

STATE OF MICHIGAN
COURT OF APPEALS

DIANE M. LANDSFELD, Personal Representative of
the Estate of FRANK JOSEPH LOCICCHIO,
deceased,

UNPUBLISHED
July 7, 1998

Plaintiff-Appellant,

v

No. 202286
Oakland Circuit Court
LC No. 93-461885 NI

GRAND TRUNK WESTERN RAILROAD,

Defendant-Appellee,

and

OAKLAND COUNTY ROAD COMMISSION and
DEPARTMENT OF TRANSPORTATION,

Defendants.

Before: Murphy, P.J., and Young, Jr. and M. R. Smith*, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court order granting summary disposition of her nuisance complaint. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent was killed when his car was struck by a freight train. Plaintiff brought a two count complaint alleging negligence and nuisance-in-fact. In an unpublished per curiam opinion issued July 5, 1996, this Court affirmed the trial court's decision granting summary disposition of plaintiff's negligence count, but found that defendant had failed to move for summary disposition of the nuisance count. *Landsfeld v Grand Trunk Western R, Inc* (Docket No. 179888).

After remand, the circuit court granted defendant's motion for summary disposition of the nuisance complaint, finding that nuisance count was only a restatement of the negligence claim.

* Circuit judge, sitting on the Court of Appeals by assignment.

A nuisance in fact is a nuisance by reason of circumstances and surroundings. An act may be found to be a nuisance in fact when its natural tendency is to create danger and inflict injury on person or property. *Wagner v Regency Inn Corp*, 186 Mich App 158, 164; 463 NW2d 450 (1990). A negligent nuisance in fact is one that is created by a violation of some duty owed to the plaintiff which results in a nuisance. *Id.*

The nuisance complaint alleges that defendant was responsible for a nuisance because it failed to equip the crossing with proper gates and warnings. However, defendant has no duty to supply these items or to petition authorities for such equipment. *Harrison v Grand Trunk Western R Co*, 162 Mich App 464, 468; 413 NW2d 429 (1987). Plaintiff failed to show that defendant breached any duty. Summary disposition was proper where the nuisance count asserted the same allegations as the negligence count. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 657; 363 NW2d 641 (1984).

Affirmed.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith