

NEW YORK COURT OF APPEALS ROUNDUP

A REVIEW OF ‘*RODRIGUEZ V. CITY OF NEW YORK*’

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In a fascinating 4-3 split decision in *Rodriguez v. City of New York*, the Court of Appeals has tackled what one judge has called “a vexing issue regarding comparative fault”—namely, whether a tort plaintiff must establish that there are no material disputed facts about whether he or she was comparatively negligent in order to prevail on a motion for partial summary judgment as to a defendant’s liability. The majority, in an opinion authored by Judge Paul G. Feinman, held that the plaintiff does *not* have an obligation to establish the absence of his or her own comparative negligence to obtain partial summary judgment. The dissent, led by Judge Michael Garcia, takes the opposite view, stating that the established, more fair rule is to allow the jury to consider both the plaintiff’s and defendant’s conduct at the same time at trial. The majority’s decision displaces the court’s prior ruling in *Thoma v. Ronai*, which lower courts had interpreted as holding that summary judgment on liability is inappropriate where questions of fact exist as to a plaintiff’s own negligence.

The case arises out of an accident in a New York City sanitation facility that left plaintiff permanently disabled. Plaintiff and his sanitation co-workers were working to put chains and plows on vehicles so they could remove snow from the roads. A truck was backing into a garage bay to be outfitted when the driver hit the brakes quickly and the truck skidded backwards into the rear of a parked car in the facility. At that time, plaintiff was walking in front of the parked car. When the truck hit the parked car, the parked car was pushed into plaintiff and pinned him against a rack of tires. He suffered back injuries, had a spinal fusion surgery, underwent a series of lumbar steroid injections, and engaged in extensive physical therapy. Plaintiff sued the City of New York and argued that the City co-workers failed to maintain control of the truck; that the truck was moving too quickly; and that the worker guiding the truck into the bay was on the wrong side of the truck and gave poor directions. The City maintained that plaintiff was at fault because he walked behind a sanitation truck moving in reverse in icy conditions.

The parties cross-moved for summary judgment, and the trial court denied both motions. On plaintiff’s motion, the trial court held that there were material issues of fact as to causation and foreseeability, but even assuming that the City was negligent, plaintiff would not be entitled to summary judgment “since the question of his comparative fault must be resolved at trial.” The First Department affirmed in a split decision. The majority observed that this procedural issue had generated conflicting decisions across the Departments and within different panels of the First Department. The majority concluded that the correct approach is to require a plaintiff to make a prima facie showing that he was free from comparative fault in order to obtain summary judgment on the issue of liability. The dissent (Judge Rolando Acosta) vehemently disagreed, finding that comparative negligence is a defense that goes strictly to damages and cannot thwart the entry of judgment as

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to a defendant's undisputed liability. Interestingly, the majority and minority have a significant factual disagreement: Judge Acosta stated that the City failed to raise issues of fact regarding its own negligence, while the majority stated that a jury could find the plaintiff 100 percent at fault in causing his injuries and therefore find *no* liability for the City.

At the Court of Appeals, the majority, consisting of Judges Feinman, Jenny Rivera, Eugene Fahey and Rowan Wilson, determined that the appeal should focus solely on "whether a plaintiff seeking summary judgment on the issue of liability must establish, as a matter of law, that he or she is free from comparative fault." The majority refers to CPLR 1411 which provides that contributory negligence "shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages." When adopting the modern comparative negligence principles in 1975, New York directed courts to consider comparative fault "only when considering the amount of damages a defendant owes to plaintiff." Based on these principles, the majority concludes that a plaintiff should not have to prove his or her absence of fault in order to obtain summary judgment as to a defendant's liability. If summary judgment is granted as to a defendant's liability, the plaintiff's relative fault would then be litigated during the damages phase.

The majority lays out the nettled case law history on this question, claiming that the court's prior decision in *Thoma* did not actually address the issue head on because the plaintiff in that case "assumed" that she could not obtain summary judgment if there was a question of fact as to her negligence (for allegedly failing to look both ways before entering a crosswalk, where she was struck by a car). This interpretation leads the majority to say that they are not overruling *Thoma* and that the lower courts that construed *Thoma* as establishing the rule that "plaintiff-must-show-an-absence-of-fault" engaged in a "mistaken" reading of that case. After the *Thoma* decision, the lower courts followed a mixed path. The Second Department held that the plaintiff must be free from fault to obtain summary judgment in *Roman v. Allimousine*. The First Department originally took a different path in *Tselebis*, holding that CPLR 1411 prevented courts from imposing a burden on plaintiffs to show freedom from comparative negligence. Subsequent panels in the First Department began to disagree, however, reaching disparate outcomes. Meanwhile, the Fourth Department ruled in *Simoneit v. Mark Cerrone* that a plaintiff could obtain summary judgment on liability despite open questions about his or her comparative fault.

The majority concludes that an award of summary judgment to a potentially at-fault plaintiff has the salutary effect of reducing issues at trial regarding the defendant's negligence and avoiding the possibility of a jury reaching a legally erroneous conclusion that a defendant is not at fault just because a plaintiff is also responsible for the incident. While the majority recognizes that the jury will still need to assess relative fault, it believes that trial courts will be able to provide instructions on the already-established liability of a defendant and the relative weighing of culpable conduct.

The dissent, comprised of Judges Michael Garcia and Leslie Stein and Chief Judge Janet DiFiore, provides a spirited rejoinder, disagreeing across-the-board with the majority, starting with the foundational question of whether *Thoma* previously declared that "plaintiff-must-show-an-absence-of-fault" in order to obtain summary judgment. For the dissenting judges, *Thoma* firmly established this rule; subsequent rulings of the court followed it; and the majority's opinion is a transformational overruling of this line of cases without admitting to the historic about-face. The dissent states that "denying summary judgment where there are triable issues concerning comparative fault, is not only the established rule, it is the fairer outcome." The dissent reasons that a jury's assessment of relative fault should be made as a whole, with evidence about both parties' conduct fully presented, rather than having the court direct the jury that a defendant has already been found at fault and his negligence a proximate cause, thus "entering the batter's box with two strikes already

called.” The dissent contends that its approach is consistent with CPLR 1411 because Article 14-A holds only that a plaintiff is not barred from recovering due to contributory fault, not that a plaintiff is entitled to summary judgment as to a defendant’s conduct and a preferential position at trial. The dissent ultimately rejects the notion that the “*Thoma* rule” would impose a “double burden” on plaintiffs and maintains that plaintiffs who plead freedom from any comparative negligence should be required to show that there are no trial-worthy questions on the issue.

The pointed opinions in *Rodriguez* reflect a lively debate over the role of stare decisis in the court’s decision-making, the rules of statutory construction, and the pragmatic impacts of the court’s rulings on everyday trial practice. The majority leans heavily on the wording of CPLR 1411 to conclude that comparative negligence issues cannot enter into a *liability* determination, while the dissent places greater weight on not disturbing the 25-year-old *Thoma* decision and the perceived inequities of having defendants enter into tort trials involving comparative fault with a liability determination already entered against them. For the lower appellate courts, the decision provides needed guidance given that the different departments had splintered in their approaches. Trial courts should likely expect to see an increase in summary judgment filings by plaintiffs who will no longer feel constrained by fact issues regarding their own potential contribution to the conduct at issue.

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