



In a closely divided Court of Appeals decision, New York's high court clarified the standard for tort plaintiffs seeking summary judgment

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Resolving an unsettled issue that has “perplexed courts for some time,” the Court of Appeals recently held that to obtain summary judgment in a comparative negligence case, a plaintiff need not bear the “double burden” of disproving his own negligence. In a 4–3 decision issued on April 3, 2018, over a strongly worded dissent, the majority found that the plaintiff in a personal injury action could obtain summary judgment, “even assuming there is an issue of fact regarding his comparative fault.”

In *Rodriguez v. City of New York*, 2018 WL 1595658 (N.Y. Apr. 3, 2018), the plaintiff was at work when he was injured by a City of New York vehicle. At the trial court level, both parties' motions for summary judgment on the issue of liability were denied, and the plaintiff appealed to the Appellate Division. After the Appellate Division upheld the trial court's decision, the plaintiff was granted leave to appeal to the Court of Appeals.

The specific issue the Court of Appeals focused on was whether a plaintiff must demonstrate the absence of his or her own comparative negligence to be entitled to partial summary judgment as to a defendant's liability. To answer this question, the court looked to the legislative intent of the comparative fault statutes in New York, which were enacted in 1975 in response to growing dissatisfaction with the traditional rule in New York.

Prior to 1975, New York followed the common-law doctrine of “contributory negligence,” which acted as a complete bar to plaintiffs recovering in a tort action if found to be even minimally negligent. As the court noted, these statutes specifically provide that “contributory negligence . . . shall not bar recovery” for a plaintiff in New York, and that such negligence should be “pleaded and proved by the party asserting the defense.” Accordingly, the court found that “comparative negligence is *not* a defense to the cause of action of negligence, because it is not a defense to any element (duty, breach, causation) of plaintiff's prima facie cause of action for negligence, and as [the statute] plainly states, is not a bar to plaintiff's recovery, but rather a diminishment of the amount of damages.”

The court also examined the legislative history of and purpose behind these statutes, which provided that the statutes were specifically enacted in response to the traditional contributory

negligence regime that had “become an obstacle to the dispensing of substantial justice” in New York. The legislative history of these statutes further provided that the purpose of the law was to bring “New York law into conformity with the majority rule and represents the culmination of the gradual but persistent erosion of the rule that freedom from contributory negligence must be pleaded and proven by the plaintiff.” The court found that this history made clear that “a plaintiff’s comparative negligence is no longer a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the mitigation of plaintiff’s damages and should be pleaded and proven by the defendant.”

Three of the justices on the court disagreed. In their dissent, the justices reasoned that they would have relied on a previous opinion by New York’s high court, *Thoma v. Ronai*, 82 NY2d 736 (1993). In *Thoma*, the court affirmed the denial of summary judgment to a plaintiff, finding that although plaintiff’s comparative negligence may have been found by a jury to be minimal, or even zero, the record did not support a finding of a total absence of plaintiff’s negligence as a matter of law. The dissent reasoned that this would also be the “fairer outcome,” as a jury cannot properly assess plaintiff’s comparative fault without considering defendant’s actions. Furthermore, the dissent found this to be the more “practical approach,” since the defendant would still be entitled to present an all-out case on the plaintiff’s negligence, thus eliminating any efficiencies that would be gained in granting summary judgment on the issue of defendant’s liability. The majority, in contrast, found the *Thoma* decision to not be controlling here, simply holding that it did not address the precise question before the court.

The immediate impact of this decision is that tort plaintiffs will now be able to obtain summary judgment despite the fact that they may have been negligent themselves. The extent of this impact, however, is yet to be known. Certainly, this decision is expected to lead to more plaintiff’s attorneys filing for summary judgment, even in cases where evidence about the plaintiff’s conduct will be presented to the jury regardless. This may also lead to more potential settlements.

But how juries will treat a summary judgment decision on the issue of defendant’s liability while simultaneously assessing a plaintiff’s comparative negligence is yet to be seen. Plaintiff’s attorneys might argue that this is the more equitable result, as it allows them to resolve the issue of defendant’s liability prior to trial, removing uncertainty about how a jury will treat an issue that could have been decided as a matter of law. Defense attorneys, however, would find such a result unequitable, as it will permit juries to assess one party’s comparative fault against a predetermined assumption that the other party was already negligent. The Defense Association of New York filed an amicus brief in the case, stating their position that such a result is “fundamentally unfair,” as it forces a defendant to “enter a batter’s box with two strikes already called.”

Despite these projections by defense and plaintiff’s attorneys, the ultimate impact of this decision will not be known until lower courts have a chance to apply this new precedent. Another issue that is currently unclear is whether New York’s statutory 9% interest will accrue based on an incomplete award of summary judgment regarding defendant’s negligence. We will be monitoring lower court decisions in the coming months for developments on these issues.

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