

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

HON. J. EMMETT MURPHY  
SUPREME COURT JUSTICE

**FILED and  
ENTERED**  
On 7-21-2006  
WESTCHESTER  
COUNTY CLERK

-----X  
AMELIA FABBRI,

Plaintiff,

- against -

PAUL HUNTLEY and DAVID LOCK,

Defendants.  
-----X

**SHORT FORM ORDER**

Index No. 02593-05  
Motion Date: 5/31/06

The following papers numbered 1 to 5 have been read on this motion by defendant Huntley for summary judgment, dismissing the complaint as against him:

<u>Papers</u>	<u>Numbers</u>
Notice of Motion; Affirmation of Francesca E. Connolly & Exhibits A-G; Memorandum of Law in Support of Motion	1-3
Affirmation in Opposition of Michael G. Hayes	4
Reply Affirmation of Connolly	5

Upon the foregoing papers, it is hereby ORDERED, that the defendant Huntley's motion for summary judgment is denied.

Plaintiff Fabbri seeks to recover damages for personal injury, when the cars driven by plaintiff Fabbri and defendant Huntley collided. Plaintiff, while driving in the northbound lane of Route

9A, made a left hand turn from Route 9A onto Stormy Town Road, which forms a T-intersection with Route 9A. Plaintiff testified that as she approached the intersection co-defendant Lock, a State Department of Transportation worker, assigned to direct traffic as needed, motioned with his hand to the plaintiff. Plaintiff testified he was motioning for her to proceed through the intersection, while defendant Lock testified he was motioning for the plaintiff to slow down. As plaintiff proceeded through the intersection, defendant Huntley's car approached the intersection from the southbound passing lane of Route 9A and struck plaintiff's car.

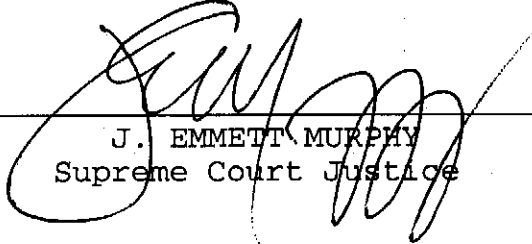
At the location of the accident, Route 9 has two northbound lanes with a left hand turning lane, plus two southbound lanes with a right hand turning lane, for access to Stormy Town Road. A median separates the two northbound and two southbound lanes. At the time of the accident a State Department of Transportation crew was assigned to clear snow from the intersection, with two state vehicles, a Pay loader, and a pick-up truck. The pick-up truck was parked in the median, partially obstructing the view of the intersection for southbound traffic.

Defendant seeks summary judgment, dismissing the case on the grounds that the plaintiff failed to yield the right of way and that there is no evidence that he was negligent in the operation of his vehicle. Vehicle & Traffic Law §1141 requires that the driver of a vehicle intending to turn left within an intersection shall

"yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard."

Although defendant established that plaintiff failed to yield the right of way (*Paljevie v Smith*, 20 AD3d 517), plaintiff has raised a triable issue of fact as to whether defendant violated Vehicle & Traffic Law §1120(a), by operating his vehicle continuously in the left passing lane of Route 9A and violated Vehicle & Traffic Law §1180(a) and (e) by driving at a rate of speed greater than was reasonably prudent under existing road conditions, to wit: proximity of hill crest to intersection, wet roadway, presence of Department of Transportation crew removing snow, partially obstructed view of intersection, 150 feet skid mark left by Huntley's vehicle and testimony from a non-party witness that Huntley was traveling "at a high rate of speed." Since plaintiff raised a triable issue of fact as to whether defendant was also negligent and, if so, whether that negligence contributed to the happening of the accident, defendant Huntleys' motion is denied (*cf. Mosch v Hansen*, 295 AD2d 717).

Dated: White Plains, New York  
July 17, 2006

  
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J. EMMETT MURPHY  
Supreme Court Justice

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