

SCAN

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 39
NASSAU COUNTY

HALEY LIBBY, an infant by her mother and natural guardian, COLLEEN LIBBY, and COLLEEN LIBBY, Individually.

Plaintiff.

- against -

Sequence No.: 002
Index No.: 025633/98

ROCCO MASTRANTONI and ROCCO MASTRANTONI.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Motion by plaintiffs for summary judgment on the issue of liability is denied.

This personal injury action arises out of a motor vehicle accident, which occurred on September 6, 1997 on Covert Avenue in Floral Park, New York. Counsel for the plaintiffs states that: "At that time, the plaintiff, [Haley Libby], was the front seat passenger of the 1996 Chevrolet motor vehicle owned by defendant, [Rocco Mastrantoni], and operated by the defendant, [Rocco Mastrantoni, Jr.]" The infant plaintiff testified at her deposition that she didn't witness the accident and that she lost consciousness. (Transcript, p. 21). She further testified that when she woke up, the car "was smashed into a front stoop of a house on someone's front lawn." (Transcript, pp. 23-24).

The plaintiffs move for summary judgment essentially on the basis of the infant plaintiff's testimony. Counsel for the plaintiffs' states that Haley Libby testified that: "Prior to the accident, while defendant, [Rocco Mastrantoni, Jr.], was at a party, the defendant consumed alcoholic beverages and smoked marijuana." (Transcript, pp. 15, 17, 18). Counsel also points to the infant plaintiff's testimony that the last thing she remembered before losing consciousness

was “[s]tarting to go really fast.” (Transcript, p. 21). In her affidavit, the infant plaintiff states that: “The last thing I recall is the defendant driving fast and the passengers telling him to slow down.”

It is the rule that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324). The Court holds that the plaintiffs have not made a prima facie showing. First of all, there is no testimony that defendant Rocco Mastrantoni, Jr.’s ability to drive a motor vehicle was impaired by reason of his consumption of alcoholic beverages and smoking marijuana prior to the accident. “It is well established . . . that the effects of alcohol consumption, as well as alcohol tolerance, may differ in significant respects from one individual to another.” (*Sorensen v. Denny Nash Inc.*, 249 AD2d 745, 747-748; cf. *Lanza v. Wells*, 99 AD2d 506). There is no reason to apply a different rule to smoking marijuana.

Second, the infant plaintiff’s deposition testimony and affidavit do not establish a causal chain between the defendant’s consumption of alcoholic beverages and smoking marijuana and the accident (i.e., testimony as to visible signs of intoxication and impairment of faculties on defendant’s part). The same is true for the infant plaintiff’s testimony and statement that the defendant was driving fast. Moreover, since the infant plaintiff did not witness the accident, there is no admissible proof as to what caused the accident. The police accident report (plaintiffs’ exhibit D) indicates that the defendant’s car was going at a high rate of speed and the operator lost control. Even if this report were admissible (see 8B NY Jur2d, Automobiles, §1115), it, likewise, fails to establish a causal chain between the defendant’s consumption of alcohol and smoking marijuana and the accident. While the reported 105 feet of tire skid marks do show that the vehicle was traveling at a high rate of speed, there is no proof that the rate of speed or anything else caused the defendant to lose control of the car.

So Ordered.


A.J.S.C.

Dated: March 5, 2001

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE