



State Farm Mut. Auto. Ins. Co. v County of Nassau

[*1] State Farm Mut. Auto. Ins. Co. v County of Nassau 2018 NY Slip Op 28368 Decided on November 27, 2018 District Court Of Nassau County, First District Fairgrieve, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on November 27, 2018
District Court of Nassau County, First District

State Farm Mutual Automobile Ins. Co., a/s/o MICHELE LICATA, Plaintiff,

against

County of Nassau and CARL TEUSHLER, Defendants.

COUNTY OF NASSAU, Plaintiff,

against

MICHELE LICATA, Defendant.

CV-003163-17NA

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Scott Fairgrieve, J.

Trial Decision

This consolidated trial involves an accident which occurred on October 22, 2016, between the vehicle owned and driven by Michele Licata, and the County of Nassau police vehicle driven by Police Officer Carl Teushler. The accident happened at or near the intersection of Ellison Avenue and Morningside Drive in Westbury, New York. Plaintiff, State Farm Mutual Automobile Ins. Co. (hereinafter referred to as "State Farm") paid for repair of the Licata vehicle, and thus brings a subrogation claim for property damage. The County of Nassau seeks recovery [*2]of property damage to the police vehicle.

Testimony of Michele Licata

Michele Licata (hereinafter referred to as "Licata") testified that on October 22, 2016, he was involved in an automobile accident at Morningside Drive and Ellison Avenue, located in either Westbury or Carle Place, New York. Licata was driving a Jeep, Grand Cherokee, insured by State Farm.

Prior to the accident, Licata was driving on Morningside Drive in an eastbound direction, heading towards Ellison Avenue. Morningside Drive forms a "T" intersection with Ellison Avenue. Licata stopped at a stop sign located on Morningside Drive and then made a left hand turn to proceed northbound on Ellison. He looked both ways when he stopped at the stop sign. There was traffic to his left and right due to a funeral procession. The cars located to his left and right were bumper to bumper. As he was turning left, Licata's vehicle was hit by a police car, located in the northbound lane on Ellison heading southbound. According to Licata's testimony, at the time of impact, the police car did not have its siren or lights on. Licata testified that after the impact, the police car turned the lights on. Licata estimated the speed of his vehicle at 5 miles per hour, and the speed of the police car between 20 - 25

miles per hour at the time of impact. Licata described the impact as "medium heavy." Licata's vehicle was towed.

Licata made a claim to State Farm. He rented a vehicle for two weeks. His deductible is \$1,000.00. Licata's vehicle sustained damage to the driver's side by the "front fender wheel" and the impact bent his wheel axel. The vehicle had no prior damage.

On cross examination, Licata testified that he was traveling to drop his friend off in Carle Place on Poplar Street.

Prior to the accident, Licata looked both ways. At the time of the accident he was looking straight ahead. His vision was going with the direction of the turn. Licata didn't hear any sirens prior to impact. The windows were down because he and his friend were both sweating. The radio was playing music. Licata testified that he did not observe any emergency lights. It was a sunny day, and his windshield was not fogged.

Testimony of Anthony Sposito

Anthony Sposito (hereinafter referred to as "Sposito") testified that he has been employed by State Farm for more than 23 years. Sposito is an independent adjuster, having a New York State Independent Adjuster License which allows him to write estimates on vehicles. He is also I-Car Platinum Level 3 certified, and has written over 1,700 damage estimates in his career. Sposito estimated the damage to the Licata vehicle at \$8,257.13.

Testimony of Police Officer Carl Teushler

Police Officer Carl Teushler (hereinafter referred to as "Teushler") testified that he is assigned to the Third Precinct as a patrol officer.

On October 22, 2016, Teushler was assigned to a funeral procession as an escort around [*3]10:15 - 10:30 a.m. He had escorted maybe three (3) funeral processions prior. The funeral procession began in New Hyde Park and was going to Holy Rood Cemetery in Westbury. Teushler stated that the procession was large. Teushler provided the following testimony concerning the chain of events leading up to the accident:

"Q. Prior to the accident can you explain the events that led up to the accident?A. Yes. So, on directing the funeral procession down to Ellison Avenue, the lead car was way up ahead at the intersection of Ellison and Old Country Road. I was the tail car. It was a large procession as I said. So, at that point I was trying to make my way up towards the front of the procession to make the main intersection safe to allow the entire procession to proceed through the intersection.Q. And at that time were you in a marked Nassau County Police vehicle?A. Yes.Q. Do you remember which number?A. 308.Q. Has that car - - does that car have courtesy lights and siren equipment?A. Yes."

Teushler stated that his police vehicle was equipped with emergency lights and siren, and that they were activated as he was making his way up towards the front of the funeral procession. His object was to "make the main intersection safe for the procession to proceed through." The accident occurred at the intersection of Ellison Avenue and Morningside Drive in Westbury. Teushler was traveling southbound. Traffic control was one of his normal duties.

Teushler saw plaintiff's vehicle "enter and pass the stopped southbound traffic." Teushler testified the accident happened as follows:

"Q. And can you describe how he acted at the [inaudible]?A. I moved from behind the procession into the northbound lane, southbound approaching the intersection of Morningside Drive. I had the lights on. I activated the siren as I was approaching the intersection. At that point, as I was coming towards the intersection I noticed the plaintiff's vehicle come out. And I immediately engaged the brakes and steered towards the right in an attempt to avoid the collision. The pavement was wet. We slid. And I struck the plaintiff's vehicle on the left - - the left front fender.Q. And during this accident the lights and sirens remained active?A. The lights were still active. The siren is you, you engage it as you're going."

Teushler estimated that he was traveling at about 15 miles per hour at the time of the accident. Ellison Avenue has one lane going northbound and one lane going southbound. Teushler testified that he could see down to the main intersection where the lead car was located and it was his objective to reach the front of the procession. He didn't observe any cars coming northbound.

On cross examination of Teushler, it was shown that there were approximately 60 cars in the funeral procession. There was bumper-to-bumper traffic from Old Country Road up Ellison [*4]and past Morningside Avenue, which consisted of the procession. Teushler was the last car in the procession before he moved into the northbound lane. The police vehicle

was "probably" more than 10 cars before the intersection of Ellison and Morningside. Teushler estimated that half of the funeral procession was past the intersection of Ellison and Morningside. Teushler testified that he traveled about 50 - 75 feet or so in the northbound lane before the accident. He engaged his lights when he moved into the northbound lane.

There was a three-way stop at the intersection, i.e., a stop sign for Morningside, a stop sign for traffic heading southbound on Ellison, and a stop sign for northbound traffic on Ellison. Teushler had not reached the intersection when the accident happened. Teushler could see the intersection of Morningside. Teushler did not see any vehicles waiting on Morningside Drive to come onto Ellison Avenue, while he approached the intersection. The other vehicle was traveling about 5 to 10 miles per hour while coming around the turn. It was raining on and off all morning and the ground was wet.

On further cross examination, Teushler seemed to offer two different versions of the location of the accident: (1) He testified that the accident "occurred behind the stop sign;" and (2) He stated that the accident diagram in the police report was correct in showing that the accident occurred in the intersection of Ellison and Morningside.

Teushler gave more details about the accident:

"Q. And how much of his car had turned, do you know before - - right at the time of the accident?A. He was in the process of the turn. So, I guess the nose had come out. And that's when I engaged the brake and tried to avoid him.Q. And when you engaged the brake, what happened?A. I slid.Q. You slid?"

Testimony of Richard Wahl

Richard Wahl (hereinafter referred to as "Wahl") is employed as a police automobile shop supervisor. The County of Nassau produced Wahl as its expert for the damage to the police vehicle, which was a Crown Victoria. The estimate of damage provided was:

"Q. Mr. Wahl, in regards to this estimate what was the total damage of the estimate?A. I believe it was around 2,500. I didn't memorize it. She has it. It was 2,400 and change I believe.Q. Do you remember which parts of the vehicle you had to replace?A. I'm pretty sure it was the left marker light, fender, the front bumper and all of its pieces. I believe the headlight.Q. And you said that the rest of this repair you performed this at your shop?A. The estimate was done at my shop.Q. Was the actual repair done at your shop?A. The shop that repaired it was our 3rd Precinct's garage."

The preliminary estimate introduced into evidence demonstrates that the cost of repairs for the police vehicle was \$2,224.61.

Decision

This trial raises several issues:

1. Who is liable for this accident?
2. Is the County of Nassau entitled to the protection of VTL § 1104 which requires the Plaintiff to demonstrate the Police Officer acted recklessly?
3. Does the "other emergency" standard contained in VTL § 114-b provide the reckless standard to protect Police Officer Teushler from liability while escorting a funeral procession?
4. Was Police Officer Teushler engaged in an emergency operation at the time of the accident?
5. Should the ordinary negligence standard or reckless disregard standard apply?

The following statutes apply to this case:

VTL § 114-b which states:

"§ 114-b. Emergency operationThe operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm or fire, actual or potential release of hazardous materials or other emergency. Emergency operations shall not include returning from such service."

VTL § 1104:

"§ 1104. Authorized emergency vehicles(a) The driver of an authorized emergency vehicle, when involved in an emergency operation, may exercise the privileges set forth in this section, but subject to the conditions herein stated.(b) The driver of an authorized emergency vehicle may:1. Stop, stand or park irrespective of the provisions of this title;2.

Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;3. Exceed the maximum speed limits so long as he does not endanger life or property;4. Disregard regulations governing directions of movement or turning in specified directions.(c) Except for an authorized emergency vehicle operated as a police vehicle or bicycle, [*5]the exemptions herein granted to an authorized emergency vehicle shall apply only when audible signals are sounded from any said vehicle while in motion by bell, horn, siren, electronic device or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp so that from any direction, under normal atmospheric conditions from a distance of five hundred feet from such vehicle, at least one red light will be displayed and visible."

VTL § 1144. Specially, 1144 states:

"(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle or bicycle when operated as an authorized emergency vehicle, and when audible signals are sounded from any said vehicle by siren, exhaust whistle, bell, air-horn or electronic equivalent; the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to the right-hand edge or curb of the roadway, or to either edge of a one-way roadway three or more lanes in width, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, unless otherwise directed by a police officer.(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with reasonable care for all persons using the highway."

VTL § 1602 states:

"(a) Whenever a police officer shall deem it advisable during a fire or at the time of any accident or special emergency and only for such period of time as is necessitated thereby for the public safety or convenience, temporarily to close any street or part thereof to vehicular traffic, or to vehicles of a certain description, or to divert the traffic thereof, or to divert or break a course of pedestrian traffic, such official shall have power and authority to do so. (emphasis added).(b) In the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians or property: any police officer or other person empowered to regulate traffic at the scene may, to the extent authorized by local law, ordinance, order, rule, regulation or administrative code provision adopted by local authorities with respect to highways within their corporate boundaries, direct traffic as conditions may require notwithstanding the provisions of this chapter or of local laws, ordinances, orders, rules,

regulations, administrative code or sanitary code provisions regulating traffic; and, in addition, outside of cities and villages any member of the state police may direct traffic as conditions may require notwithstanding the provisions of this chapter or of local laws, ordinances, orders, rules or regulations regulating traffic. (emphasis added)."

A police vehicle is an authorized "emergency vehicle" within the ambit of VTL §§ 101 and 1104. See *Wilmot v. City of New York*, 73 AD2d 201, 426 NYS2d 8 (1st Dept 1980). State [*6]Farm concedes in its Memorandum of Law that the police vehicle is an emergency vehicle but subject to the privileges articulated in VTL § 1104.

There is no question that the police vehicle was not engaged in one of the emergency situations explicitly articulated in VTL § 114-b so as to qualify for the reckless standard for liability. To qualify for the reckless standard, the police vehicle would have to come within the definition "or other emergency" set forth in VTL § 114-b. The VTL does not expressly define "or other emergency." There is no reported case dealing with an emergency situation and funeral procession.

In *Mattera v. Avis Rent A Car System, Inc.*, 245 AD2d 274, 665 NYS2d 94 (2nd Dept 1997), plaintiff's vehicle was struck by the unmarked police car driven by Detective Edward Snow, which was responding to the scene of a buy-and-bust operation where a suspect was being held. The Court held that this scenario did not constitute an emergency situation to apply the reckless standard:

"The Supreme Court properly concluded that Snow's conduct in making a left turn in front of Mattera's oncoming vehicle was negligent as a matter of law (see, *Vehicle and Traffic Law* § 1141; *Lester v. Jolicofur*, 120 AD2d 574, 501 NYS2d 61; *Kiernan v. Edwards*, 97 AD2d 750, 468 NYS2d 381; see also, *Nunziata v. Birchell*, 238 AD2d 555, 656 NYS2d 383). On these facts, the privilege afforded to operators of authorized emergency vehicles engaged in an emergency operation pursuant to *Vehicle and Traffic Law* § 1104 is inapplicable (cf., *Williams v. City of New York*, 240 AD2d 734, 659 NYS2d 302); this was not such an emergency operation (cf., *Mulligan v. City of New York*, 245 AD2d 277, 664 NYS2d 484)."

In *DeLuca v. Blanco*, 31 AD3d 600, 819 NYS2d 86 (2nd Dept 2006), the defendant Police Officer Bruce Blanco was parked on the shoulder of Sunrise Highway, near Exit 45, in his patrol car. The patrol car had its interior lights on but the exterior lights were off. The plaintiff Christopher DeLuca drove his pick-up truck off the highway and complained to Officer Blanco that occupants of another pick-up truck had thrown garbage out of the vehicle. Officer Blanco pulled his vehicle onto Sunrise Highway without putting his exterior lights on. This caused another vehicle to avoid hitting the patrol car but striking plaintiff

DeLuca who was standing on the shoulder. The Court held that the police officer was not engaged in an emergency operation when he entered the highway without his lights on:

"Generally, a police officer is qualifiedly exempt from certain traffic laws while driving a vehicle in an emergency operation, and his conduct may not be the basis of civil liability to an injured third party unless the officer acted in reckless disregard for the safety of others (see *Saarinen v. Kerr*, 84 NY2d 494, 501, 620 NYS2d 297, 644 NE2d 988; *Turini v. County of Suffolk*, 8 AD3d 260, 261, 778 NYS2d 66; Vehicle and Traffic Law § 1104[b] [1-4]; [e]). Based on the evidence adduced at trial, however, it cannot be said that Officer Blanco was involved in an emergency operation when he entered the highway without his lights on (see Vehicle and Traffic Law § 114[b]; *Mattera v. Avis Rent A Car Sys.*, 245 AD2d 274, 275, 665 NYS2d 94; *LaMotta v. City of New York*, 130 [*7]AD2d 627, 515 NYS2d 554; cf. *Criscione v. City of New York*, 97 NY2d 152, 157-158, 736 NYS2d 656, 762 NE2d 342). Thus, contrary to the defendants' contention, the trial court properly refused to instruct the jury on the 'reckless disregard' standard of care."

The Second Department has also refused to invoke the emergency doctrine where the police officers were en route to investigate a past burglary which was a nonemergency call. The police car was traveling at a normal speed, without having activated the siren or dome lights. See *LaMotta v. City of New York*, 130 AD2d 627, 515 NYS2d 554 (2nd Dept 1987).

Other Courts have similarly declined to invoke the emergency doctrine. For example, in *Kabir v. County of Monroe*, 16 NY3d 217 (2011), a police officer looked down for purposes of locating where he was proceeding to respond to a burglary call and rear ended a vehicle located in front of his vehicle. Police were double-parked in an unmarked police vehicle in order to observe two suspects in *Quintero v. City of New York*, 113 AD3d 414, 978 NYS2d 155 (1st Dept 2014), when they were struck from behind by the codefendants' minivan. *Rusho v. State of New York*, 76 AD3d 783, 906 NYS2d 836 (4th Dept 2010) held that a parole officer was not engaged in an emergency operation when he was performing an investigatory function, attempting to turn his vehicle around to determine if a motorist was a parole absconder.

Based upon a review of the applicable law, this court declines to apply the emergency standard to the police officer escorting the funeral procession in the instant case. No emergency existed with respect to the funeral procession which would exempt the police officer and County of Nassau from the law of ordinary negligence. Cf., *Merkling v. Ford Motor Co.*, 251 AD 89, 296 NYS 383 (4th Dept 1937).

See PJI 2:79A, Motor Vehicle Accidents - Authorized Emergency Vehicles - Vehicle and Traffic Law § 1104, which states:

"The privilege in VTL § 1104 applies only if the driver of the authorized emergency vehicle was engaged in both an 'emergency operation' and conduct falling within one of the four categories of privileged activities enumerated in the statute, *Kabir v. Monroe*, 16 NY3d 217, 920 NYS2d 268, 945 NE2d 461 (2011)."

Nonetheless, the County maintains that VTL § 1602 authorized Teushler's actions as an emergency, thereby requiring the reckless standard to be applied. However, to be applicable, VTL § 1602 requires an accident or special emergency. In the case at bar, there was neither. In *People v. Uncapher*, 207 Misc 960, 141 NYS2d 377 (County Court, Steuben Ct, 1955), the Court interpreted "special emergency":

"Attention has not been called to any decision of the courts of this state wherein the phrase 'special emergency' is defined. However, in the light of the definitions of the word 'emergency' it appears to convey the idea that it is something more pressing than the usual emergency, exigency, crisis or predicament and that it is distinguishable by some unusual quality. It is not something that may reasonably be foreseen in time to deliberate, exercise judgment or discretion and to take action before serious damage occurs. It is sudden, acute and taut. The Supreme Judicial Court of the State of Massachusetts has had occasion to define the phrase a 'special emergency involving the health or safety of the people or their property.' It said in *Safford v. City of Lowell*, 255 Mass. 220, 225, 151 NE 111, 113: 'Without attempting an exact or all-inclusive definition, it is manifest that that language does not apply to a condition which may clearly be foreseen in abundant time to take remedial action before serious damage to the health or to the safety of person or property is likely to occur.' (Emphasis supplied)."

No special emergency existed when Teushler moved his vehicle into the northbound lane on Ellison to proceed to direct traffic at Old Country Road. Thus, VTL § 1602 has no application to the facts of this case.

Since ordinary negligence standards apply, who is responsible for the accident and what percentage of fault should be applied? See *La Motta v. City of New York*, 130 AD2d 627, 515 NYS2d 554 (2nd Dept 1987).

The court finds the testimony of Teushler to be credible that he had his siren and lights on before the impact as he proceeded southbound in the northbound lane. However, as he applied his brakes he skidded into Licata's vehicle. The court attributes 60% of the accident

to Licata because he should have seen the police vehicle before turning into the intersection. The court assigns 40% to Teushler due to his skidding into the Licata vehicle when the ground was wet.

Conclusion

1. The reckless standard is inapplicable here because no emergency existed. Liability will be determined by the ordinary rules of negligence.
2. State Farm is entitled to recover 40% of \$8,257.13 or \$3,302.85.
3. The County of Nassau is entitled to 60% of \$2,224.61 or \$1,334.76.

So Ordered:

/s/ Hon. Scott Fairgrieve

DISTRICT COURT JUDGE

Dated: November 27, 2018