

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Fox v. McClellan

2022 NY Slip Op 03819 (N.Y. Ct. App. 2022) · No. 231 CA 21-00469 · Decided June 10, 2022

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order denying the defendant's motion for summary judgment in a personal injury action arising from a vehicle striking a road construction worker. The court held that the defendant failed to establish as a matter of law that he faced a sudden and unexpected emergency under the emergency doctrine. The existence of an emergency and the reasonableness of the driver's response generally presented issues of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Smith, J.; Nemoyer, J.; Curran, J.; Bannister, J.
JURISDICTION	New York
DECIDED	June 10, 2022
DOCKET	231 CA 21-00469
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying his motion for summary judgment dismissing the amended complaint in a personal-injury action.
STANDARD OF REVIEW	Summary judgment is appropriate only when the movant establishes entitlement to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party. On the emergency-doctrine issue, the existence of an emergency and the reasonableness of the driver's response generally present issues of fact.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	James W. McClellan v. James A. Fox

TOPICS

- negligence
- personal injury
- summary judgment
- civil procedure
- construction law

PRACTICE AREAS

torts

negligence

personal injury

civil procedure

construction law

QUESTIONS PRESENTED

1. Whether defendant established as a matter of law that the emergency doctrine entitled him to summary judgment dismissing the amended complaint.
2. Whether Supreme Court properly denied defendant's motion for summary judgment despite the alleged insufficiency of plaintiff's opposition papers.

HOLDINGS

1. Defendant failed to establish as a matter of law that he was confronted with a sudden and unexpected emergency to which he did not contribute; therefore, summary judgment dismissing the amended complaint was properly denied.
2. Because defendant did not establish entitlement to judgment as a matter of law, the court properly denied summary judgment regardless of the sufficiency of plaintiff's opposition papers.

KEY QUOTATIONS

“recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context” ([*1])

“The existence of an emergency and the reasonableness of a driver's response thereto generally constitute issues of fact” ([*1])

FACTUAL BACKGROUND

Plaintiff was a member of a crew working on a road construction project when he was struck by a vehicle operated by defendant. Defendant testified that, while driving northbound, he observed construction work and a dump truck blocking his lane. As defendant edged or coasted past the dump truck while it was backing into the southbound lane, his vehicle struck plaintiff, whom defendant testified he had not seen before the impact.

PROCEDURAL HISTORY

Plaintiff commenced an action for damages arising from injuries sustained when defendant's vehicle struck him during a road construction project. Supreme Court, Monroe County, denied defendant's motion for summary judgment. The Appellate Division unanimously affirmed that order without costs.

DISPOSITION

affirmed

CASES CITED

- Caristo v. Sanzone, 96 N.Y.2d 172, 174 (2001)
- Dalton v. Lucas, 96 A.D.3d 1648, 1649 (4th Dep't 2012)
- Andrews v. County of Cayuga, 96 A.D.3d 1477, 1479 (4th Dep't 2012)
- White v. Connors, 177 A.D.3d 1250, 1252 (4th Dep't 2019)
- Jablonski v. Jakaitis, 85 A.D.3d 969, 970 (2d Dep't 2011)
- Anderson v. Krauss, 204 A.D.2d 1074, 1075 (4th Dep't 1994)
- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986)

OPINION

Fox v. McClellan 2022 NY Slip Op 03819

PER CURIAM.

Fox v McClellan (2022 NY Slip Op 03819) Fox v McClellan 2022 NY Slip Op 03819 Decided on June 10, 2022 Appellate Division, Fourth Department 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 Official Reports. Decided on June 10, 2022

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND BANNISTER, JJ. 231 CA 21-00469

[*1]JAMES A. FOX, PLAINTIFF-RESPONDENT,

vJAMES W. MCCLELLAN, DEFENDANT-APPELLANT. KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (BRENT C. SEYMOUR OF COUNSEL), FOR DEFENDANT-APPELLANT. WILLIAM MATTAR, P.C., ROCHESTER (MATTHEW J. KAISER OF COUNSEL), FOR PLAINTIFF-RESPONDENT. Appeal from an order of the Supreme Court, Monroe County (Ann Marie Taddeo, J.), entered March 11, 2021. The order denied the motion of defendant for summary judgment. 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 he was struck by a vehicle operated by defendant. At the time of the accident, plaintiff was a member of a crew working on a road construction project. Defendant appeals from an order that denied his motion for summary judgment dismissing the amended complaint. We affirm. We reject defendant's contention that Supreme Court erred in denying the motion insofar as it sought summary judgment dismissing the amended complaint based on the application of the emergency doctrine. The emergency doctrine " 'recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context' . . . , provided the actor has not created the emergency" (Caristo v Sanzone, 96 NY2d 172, 174 [2001]). "The existence of an emergency and the reasonableness of a driver's response thereto generally

constitute issues of fact" (Dalton v Lucas, 96 AD3d 1648, 1649 [4th Dept 2012]; see Andrews v County of Cayuga, 96 AD3d 1477, 1479 [4th Dept 2012]). In support of his motion, defendant submitted, inter alia, his own deposition testimony, wherein he testified that, while he was driving northbound on the roadway in question, he observed construction work and a dump truck blocking his lane of travel. Defendant then "edged or coasted" up to the dump truck as it was backing into the southbound lane. As he passed the dump truck in the northbound lane, defendant's vehicle struck plaintiff. Defendant conceded that he never observed plaintiff before his vehicle struck plaintiff. We conclude that defendant's submissions failed to establish as a matter of law that he was confronted with a sudden and unexpected emergency situation to which he did not contribute (see White v Connors, 177 AD3d 1250, 1252 [4th Dept 2019]; Jablonski v Jakaitis, 85 AD3d 969, 970 [2d Dept 2011]; see also Anderson v Krauss, 204 AD2d 1074, 1075 [4th Dept 1994]). Thus, the court properly denied that part of defendant's motion for summary judgment dismissing the amended complaint pursuant to the emergency doctrine, regardless of the sufficiency of plaintiff's opposition papers (see generally Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). We have considered defendant's remaining contentions and conclude that they do not warrant modification or reversal of the order. Entered: June 10, 2022 Ann Dillon Flynn Clerk of the Court