

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND DEPARTMENT**

**Greaves v. Zerillo**

2026 NY Slip Op 00351 · No. 2024-07899 · Decided January 28, 2026

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**SUMMARY**

The Appellate Division, Second Department, affirmed an order denying the plaintiff's motion for summary judgment dismissing the defendant's comparative-negligence affirmative defense in a motor-vehicle personal-injury action. The court held that the plaintiff's affidavit did not establish prima facie that he was free from comparative fault because a driver with the right-of-way must still exercise reasonable care to avoid a collision.

**OPINION**

PER CURIAM.

Greaves v Zerillo ( 2026 NY Slip Op 00351 ) Greaves v Zerillo 2026 NY Slip Op 00351 Decided on January 28, 2026 Appellate Division, Second 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 January 28, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

PAUL WOOTEN BARRY E. WARHIT DONNA-MARIE E. GOLIA, JJ. 2024-07899 (Index No. 55583/24) [\*1]Regan Greaves, appellant, v Jeffery Zerillo, respondent. Sullivan Law Firm, New York, NY (James A. Domini of counsel), for appellant. Collins, Fitzpatrick & Schoene, LLP, White Plains, NY (Todd J. Manister of counsel), for respondent. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Charles D. Wood, J.), dated July 18, 2024.

The order, insofar as appealed from, denied that branch of the plaintiff's motion which was for summary judgment dismissing the defendant's affirmative defense alleging comparative negligence. ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained when his vehicle collided with the defendant's vehicle at an intersection in Westchester County. The plaintiff alleged that at the time of the accident, the defendant was traveling on a road controlled by a stop sign at the subject intersection, while the plaintiff was traveling on an intersecting road that was not controlled by any traffic control device.

The plaintiff moved, inter alia, for summary judgment dismissing the defendant's affirmative defense alleging comparative negligence. In an order dated July 18, 2024, the Supreme Court, among other things, denied that branch of the plaintiff's motion.

The plaintiff appeals. When a plaintiff moves for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence, the plaintiff must establish, prima facie, that he or she was not at fault in causing the accident ( see *Seizeme v Levy*, 208 AD3d 809, 810; *Sapienza v Harrison*, 191 AD3d 1028, 1029 ). "Even though the driver with the right-of-way is entitled to assume that other drivers will obey the traffic laws requiring them to yield, he or she still has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection" ( *Park v Giunta*, 217 AD3d 661, 662; see *Tornabene v Seickel*, 186 AD3d 645, 646 ).

Here, the plaintiff's affidavit failed to provide sufficient details to demonstrate, prima facie, that the plaintiff was not comparatively at fault in causing the accident ( see *Fischetti v Simonovsky*, 227 AD3d 670, 672; *Karim v Proline Rental, LLC*, 222 AD3d 851, 853).

Accordingly, the Supreme Court properly denied that branch of the plaintiff's motion which was for summary judgment dismissing the defendant's affirmative defense alleging comparative negligence without regard to the sufficiency of the defendant's opposition papers regarding this issue ( see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 ). DILLON, J.P., WOOTEN, WARHIT and GOLIA, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court