

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 10  
NASSAU COUNTY

DONNA CIRANNI, as Administratrix of the  
Estate of MICHAEL C. RODRIGUEZ,

Plaintiff,

MOTION DATE:  
June 22, 2001  
INDEX No. 4161/00

-against-

SEQUENCE No. 1

JESSICA FERRANDINO & MICHAEL FERRANDINO,

Defendants.

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The following papers read on this motion:

- Notice of Motion and Supporting Papers
- Affirmation in Opposition
- Reply Affirmation

Defendants move for summary judgment.

Defendant Jessica Ferrandino (Ferrandino) was operating a motor vehicle owned by her father, co-defendant Michael Ferrandino on April 3, 1998. Michael C. Rodriguez (Rodriguez) was riding his bicycle when he swerved into the road to avoid hitting a parked car. He was struck and killed by the Ferrandino vehicle.

Defendants have submitted a sworn affidavit of Theresa Cutrone (Cutrone) defendants' Exhibit C). Cutrone stated she was a passenger in the Ferrandino vehicle when Rodriguez was struck. The Ferrandino vehicle was going east on Hunt Road Town of Hempstead, Nassau County. Cutrone saw three bicyclist on the south side sidewalk of Hunt Road traveling west bound. She stated Rodriguez swerved into the street around a parked jeep. Cutrone states she did not see Rodriguez after seeing him on the sidewalk until he came in contact with the Ferrandino. Her vision was blocked due to a parked vehicle. Ferrandino supplied an affidavit (see, defendants' Exhibit D) and plaintiff supplied Ferrandino's deposition (annexed to plaintiff's opposition) which tell the same facts. Defendants have also supplied the sworn affidavits of George Schmitt (Schmitt) and John Civitano (Civitano). Both Schmitt and Civitano were riding their bikes with Rodriguez when they saw him attempt to jump a curb (off a driving curb cut). To avoid hitting a parked car, Rodriguez swerved hard out into the street, and he was hit by the Ferrandino vehicle. Civitano noted the gray car (the Ferrandino vehicle) was not going fast at the time of the accident.

Contrary to plaintiff's contentions no issue of fact as to whether Ferrandino was negligent was raised at all. Plaintiff's attorney has attached Ferrandino's deposition to the plaintiff's affirmation in opposition. Counsel notes Ferrandino had been

licensed for "only eight months" (p. 6), Ferrandino's claim that she took 3-4 minutes to travel one and a half blocks "is suspect". The three bicyclists were riding their bikes on the sidewalk (p. 32). When Ferrandino states she saw the decedent, she reduced her speed and counsel wonders if Ferrandino sensed a "potential danger".

After some other similar insights, counsel questions whether Ferrandino took all reasonable steps to anticipate and avoid the accident.

It is clear the accident occurred within a matter of seconds and there was simply not sufficient time for Ferrandino to take evasive action (see, Wilke v Price, 221 AD2d 846). No evidence has been submitted that would indicate any negligence on the part of Ferrandino; mere speculation that Ferrandino may have failed to act properly is insufficient to defeat a summary judgment motion (Schneider v American Diabetes Assn., 253 AD2d 807).

Recently, the Appellate Division Second Department, affirmed a jury verdict for defendant motorist where motorist was traveling at 20 miles per hour and did not see the bicyclist before impact, and the bicyclist testified that he did not come to a complete stop when he reached the roadway after riding down a driveway in violation of VTL §1234(c), and photographs of the roadway depicted tall hedges lining the driveway which would have obstructed the motorist's view (Abbate v Liss, \_\_\_AD2d \_\_\_, 727 NYS2d 134).

Defendants here have presented a prima facie case for summary judgment on their behalf.

The Appellate Division, Second Department, in affirming a motion granting summary judgment, has held a driver of an automobile was not negligent in colliding with a child bicyclist where the child rode the bicycle out of the driveway and into the street without stopping or looking, the cyclist came into the driver's view when he was no more than 20 feet away, and the driver immediately applied the brakes but the driver could not avoid the collision which occurred in a matter of seconds (McKeaveney v Reiffert, 268 AD2d 411).

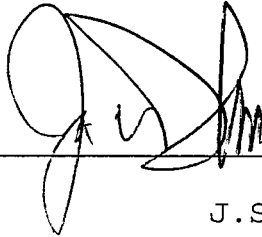
The movants have shown that they did nothing to cause the accident. The plaintiff's opposing assertions rest upon, at best, a series of conclusory allegations which fail to generate a triable issue of fact (Zuckerman v City of New York, 49 NY2d 557; Slanetz v North Shore University Hospital, 228 AD2d 490). Notably a shadowy resemblance of an issue or bold conclusory allegations, even if believable, are insufficient to defeat a motion for summary judgment (Polanco v City of New York, 244 AD2d 322).

Here the facts clearly point to the negligence of one party without any fault or culpable conduct by the other parties (defendants herein); summary judgment is appropriate (Churyk v Haner, 276 AD2d 736).

The uncontroverted evidence adduced supports the conclusion that there was no evidence to support a finding that Ferrandino failed to use reasonable care in the operation of her vehicle or that she could have avoided the accident (Miesing v Whinnery, 233 AD2d 551).

Accordingly, the defendants' motion for summary judgment is granted.

This constitutes the Order and Judgment of the Court.



J.S.C.

Dated: August 21, 2001

**ENTERED**  
AUG 24 2001  
NASSAU COUNTY  
COUNTY CLERKS OFFICE