

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

1014

CA 14-00184

PRESENT: CENTRA, J.P., FAHEY, WHALEN, AND DEJOSEPH, JJ.

TREVOR JOHNSON, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ALEXA L. MURPHY AND CORRINE E. MURPHY,
DEFENDANTS-RESPONDENTS.

LAW OFFICE OF WILLIAM K. MATTAR, P.C., WILLIAMSVILLE (SARA T. WALLITT OF COUNSEL), FOR PLAINTIFF-APPELLANT.

COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (DANIEL P. FLETCHER OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Thomas A. Stander, J.), entered April 15, 2013. The order granted the motion of defendants for summary judgment dismissing the complaint and denied the cross motion of plaintiff to compel certain disclosure.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries he sustained when his bicycle collided with a motor vehicle driven by Corrine E. Murphy (defendant). Supreme Court properly granted defendants' motion for summary judgment seeking dismissal of the complaint. Defendants established that plaintiff rode his bicycle from his driveway into the road without stopping, despite the fact that his view of oncoming traffic to his left was obstructed by a commercial truck parked next to his driveway. Defendants further established that defendant, who had the right-of-way, was traveling below the speed limit and did not see plaintiff until plaintiff collided with the passenger side of her vehicle, thus giving her no time to react. Defendants therefore established that plaintiff was the sole proximate cause of the accident, and plaintiff failed to raise a triable issue of fact (*see George v Cerat*, 118 AD3d 1475, 1476; *Rosa v Scheiber*, 89 AD3d 827, 828; *see generally Zuckerman v City of New York*, 49 NY2d 557, 562).

The court also properly denied plaintiff's cross motion seeking to compel defendants to provide discovery responses and for defendant "to appear at second party depositions." As a preliminary matter, we note that although the cross motion was untimely, the court properly considered it to the extent that plaintiff argued that discovery was needed to oppose the motion (*see CPLR 3212 [f]*; *see generally Guallpa*

v Leon D. DeMatteis Constr. Corp., 117 AD3d 614, 616-617; *Paredes v 1668 Realty Assoc., LLC*, 110 AD3d 700, 702; *Conklin v Triborough Bridge & Tunnel Auth.*, 49 AD3d 320, 321). In any event, the information sought by plaintiff at a further deposition of defendant, such as statements given by defendant to her insurance carrier, was privileged (see *Beaumont v Smyth*, 306 AD2d 921, 922; *Recant v Harwood*, 222 AD2d 372, 373-374; *Sofio v Hughes*, 148 AD2d 439, 440; *Matter of Weaver v Waterville Knitting Mills*, 78 AD2d 574, 574-575). Furthermore, plaintiff failed to establish that the documents and photographs he sought were "essential to justify opposition" to the motion (CPLR 3212 [f]).

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court