

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

FAITH GOLDSMITH SUMNER,
INDIVIDUALLY, AND ON BEHALF
OF THE DECEDENT, TIMOTHY W.
SUMNER, SR., AND AS NATURAL
TUTRIX OF THEIR MINOR
CHILDREN, DIANNE SUMNER,
TIMOTHY W. SUMNER, JR.,
TREMAIN MAJOR SUMNER,
TIMBERLY GOLDSMITH, MR.
TRINITY SUMNER, SEVENTH LUV
SUMNER, ZALYLA SUMNER AND
BABY RENEE SUMNER

NO. 2013 CW 0486

VERSUS

CANADIAN NATIONAL RAILWAY
COMPANY, ILLINOIS CENTRAL
RAILROAD COMPANY, TOWN OF
WALKER, LOUISIANA, LIVINGSTON
ECONOMIC DEVELOPMENT COUNCIL,
INC., LIVINGSTON PARISH
COUNCIL AND THE STATE OF LOUISIANA,
THROUGH THE DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

MAY 08 2013

In Re: Livingston Economic Development Council, Inc.,
applying for supervisory writs, 21st Judicial
District Court, Parish of Livingston, No.
124,207.

BEFORE: PARRO, WELCH AND DRAKE, JJ.

WRIT DENIED. Genuine issues of material fact remain as to causation and the location of the entrance sign to the Livingston Parish Industrial Park that preclude the grant of summary judgment in favor of the defendant Livingston Economic Development Council, Inc.

JEW

EGD

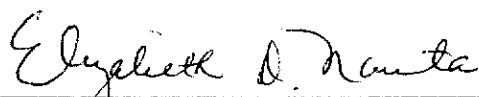
Parro, J., dissents and would grant the writ. Louisiana Revised Statute 32:171(E) provides, "At any railroad grade crossing provided with railroad cross buck signs, . . . the driver of a vehicle shall in obedience to the railroad cross buck sign, yield the right-of-way and slow down to a speed reasonable for the existing conditions and shall stop, if required for safety, at a clearly marked stopped line or, if no line, within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall not proceed until he or she can do so safely." Moreover, the statute states, "If a driver is involved in a collision at a railroad crossing or interferes with the movement of a train after driving past the railroad cross buck sign, the collision or interference is prima facie evidence of the driver's failure to yield the right of way."

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In this case, the eyewitness testimony shows that Timothy Sumner, Sr. never stopped or slowed before attempting to clear the railroad crossing. The plaintiffs have failed to present any evidence that Sumner yielded to the right-of-way and looked for oncoming trains before crossing the railroad tracks. Moreover, the expert testimony of defense expert Michael S. Gillen shows that the accident could have been avoided if only Sumner had stopped and observed between fifteen and fifty feet of the nearest rail of the main line. In the absence of any evidence to rebut the presumption under La. R.S. 32:171(E) or to show that Sumner's view was obscured, there are no genuine issues of material fact as to causation. Accordingly, I would grant the writ application and render summary judgment in favor of defendant Livingston Economic Development Council, Inc., and against the plaintiffs as to causation.

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT
FOR THE COURT