

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 21-00611

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND WINSLOW, JJ.

FREDERICK N. FARWELL, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF SYRACUSE, SYRACUSE POLICE DEPARTMENT AND
GREGORY J. DIPUCCIO, DEFENDANTS-APPELLANTS.

GOLDBERG SEGALLA LLP, SYRACUSE (AARON M. SCHIFFRIK OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

ROBERT E. LAHM, PLLC, SYRACUSE (ROBERT E. LAHM OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County
(Gerard J. Neri, J.), entered April 19, 2021. The order denied the
motion of defendants for summary judgment.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for
injuries he sustained when the bicycle he was riding collided at an
intersection with a police vehicle operated by defendant Gregory J.
DiPuccio (defendant officer), a police officer employed by defendant
Syracuse Police Department who was responding to an emergency call.
Defendants thereafter moved for summary judgment dismissing the
complaint on the ground that defendant officer did not act with
"reckless disregard" for the safety of others. Supreme Court denied
the motion, and we affirm.

We conclude that, at the time of the collision, defendant officer
was operating an authorized emergency vehicle while involved in an
emergency operation (see Vehicle and Traffic Law §§ 101, 114-b).
Thus, the standard of liability pursuant to Vehicle and Traffic Law
§ 1104 (e), i.e., reckless disregard for the safety of others, rather
than that of ordinary negligence, applies to his actions (see
Criscione v City of New York, 97 NY2d 152, 157-158 [2001]; *Nikolov v
Town of Cheektowaga*, 96 AD3d 1372, 1373 [4th Dept 2012]). Although
defendants established as a matter of law that defendant officer's
conduct did not rise to the level of reckless disregard for the safety
of others (see *Szczerbiak v Pilat*, 90 NY2d 553, 556-557 [1997]),
plaintiff raised a triable issue of fact with respect thereto (see
Coston v City of Buffalo, 162 AD3d 1492, 1493 [4th Dept 2018]; see
generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman*

v City of New York, 49 NY2d 557, 562 [1980]).

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court