This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1718

Lance G. Cariveau,
Appellant,

vs.

Dakota, Minnesota & Eastern Railroad Corporation,
Respondent.

Filed July 25, 2022
Affirmed
Reyes, Judge

Dodge County District Court
File No. 20-CV-20-447

Andrew L. Davick, Ava. M. Cavaco, Meshbesher & Spence, Ltd., Rochester, Minnesota (for appellant)

Eric E. Holman, Donna Law Firm, P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges a district court order granting summary judgment to respondent railroad, arguing that the district court erred by dismissing his negligence claims as a matter of law because (1) the apportionment of negligent fault between him and respondent is a question for the jury and (2) whether respondent was negligent per se for

failure to provide adequate warning devices is not federally preempted by the Federal Railroad Safety Act (FRSA) or precluded by state common or statutory law. We affirm.

FACTS

The facts are undisputed. Late afternoon on June 5, 2014, while driving on a highway for his daily work commute, appellant Lance G. Cariveau and another car in front of him came upon a railroad crossing. The crossing had a black and white X-shaped crossbuck sign containing the words "RAILROAD CROSSING" installed by respondent Dakota, Minnesota & Eastern Railroad Corporation (DME). The crossing did not have a stop or yield sign, a mechanical crossing arm, or warnings like flashing red lights or a bell. However, in 1990, the State of Minnesota and DME entered into an agreement known as the Crossbuck Project. Under the agreement, DME installed new crossbuck signs and various warning signs at the railroad crossing at issue, among others. DME paid for 10% of the project, and federal funds allocated by the Federal Highway Administration (FHA) accounted for the other 90%.

As the car in front of Cariveau and Cariveau neared the crossing, so too did a train, traveling at a standard speed with its safety lights on. Realizing that the cars were not yielding, the train conductors sounded the train's horn and engaged the train's emergency brake. The car in front of Cariveau did not stop at the crossing and narrowly avoided getting hit by the train. Cariveau likewise did not stop, but the train collided with his vehicle. Cariveau suffered severe injuries from the collision and cannot remember the events before, during, or just after.

Cariveau is deaf and communicates using American Sign Language. Both before and during the crash, he had been using his phone to record a video message, which involved communicating in ASL with his hands. Following the accident, police issued Cariveau two traffic citations, one citation for using his phone while driving, in violation of Minn. Stat. § 169.475, subd. 2 (2014), and one citation for failing to yield to the train, in violation of Minn. Stat. § 169.26, subd. 1(a)(2) (2014). Cariveau pleaded guilty to both traffic violations.

Cariveau sued DME for negligence, arguing that DME breached its duty to operate the train reasonably and warn vehicles of an oncoming train.[1] DME later moved for summary judgment, arguing that Cariveau's negligence outweighed DME's negligence, if any, because Cariveau was on his phone at the time of the collision, failed to yield to the visible train, and accelerated in an attempt to "beat the train." DME also argued that federal preemption and state law preclusion principles required the dismissal of some of Cariveau's claims. DME submitted affidavits of the train conductors, eyewitnesses, and engineers; documents on the Crossbuck Project; police incident reports; and other relevant exhibits, including the below three pictures:

[1] Cariveau also claimed DME breached its duty to him and other motorists by excessive speeding. However, Cariveau does not raise this issue on appeal.

1. Police squad-car dashcam showing crossing and crossbuck sign

2. Photograph depicting location of train's four safety lights

3. Google Maps image depicting motorist view of tracks

In response, Cariveau submitted two photographs: a screenshot of a police squad-car dashcam showing a small cluster of trees east of the crossing and a Google Maps screenshot of the crossing. Cariveau also submitted an accident report, two news articles, and evidence of the population increase in the area. The district court granted DME's motion for summary judgment and dismissed Cariveau's claims with prejudice. This appeal follows.

DECISION

Cariveau argues that the district court erred by dismissing his negligence claims against DME because (1) the apportionment of fault between him and DME is a question for the jury and (2) whether DME was negligent per se for failure to provide adequate warning devices is not federally preempted or precluded by state law. We address both arguments in turn.

I. Standard of review

A district court must grant summary judgment if the movant shows "no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01; *see Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (stating that appellate courts "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment"). This court reviews the district court's legal conclusions on summary judgment de novo, viewing "the evidence in the light most favorable to the party against whom summary judgment was granted." *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). And "[w]hether federal law preempts state law is primarily

an issue of statutory interpretation, which we review de novo." *See In re Est. of Barg*, 752 N.W.2d 52, 63 (Minn. 2008).

In this case, whether Cariveau is barred recovery under comparative-fault laws and whether his negligence-per-se claim is preempted by federal law or precluded by state law are questions of law that we review de novo.

II. The district court did not err by granting DME summary judgment after determining the apportionment of fault.

Cariveau concedes that a comparative-fault analysis is required but argues that there is a genuine issue of material fact for the jury of whether his negligent inattentiveness was greater than DME's negligence. Cariveau's argument is unpersuasive.

The relevant portion of the comparative-fault statute states:

> Contributory fault does not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death, in injury to person or property, or in economic loss, *if the contributory fault was not greater than the fault of the person against whom recovery is sought*, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering.

Minn. Stat. § 604.01, subd. 1 (2020) (emphasis added). Generally, the jury should determine the apportionment of negligent fault between parties except for "rare cases" in which the evidence is undisputed and "the factfinder could come to only one conclusion." *Riley v. Lake*, 203 N.W.2d 331, 340 (Minn. 1972); *see also Jack Frost, Inc. v. Engineered Bldg. Components Co.*, 304 N.W.2d 346, 350 (Minn. 1981). This is one of those rare cases.

Here, the facts are undisputed. Cariveau drove through the crossing every day on his way to work. He illegally used his phone up to and at the time of the collision, failed

to stop at the crossing and yield to the train, and sped up to attempt to beat the train. The crossing has a clear crossbuck sign which conforms to adequate-warning regulations. Before the collision, a conductor had been looking out for hazards at the crossing, the train's four safety lights were on, and the conductors sounded the train's horn. An eyewitness driving directly behind Cariveau could see the train and testified that there were no trees or vegetation that obstructed the view of the train. Further, the nearest visual obstruction to the crossing was a grove of trees 700 feet away from the crossing and therefore not within the purview of DME's duty under Minn. R. 8330.0320, subp. 3(C) (2021), to clear visibility obstructions to provide drivers an adequate view of oncoming trains.

Though traffic violations generally are not per se evidence of negligence, they are prima facie evidence of negligence. Minn. Stat. § 169.96(b) (2020). If, however, that evidence is not rebutted, it becomes conclusive. *Warning v. Kanabec Cnty. Co-op. Oil Ass'n*, 42 N.W.2d 881, 882 (Minn. 1950). And in contributory-negligence cases involving train collisions at railroad crossings, district courts may determine a plaintiff-driver guilty of contributory negligence "[w]hen the evidence conclusively shows that a colliding train must have been visible from the point where the traveler should have looked." *Rogge v. Great N. Ry. Co.*, 47 N.W.2d 475, 478 (Minn. 1951) (quotation omitted); *see, e.g.*, *Dahlquist v. Minneapolis & St. L. Ry. Co.*, 41 N.W.2d 587, 588-89 (Minn. 1950) ("If the driver . . . has an adequate opportunity under the surrounding circumstances to know of and see the approaching train in time to avoid the collision, he is guilty of contributory negligence as a matter of law."); *Luce v. Great N. Ry. Co.*, 281 N.W. 812, 814-15 (Minn.

1938) (concluding that plaintiff-driver was guilty of contributory negligence as matter of law and therefore barred recovery because oncoming train warned plaintiff with bell and whistle and headlights were on, and, but for plaintiff's own negligence in failing to stop and look, plaintiff would have seen approaching train); Minn. Stat. § 169.26, subd. 1(b) (2020) ("The fact that a moving railroad train . . . approaching a railroad grade crossing is visible from the crossing is prima facie evidence that it is not safe to proceed.").

Cariveau did not dispute the prima facie evidence of his two traffic violations, making that evidence conclusive of his negligence. *See Warning*, 42 N.W.2d at 882. In fact, Cariveau failed to present anything directly refuting DME's evidence supporting its motion for summary judgment. He instead submitted two screenshot photos showing the crossing and a small group of trees east of the crossing, an accident report, articles about previous collisions at the crossing, and search results showing an increase in population in the area, none of which pertain to Cariveau's claim that DME conductors and engineers breached their duty to operate the train reasonably.

Further, although Cariveau submitted evidence showing trees near the crossing, he did not affirmatively argue that the trees *actually* obstructed his view. Instead, Cariveau speculated only that those trees "*could* block the sightline of an oncoming train from approaching motor vehicles." (Emphasis added.) Such speculation is not enough to defeat summary judgment. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) ("Speculation [and] general assertions . . . are not sufficient to create a genuine issue of material fact for trial."). And while his evidence might be relevant to his inadequate-warning-device claim, the district court correctly dismissed that claim on other

grounds for the reasons discussed below. Based on these undisputed facts and because Cariveau neither disputed the prima facie evidence of negligence nor presented evidence of a genuine issue of material fact, a factfinder could come to only one conclusion. *See Jack Frost*, 34 N.W.2d at 350. We therefore conclude that the district court did not err by granting DME summary judgment as a matter of law.

III. The district court did not err by dismissing appellant's inadequate-warning-device claim as a matter of law based on federal preemption principles.

Cariveau appears to argue that the district court erred by summarily dismissing his inadequate-warning-device claim based on federal preemption and state law preclusion principles because (1) state common law dictates that questions on adequacy of warning devices are for the jury, (2) the FRSA does not completely preempt his state-law claims, and (3) discovery and admission of the Crossbuck Project is barred under 23 U.S.C. § 407 (West Supp. 2022).[2]

Federal preemption derives from the Supremacy Clause of the United States Constitution, which states that "This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby." U.S. Const. art. VI, cl. 2.

Congress created the FRSA "to promote safety in every area of railroad operations and reduce railroad-related incidents." 49 U.S.C. § 20101. Under the FRSA, the Secretary

[2] In district court, Cariveau argued that the FRSA expressly permits his state-law claim under 49 U.S.C. § 20101 (2018), but he did not raise this issue on appeal.

of Transportation has the authority to regulate "every area of railroad safety." 49 U.S.C. § 20103(a) (2018).

Cariveau first contends that state common law dictates that his inadequate-warning-device claim is a question for the jury. We disagree.

Generally, state common-law and statutory claims of negligent warning devices are preempted by the FRSA when federal funds are used to install such devices. *See Norfolk S. Ry. v. Shanklin*, 529 U.S. 344, 358-59 (2000); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) (stating that FRSA preemption applies to state common-law and state statutory claims). Preemption applies so long as "the FHA has funded the crossing improvement project" and "the warning devices are actually installed and operating." *Norfolk S. Ry.*, 529 U.S. at 354.

Here, federal funds were used to install warning devices at the crossing. When DME undertook the Crossbuck Project, it only paid for 10% of the costs, while federal funds covered 90% of the project. Thus, the FRSA preempts Cariveau's state common-law warning-device claim.

Cariveau next appears to argue that "[p]reemption under the FRSA is . . . not complete preemption." He presents no further discussion to support that assertion, citing only to the unpublished federal decision *Allende v. Soo Line R.R. Co.*, No. 03-cv-03093, slip op. at 19 (D. Minn. Jan. 29, 2004), for the proposition that the legislature did not intend for the FRSA to "provide the exclusive cause of action for plaintiffs' claims." But we are not bound by federal district court decisions. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (stating that this court is

bound only by United States Supreme Court precedent and not by "any other federal courts' opinion, even when interpreting federal statutes"). *Allende* is also not persuasive. In *Allende*, the plaintiffs' claims did not involve inadequate warning devices at a crossing or improper train speed, as is alleged here. *See Allende*, slip op. at 2.

Finally, Cariveau argues, for the first time on appeal, that 23 U.S.C. § 407 bars the discovery and admission of the Crossbuck Project. However, because Cariveau failed to raise this issue below, this argument is forfeited, and we do not address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those issues presented to and considered by district court). After considering all of Cariveau's arguments, we conclude that the district court did not err.

Affirmed.