

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

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CA 12-01320

PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND VALENTINO, JJ.

CARRIE LISKIEWICZ, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

MARY E. HAMEISTER AND JAMES A. COREY,
DEFENDANTS-APPELLANTS.

THOMAS P. DURKIN, ROCHESTER, FOR DEFENDANTS-APPELLANTS.

ADAMS, HANSON, REGO, CARLIN, HUGHES, KAPLAN & FISHBEIN, WILLIAMSVILLE
(BETHANY A. RUBIN OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered December 21, 2011. The order granted the motion of plaintiff for summary judgment dismissing the counterclaim of defendants.

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

Memorandum: Plaintiff commenced this action seeking damages for personal injuries she sustained when her vehicle struck a vehicle owned by defendant James A. Corey and operated by defendant Mary E. Hameister. Plaintiff's vehicle, which was traveling at the speed limit, hit the passenger's side of the vehicle driven by Hameister when Hameister, after stopping at a stop sign, drove the vehicle through the intersection and directly into the path of plaintiff's vehicle. Plaintiff was not subject to any traffic control devices at the intersection.

We reject defendants' contention that Supreme Court erred in granting plaintiff's motion for summary judgment dismissing defendants' counterclaim for contribution. "It is well settled that a driver who has the right[-]of[-]way is entitled to anticipate that [the drivers of] other vehicles will obey the traffic laws that require them to yield" (*Lescenski v Williams*, 90 AD3d 1705, 1705, 1v denied 18 NY3d 811 [internal quotation marks omitted]). Here, plaintiff met her initial burden on the motion by establishing as a matter of law that the sole proximate cause of the accident was Hameister's failure to yield the right-of-way to plaintiff (*see id.* at 1706; *Wallace v Kuhn*, 23 AD3d 1042, 1043; *see also Limardi v McLeod*, 100 AD3d 1375, 1375). In support of the motion, plaintiff submitted evidence demonstrating that, as Hameister approached the intersection, plaintiff "was traveling at a lawful rate of speed, had the

right-of-way with respect to her vehicle and did not have an opportunity to avoid the accident" (*Lescenski*, 90 AD3d at 1706). In response, defendants failed to "raise[] a triable issue of fact whether [plaintiff] was at fault in the happening of the accident or whether [s]he could have done anything to avoid the collision" (*Wallace*, 23 AD3d at 1043 [internal quotation marks omitted]). "[Defendants'] contention that [plaintiff] could be found negligent because [s]he failed to see [Hameister's] vehicle until immediately before the collision is based on speculation and is insufficient to defeat a motion for summary judgment" (*id.* [internal quotation marks omitted]; see *Lescenski*, 90 AD3d at 1706).

Entered: March 15, 2013

Frances E. Cafarell
Clerk of the Court