State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 2, 2026 CV-25-0103

MADISON KING,
Appellant,
v MEMORANDUM AND ORDER

LARRY J. JOHNSON et al.,
Respondents.

Calendar Date: May 26, 2026

Before: Reynolds Fitzgerald, J.P., Ceresia, McShan, Mackey and Ryba, JJ.

Dalmata, Maloy & Burke, LLP, Schenectady (*Cory Ross Dalmata* of counsel), for appellant.

Law Offices of Rothenberg & Romanek, Uniondale (*Brian D. Richardson* of counsel), for respondents.

Ceresia, J.

Appeal from an order of the Supreme Court (Martin Auffredou, J.), entered December 17, 2024 in Fulton County, which granted defendants' motion for summary judgment dismissing the complaint.

On an afternoon in December 2021, plaintiff attempted to make a left turn out of a private driveway onto State Highway 29 (hereinafter Route 29) in the Town of Johnstown, Fulton County. Upon stopping at a stop sign at the end of the driveway, plaintiff looked to her left, where she could see for approximately 200-300 feet before the road curved away and out of her line of sight. Intending to cross over the eastbound travel lane and the center turning lane into the westbound travel lane, plaintiff saw what she

believed to be an opening in the oncoming traffic. She then entered the roadway, whereupon her vehicle was struck on the driver's side by a vehicle owned by defendant Heidi Robbins and operated by defendant Larry J. Johnson. Thereafter, plaintiff commenced this negligence action to recover damages for personal injuries sustained. Following joinder of issue, defendants moved for summary judgment on the issue of liability, and plaintiff opposed. Supreme Court granted defendants' motion and dismissed the complaint, prompting this appeal by plaintiff.

As relevant here, "[t]he driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed" (Vehicle and Traffic Law § 1143; *see Devanny v Cook*, 247 AD3d 1300, 1301 [3d Dept 2026]; *Gandolfo v DeMasi*, 28 AD3d 606, 607 [2d Dept 2006]). It is well established that "the driver of a vehicle with the right-of-way is entitled to anticipate that other vehicles will obey the traffic laws that require them to yield" (*Taylor v Appleberry*, 214 AD3d 1142, 1143 [3d Dept 2023] [internal quotation marks and citations omitted]; *see Carpentieri v Kloc*, 213 AD3d 1314, 1315 [4th Dept 2023]). "[A]lthough a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively at fault for failing to avoid the collision" (*Debra F. v New Hope View Farm*, 155 AD3d 1491, 1492 [3d Dept 2017] [internal quotation marks and citation omitted]; *see Notaroberta v Golub*, 226 AD3d 1039, 1040 [2d Dept 2024]).

Defendants contended that they were entitled to summary judgment based upon the emergency doctrine, which required them to "establish as a matter of law that [Johnson] did not contribute to the creation of the emergency situation, and that his . . . reaction was reasonable under the circumstances such that he . . . could not have done anything to avoid the collision" (*Ohl v Smith*, 215 AD3d 1019, 1021 [3d Dept 2023] [internal quotation marks and citations omitted]). In support of their motion, defendants submitted, among other things, Johnson's deposition testimony, in which he indicated that he was driving on Route 29 at 45 miles per hour (hereinafter mph), below the 55 mph speed limit, when he came around a bend in the road. He looked down to check his speed and when he looked up again, he saw plaintiff's vehicle in the middle of the lane in front of him. According to Johnson, he did not have time to honk his horn and, although he applied his brakes, he was unable to avoid striking plaintiff. With this testimony, defendants met their initial burden of establishing as a matter of law that Johnson was operating his vehicle in a prudent manner and that plaintiff failed to yield the right-of-way by crossing the roadway directly into Johnson's path (*see Hand v Ridge Volunteer*

Fire Dept., Inc., 216 AD3d 923, 924 [2d Dept 2023]; *Ohl v Smith*, 215 AD3d at 1022). Thus, the burden shifted to plaintiff to establish a material issue of fact (*see Ohl v Smith*, 215 AD3d at 1022; *O'Brien v Couch*, 124 AD3d 975, 976 [3d Dept 2015]).

Plaintiff failed to meet this shifted burden. First, plaintiff contended that Johnson had ample time to avoid her, due to his deposition testimony that it was "about a minute" between when he saw her vehicle and when he struck it. Although we are mindful that the court's role on a summary judgment motion is issue identification rather than issue resolution, a genuine factual issue will not be found where evidence is misinterpreted or taken out of context (*see Taylor v Appleberry*, 214 AD3d at 1146). Johnson's complete statement was that the interval lasted "[p]robably about a minute, if that, not even that. Like I said, I looked up and there she was, boom." When asked if he blew his horn before the impact, he replied, "[n]o, I had no time to react." Viewing Johnson's testimony in full and putting it in its proper context, it is clear that he was not referring to a literal minute but, instead, a period of time much briefer than that, such that plaintiff has failed to raise a triable issue of fact in this regard.[1]

Plaintiff also argued that there was a question of fact regarding whether Johnson was negligent because he looked down at his speedometer before the collision. However, the evidence simply revealed that Johnson briefly checked his speed, something that can reasonably be expected of a safe driver, and such conduct, without any additional evidence tending to demonstrate negligent behavior, did not raise a material issue as to whether Johnson contributed to the emergency at hand (*see Guerin v Robbins*, 182 AD3d 951, 952 [3d Dept 2020] [finding no fact question raised as to the defendant driver's negligence where driver turned his head to the right to check for an opening in the adjacent lane before turning back and finding stopped vehicle in front of him]).

Next, plaintiff claimed that summary judgment was improper because there was a factual question as to the specific location where the accident occurred. That is, while Johnson testified that he struck plaintiff's vehicle while she was in his lane of travel, it was plaintiff's testimony that she had already passed through that lane and was in the center turning lane at the time of the impact. This argument fails, as plaintiff was required

[1] As a practical matter, it would have been impossible for Johnson to travel a full minute at his stated speed of 45 mph between seeing plaintiff's vehicle and striking it. This would have resulted in Johnson driving roughly three quarters of a mile, but it was undisputed that there was only 200-300 feet of visibility as Johnson came around the bend in the road.

to yield to "*all* vehicles approaching on the roadway to be entered or crossed" (Vehicle and Traffic Law § 1143 [emphasis added]), regardless of whether those oncoming vehicles were occupying a traveling lane or the center turning lane (*see Darnley v Randazzo*, 159 AD3d 1578, 1578 [4th Dept 2018]; *Rose v Leberth*, 128 AD3d 1492, 1493 [4th Dept 2015]).

Finally, plaintiff alleged that there was a factual issue as to whether Johnson was speeding. In that regard, plaintiff contended that Johnson must have exceeded the 55 mph speed limit because he testified that his route that day, which was approximately 10 miles long, would have taken him only six or seven minutes. It is speculative to suggest that Johnson must have been speeding at the precise time of the accident based merely upon his rough estimate as to how long he expected the trip to take, and his testimony that he was not speeding at the relevant time is otherwise undisputed in the record (*see Peterson v Garnsey*, 227 AD3d 1249, 1251 [3d Dept 2024]). Accordingly, in view of all of the foregoing, Supreme Court properly awarded defendants summary judgment dismissing the complaint (*see Ohl v Smith*, 215 AD3d at 1023; *Debra F. v New Hope View Farm*, 155 AD3d at 1492).

Reynolds Fitzgerald, J.P., McShan, Mackey and Ryba, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

Robert D. Mayberger
Clerk of the Court