SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1584

CA 10-00721

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, LINDLEY, AND SCONIERS, JJ.

AUTUMN D. ROGERS AND EUGENE ROGERS, INDIVIDUALLY AND AS HUSBAND AND WIFE, PLAINTIFFS-RESPONDENTS,

V MEMORANDUM AND ORDER

JANNA K. EDELMAN, DEFENDANT-APPELLANT.

HAGELIN KENT LLC, ROCHESTER (JOHN E. ABEEL OF COUNSEL), FOR DEFENDANT-APPELLANT.

CELLINO & BARNES, P.C., ROCHESTER (CHARLES F. BURKWIT OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, ROCHESTER (MATTHEW A. LENHARD OF COUNSEL), FOR PLAINTIFF-RESPONDENT EUGENE ROGERS, ON THE COUNTERCLAIM.

Appeal from an order of the Supreme Court, Wayne County (Dennis M. Kehoe, A.J.), entered December 30, 2009 in a personal injury action. The order, among other things, granted plaintiffs' motion for summary judgment on the issue of negligence.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained when the vehicle driven by Eugene Rogers (plaintiff), in which plaintiff Autumn D. Rogers was a passenger, collided with a vehicle driven by defendant. We conclude that Supreme Court properly granted the motion of plaintiff for summary judgment dismissing the counterclaim against him, as well as the "cross motion" of both plaintiffs for partial summary judgment on the issue of negligence. It is undisputed that the collision occurred when defendant, who was turning into a driveway, turned left in front of plaintiffs' oncoming vehicle. Plaintiffs testified at their respective depositions that their vehicle was traveling at or below the speed limit, that they saw defendant's vehicle for some distance before it turned, and that, when defendant's vehicle turned left, there was no opportunity to avoid the accident. Defendant, on the other hand, testified at her deposition that she never saw plaintiffs' vehicle prior to the collision.

It is well settled that "[a driver] who has the right of way is entitled to anticipate that other vehicles will obey the traffic laws

that require them to yield" (*Namisnak v Martin*, 244 AD2d 258, 260; *see Wallace v Kuhn*, 23 AD3d 1042, 1043; *Doxtader v Janczuk*, 294 AD2d 859, *lv denied* 99 NY2d 505). "Plaintiff[s] met [their] initial burden by establishing as a matter of law 'that the sole proximate cause of the accident was defendant's failure to yield the right of way' to plaintiff[s]" (*Guadagno v Norward*, 43 AD3d 1432, 1433; *see Kelsey v Degan*, 266 AD2d 843; *Galvin v Zacholl*, 302 AD2d 965, 967, *lv denied* 100 NY2d 512), and defendant failed to raise a triable issue of fact (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). Contrary to defendant's contention, plaintiff established as a matter of law that he "was free from fault in the occurrence of the accident" (*Hillman v Eick*, 8 AD3d 989, 991).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court