

<b>Robinson v County of Suffolk</b>
2020 NY Slip Op 35165(U)
October 5, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 609419/2018
Judge: Joseph A. Santorelli
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# ORIGINAL

SHORT FORM ORDER

INDEX No. 609419/2018

CAL. No. 201902367MV

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 6/4/20

ADJ. DATE 8/27/20

Mot. Seq. # 001 MD

-----X  
SARAH ROBINSON and CHRISTOPHER  
ROBINSON,

Plaintiffs,

- against -

COUNTY OF SUFFOLK, SUFFOLK COUNTY  
POLICE DEPARTMENT and ERIC  
DORFMAN,

Defendants.  
-----X

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Upon the following papers read on this e-filed motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by defendants County of Suffolk, Suffolk County Police Department, and Eric Dorfman, on May 4, 2020 ; Notice of Cross Motion and supporting papers      ; Answering Affidavits and supporting papers filed by plaintiffs, on August 6, 2020 ; Replying Affidavits and supporting papers Filed on August 25, 2020 ; Other sur-reply filed by plaintiffs, on August 26, 2020 ; it is

**ORDERED** that the motion by defendants County of Suffolk, Suffolk County Police Department, and Eric Dorfman for summary judgment dismissing the complaint as asserted against them is denied.

This action was commenced by plaintiff Sarah Robinson to recover damages for injuries she allegedly sustained on April 19, 2017, when her motor vehicle collided with a Suffolk County Police Department (SCPD) vehicle, operated by Suffolk County Police Officer Eric Dorfman, at the intersection of North Country Road and Mount Sinai-Coram Road, in Mount Sinai, New York. Plaintiff alleges that Officer Dorfman operated the vehicle in a reckless manner, causing the accident. Plaintiff's husband, Christopher Robinson, sues derivatively for loss of services.

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Defendants County of Suffolk, Suffolk County Police Department, and Eric Dorfman (collectively “Suffolk County”) now move for summary judgment dismissing the complaint, arguing that Officer Dorfman was acting within his official duties and responding to an emergency at the time of the accident and that, therefore, he can only be liable for injuries to plaintiff if he acted with reckless disregard in the operation of his vehicle. Suffolk County further argues that Officer Dorfman did not operate his police vehicle in a reckless manner. In support of its motion, Suffolk County submits, inter alia, transcripts of the General Municipal Law § 50-h hearing testimony of plaintiffs, along with the transcripts of the deposition testimony of plaintiffs and Officer Dorfman. Plaintiffs oppose the motion, arguing that questions of fact exist with respect to the happening of the accident and whether or not Officer Dorfman activated his sirens. Plaintiffs submit, inter alia, a surveillance video of the intersection at the time of the accident, and the affidavit of John E. Serth, Jr., an accident reconstructionist.

Initially, the Court notes that the uncertified police accident report submitted by Suffolk County is not in admissible form and will not be considered in the determination of the motion (*see* CPLR 4518 [a]; *Yassin v Blackman*, \_\_ AD3d \_\_, 2020 NY Slip Op 05090 [2d Dept 2020]; *Han Hao Huang v “John Doe”*, 169 AD3d 1014, 94 NYS3d 572 [2d Dept 2019]; *Adobea v Junel*, 114 AD3d 818, 980 NYS2d 564 [2d Dept 2014]).

Plaintiff testified at both a General Municipal Law § 50-h hearing and at a deposition, and her testimony was essentially the same. Plaintiff testified that at approximately 11:30 p.m. on April 19, 2017, she was operating her vehicle eastbound on North Country Road in Mount Sinai, New York. Plaintiff testified that the roads were wet from earlier rain, that the traffic conditions were light, and that the street was illuminated by street lights. She testified that she was driving cautiously due to the wet roads, and that she was driving at approximately 25 to 35 miles per hour. She testified that she was approaching the intersection of Mount Sinai-Coram Road, and that the traffic light that was governing her direction of travel was steady green. Plaintiff testified that as she was in the intersection, her vehicle was struck by a SCPD police vehicle that was traveling southbound on Mount Sinai-Coram Road. She testified that she did not see the SCPD vehicle, or its illuminated emergency lights, until a moment before the impact, and that she was unable to avoid the collision.

Eric Dorfman testified that on April 19, 2017, he was working as a police officer for the SCPD and that he was on patrol in Mount Sinai for the 9 p.m. to 7 a.m. tour. He testified that the roads that evening were wet from an earlier rain, and that the traffic conditions were very light. Officer Dorfman testified that prior to the accident, he received a call from dispatch regarding a car accident in which a car had struck a utility pole, and that there were unknown injuries. Officer Dorfman could not recall where this accident allegedly was located. He testified that he illuminated his emergency lights, subsequently sounded his emergency siren, and proceeded to the accident scene. He testified that he was traveling southbound on Mount Sinai-Coram Road at approximately 25 miles per hour. He further testified that as he approached the intersection with North Country Road, he slowed his vehicle to 10 to 15 miles per hour so that he could “make safe passage through the intersection.” He testified that the traffic signal governing his lane of travel was a steady red. He also testified that the configuration of the intersection, along with the rise and fall of the elevation of North Country Road, resulted in him not being able to observe a car, coming from the west, while it was “far away.” Officer Dorfman testified that as he began to proceed into the intersection, he observed plaintiff’s vehicle approaching over the

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hill crest “at a high rate of speed” approximately two to four seconds before the collision. He testified that he estimated plaintiff’s speed to be 50 miles per hour, based on his “experience in personal observation of the vehicle.” He testified that he attempted to avoid the collision by accelerating through the intersection and attempting to swerve.

Drivers of emergency vehicles have a primary obligation to respond quickly to preserve life and property and to enforce criminal laws (*Saarinen v Kerr*, 84 NY2d 494, 602 NYS2d 297 [1994]). Vehicle and Traffic Law § 1104 provides that a person operating an “authorized emergency vehicle” has the qualified privilege to disregard certain traffic laws during an emergency operation (*see* Vehicle and Traffic Law § 1104 [b] [1]-[4]; *Criscione v City of New York*, 97 NY2d 152, 736 NYS2d 656 [2001]; *Szczerbiak v Pilat*, 90 NY2d 553, 664 NYS2d 252 [1997]; *Saarinen v Kerr*, *supra*; *Carallo v Martino*, 58 AD3d 792, 873 NYS2d 102 [2d Dept 2009]; *Mouzakes v County of Suffolk*, 94 AD3d 829, 941 NYS2d 850 [2d Dept 2012]). Vehicle and Traffic Law § 1104 (b) (2) states “[t]he driver of an authorized vehicle may . . . [p]roceed past a steady red signal . . . but only after slowing down as may be necessary for safe operation.” However, the driver of an emergency vehicle is not relieved of his or her duty to drive with due regard for the safety of others and will not be protected when he or she recklessly disregards the safety of others (*see Mouzakes v County of Suffolk*, *supra*).

The manner in which a police officer operates his or her vehicle in an emergency situation “may not form the basis for civil liability to an injured third party unless the officer acted in reckless disregard for the safety of others” (*Puntarich v County of Suffolk*, 47 AD3d 785, 786, 850 NYS2d 182 [2d Dept 2008]; *see Alexander v City of New York*, 107 NYS3d 688, 2019 NY Slip Op 07042 [2d Dept 2019]; *McGough v City of Long Beach*, 174 AD3d 698, 102 NYS3d 456 [2d Dept 2019]). The “reckless disregard” standard requires proof that the driver “has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome” (*Frezzell v City of New York*, 24 NY3d 213, 217, 997 NYS2d 367 [2014]; *see McGough v City of Long Beach*, *supra*; *Notorangelo v State*, 240 AD2d 716, 659 NYS2d 312 [2d Dept 1997]; *see also Saarinen v Kerr*, *supra*). To find reckless disregard “requires a showing of more than a momentary judgment lapse” (*Saarinen v Kerr*, *supra* at 502). Further, the reckless disregard standard of care in Vehicle and Traffic Law § 1104 (e) only applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law § 1104 (b) (*see Cioffi v S.M. Foods, Inc.*, 178 AD3d 1006, 116 NYS3d 306 [2d Dept 2019]; *Thomas v City of New York*, 172 AD3d 1132, 100 NYS3d 318 [2d Dept 2019]). Any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence (*Kabir v County of Monroe*, 16 NY3d 217, 920 NYS2d 268 [2011]; *see Thomas v City of New York*, *supra*). While the reckless disregard standard of care under Vehicle and Traffic Law § 1104 “shields municipalities from simple negligence and mere errors in judgment, it also protects innocent victims and the general public by expressly not relieving emergency operators and their municipal employers of all reasonable care” (*Campbell v City of Elmira*, 84 NY2d 505, 513, 620 NYS2d 302 [1994]; *see Szczerbiak v Pilat*; *supra*).

Suffolk County has failed to eliminate all triable issues of fact. Suffolk County has submitted evidence that Officer Dorfman was operating a marked police vehicle and that he slowed his vehicle, looking before entering the subject intersection where his lane of travel was governed by a red light (*see*

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Vehicle and Traffic Law § 1104 [b] (2); Vehicle and Traffic Law § 114-b; *Criscione v City of New York, supra*; *Szczerbiak v Pilat, supra*; *Saarinen v Kerr, supra*; *McGough v City of Long Beach, supra*; *Mouzakes v County of Suffolk, supra*). However, Officer Dorfman also testified that, at the subject intersection and from his vantage point, he would not be able to see a car coming from a distance away due to the change in elevation of North Country Road as it approaches the intersection. Suffolk County also submits the testimony of plaintiff, who testified that she did not observe Officer Dorfman’s vehicle before the collision, and that the configuration of the intersection made it difficult to see oncoming traffic.

Therefore, Suffolk County has failed to eliminate questions of fact with respect to whether Officer Dorfman’s actions constituted reckless disregard for the safety of others (*see Frezzell v City of New York, supra*; *Cordero v Nunez*, 179 AD3d 635, 113 NYS3d 593 [2d Dept 2020]; *Starkman v City of Long Beach*, 106 AD3d 1076, 965 NYS2d 609 [2d Dept 2013]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]).

Accordingly, the motion by defendants County of Suffolk, Suffolk County Police Department, and Eric Dorfman for summary judgment dismissing the complaint as asserted against them is denied.

Dated:     **OCT 05 2020**    

  
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HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_ FINAL DISPOSITION      **X**   NON-FINAL DISPOSITION