

STATE OF MICHIGAN
COURT OF APPEALS

EDDIE DANIELS and FAYE DANIELS,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 174971

GRAND TRUNK WESTERN RAILROAD
COMPANY,

Lapeer Circuit Court
LC No. 92-18627-NI

Defendant,

and

IMLAY CITY,

Defendant-Appellee.

EDDIE DANIELS and FAYE DANIELS,

Plaintiffs-Appellants,

v

No. 177314

GRAND TRUNK WESTERN RAILROAD
COMPANY,

Lapeer Circuit Court
LC No. 92-18627-NI

Defendant,

and

IMLAY CITY,

Defendant-Appellee.

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

Before: MacKenzie, P.J., and Saad and C. F. Youngblood*, JJ.

YOUNGBLOOD, J. (concurring in part, dissenting in part).

I concur with the majority in holding that the finding of the trial court, that the plaintiffs' claims were frivolous, was clearly erroneous. There was no basis for the assessment of costs.

I respectfully dissent from the majority's affirming the trial court's grant of summary disposition. The railroad tracks cross Black Corner's Road. Immediately before the railroad crossing, there is a T-intersection where Fourth Street meets Black Corner's Road. At approximately 4:00 a.m., in the dark, the plaintiff's semi-trailer truck was on Fourth Street, stopped at the stop sign, at the intersection of Black Corner's Road, a clear and undisputed violation of the Michigan Manual of Uniform Traffic Control Devices.¹ There is a railroad crossing warning sign for traffic on Black Corner's Road, but this sign is not visible to westbound traffic on Fourth Street which turns south onto Black Corner's Road.

Plaintiff's semi-trailer turned left, to go south, on Black Corner's Road. As he approached the railroad tracks, which were not visible when turning, he saw a stop sign but did not see the white railroad crossing sign immediately before the tracks.² Plaintiff did not stop for the stop sign, but alleges that he did look both ways and did not see any automobile traffic. He was struck by a train as he proceeded across the tracks. Plaintiffs presented expert testimony by way of affidavit that defendant violated the Michigan Manual of Uniform Traffic Control Devices and that the lack of a railroad warning sign was a proximate cause of the accident. Defendant presented no counter-affidavit.

The majority holds that the trial court properly concluded the failure to install a railroad warning sign was not a proximate cause of plaintiff's injuries. I find that reasonable minds could differ on the issue of whether defendant's conduct was a proximate cause of plaintiff's injury or plaintiff's negligence was the sole and exclusive proximate cause of plaintiff's injuries, thus leaving it to the jury to determine whether defendant's violation of the Michigan Manual of Uniform Traffic Control Devices was a proximate cause of the accident. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483; 478 NW2d 914 (1991); *Klanseck v Anderson Sales & Service, Inc*, 426 Mich 78; 393 NW2d 356 (1986); *Taylor v Wyeth Laboratories, Inc*, 139 Mich App 389; 362 NW2d 293 (1985). The doctrine of comparative negligence leaves this issue to the jury and should not be decided by the trial court on a motion for summary disposition.

It is for the jury to decide whether it was reasonable for plaintiff not to see the informational white railroad sign at night in the lighting conditions that existed at the time and whether plaintiff's conduct would have been altered had he been warned of and known of the existence of the railroad tracks.

For these reasons, I respectfully dissent as to this portion of the majority's opinion.

/s/ Carole F. Youngblood

¹ The Michigan Manual of Uniform Traffic Control Devices has been adopted by the State of Michigan and compliance with its provisions is mandatory. The Manual requires a railroad crossing warning sign to inform traffic on Fourth Street. It is not disputed that the defendant failed to install this sign.

² The white x-shaped railroad crossing sign is not a warning sign; it is merely an informational device and not traffic regulating.