, as he approached the intersection, the roadway had a "slight decline underneath the railroad trestle," and that the railroad trestle partially blocked his view of Holzman Lane. He testified that he did not apply his brakes before driving underneath the trestle, but he took his foot off the accelerator, thereby reducing his speed a "slight bit" to approximately 25 miles per hour, and then "coasted." Gil testified that as his vehicle was traveling underneath the trestle, he saw Miller's vehicle approximately 15 to 20 feet away from his truck, and although he applied his brakes and attempted to steer toward the left, the front of his truck struck Miller's vehicle approximately one second later.

Id., 163 AD3d at 955. Without analysis or explanation, the Second Department ruled that "[t]he evidence submitted by Gil and Hampton Outdoor revealed triable issues of fact as to whether Gil contributed to the happening of the accident." *Id.*, at 957.

On this point, however, *Miller v. County of Orange* is clearly distinguishable from the case at bar. In *Miller*, (1) the railroad trestle partially blocked defendant Gil's view of the intersecting roadway; (2) although he had the right of way, Gil evidently realized that the circumstances were such as to dictate a moderation of speed as he approached the trestle; (3) however, he did not brake but only took his foot off the accelerator and costed; (4) Gil had time to institute evasive measures; but (5) he was unable to avoid colliding with Ms. Miller's vehicle. In these circumstances, the Second Department evidently found that the evidence raised a question whether Gil had acted reasonably under the circumstances, and whether, for instance, a negligent failure to timely brake his vehicle contributed to the occurrence of the accident.

Here, in contrast, (1) the bush did not block Plaintiff's view of Defendant's vehicle on Deer Run Road; (2) the circumstances did not call for a moderation of Plaintiff's speed: Route 300 was a straight through highway, and Plaintiff was entitled to anticipate that the Defendant would obey traffic laws that required him to yield; and (3) when Defendant failed to yield, the

impact occurred almost immediately, leaving Plaintiff no time to institute evasive measures. Under the circumstances presented here, this case is governed by the rule, cited above, that a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision.

C. **Conclusion**

In view of the foregoing, Plaintiffs are entitled to partial summary judgment on liability as against Defendants.

It is therefore

ORDERED, that Plaintiffs' motion for partial summary judgment on the issue of liability is granted.

The foregoing constitutes the decision and order of the Court.

Dated: June 15, 2020 ENTER
Goshen, New York

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

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

* TRIAL for OCT. 26, 2020 *
CMB IS NOW DAMAGES ONLY