

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Willard F. Henry,

Plaintiff,

v.

CSX Transportation, Inc.,

Defendant.

Case No. 2:10-cv-1056

Judge Graham

Magistrate Judge Abel

ORDER

Before the Court is defendant CSX Transportation, Inc.'s motion *in limine* regarding the causation standard to be applied under the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51 *et seq.* (Doc. 53.) Defendant argues that the proper causation standard under FELA is proximate cause.

Remarkably absent from defendant's motion is any reference to CSX Transportation, Inc. v. McBride, 131 S.Ct. 2630 (2011), a case that goes directly against defendant's argument and *in which defendant was a party*. The Supreme Court in McBride was exceedingly clear:

In accord with the text and purpose of the Act, this Court's decision in Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 77 S.Ct. 443, 1 L.Ed.2d 493 (1957), and the uniform view of federal appellate courts, we conclude that the Act does not incorporate "proximate cause" standards developed in non-statutory common-law tort actions. The charge proper in FELA cases, we hold, simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff or employee's injury if the railroad's negligence played any part in bringing about the injury.
131 S.Ct. at 2634.

Given the clarity of the Supreme Court's holding, defendant's argument that proximate cause is the proper standard is not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law" FED. R. CIV. PRO. 11(b)(2).

The motion is DENIED.

IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: August 31, 2012