

Tort – Death on commuter rail tracks

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By admin

Where the plaintiffs' daughter, a Boston University freshman, was struck and killed by a Massachusetts Bay Transportation Authority commuter rail train while walking with a friend at night on tracks adjacent to the university campus, the plaintiffs possess no viable claims against any of several defendants sued either in tort or contract.

Defendants' motions for summary judgment granted.

Judge's reasoning

"The filings in this case are voluminous, and the plaintiffs have multiple well-presented and argued theories of liability as to each defendant. However, despite all the permutations of such theories, at the threshold the plaintiffs have an insuperable problem. That problem is that none of the defendants owed a duty of care to [plaintiffs' daughter] Molly [Ferguson Shattuck] and [her friend] Andrew [Voluck] because of the open and obvious nature of the risk posed to any sensate person entering the Beacon Yards at night.

"Landowners are relieved of the duty to warn of open and obvious dangers on their premises because it is not reasonably foreseeable that a visitor exercising (as the law presumes) reasonable care for his own safety would suffer injury from such blatant hazards. Stated otherwise, where a danger would be obvious to a person of ordinary perception and judgment, a landowner may reasonably assume that a visitor has knowledge of it and, therefore, "any further warning would be an empty form" that would not reduce the likelihood of resulting harm.' ...

"Where a dangerously open and obvious condition exists, '[p]lain common sense, bolstered by the weight of authority in other jurisdictions where this issue has been addressed, convince us that [there is ordinarily no duty to warn or take other preventive measures to reduce the risk posed].' ...

"The Appeals Court has consistently applied the above principles in subsequent cases. ...

"Even in the daylight, to any reasonable person the Beacon Yards was an inherently forbidding place. This is apparent from the descriptions and exhibits in the record. ... [T]he Yard extends for over a mile and is comprised of a network of approximately 20 intersecting rail lines incident to its function as a switching facility. There was no passenger station in the Yards, nor any crossings for public use. And approximately 50 trains per day passed through it. To enter such a place at night necessarily invited dire risk.

"And Molly had to be aware of the character of the Yards because she had a direct view of the Yards through the picture window of her dorm room. ... Further, the record documents that Molly was an intelligent and competent person. Thus, there is no occasion here to consider any perceptual impairment that might otherwise be argued to affect the application of the open and obvious principle and its bar to recovery.

"Although not material to the Court's decision, the record further establishes that Molly and Andrew were trespassers. Their presence on the tracks of the Beacon Yards was a criminal offense. ... Liability under such circumstances attaches only if a landowners conduct was willful, wanton or reckless. ... By operation of the Wrongful Death Statute, G.L.c. 229, §2, a 'railroad shall not be liable for negligence in causing the death of a person while walking or being upon such railroad.' Thus, to be actionable, CSX [Transportation, Inc.]'s and the MBTA's conduct must have been wanton, willful or reckless. One 'acts wantonly, willfully and recklessly only when he inflicts the injury intentionally, or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.' ... On its review of the record, the Court finds no reasonable basis for a conclusion that any of the defendants' conduct rose (or descended) to such a level. ...

"Finally, ... the complaint against BU contains a contract count. The count is predicated on a theory that through its website and its police handbook BU contractually bound itself to take proactive measures to protect its students from harm. The plaintiffs submit that BU's failure to do so with regard to the risk posed by the Beacon Yards breached that promise to Molly. For substantially the reasons stated at pages 17-20 of BU's memorandum, the Court finds and rules that no reasonable jury could conclude that BU breached any contractual obligation to Molly to provide her with a reasonably safe educational environment.

"The defendants' motions for summary judgment are allowed. "

Shattuck, et al. v. Trustees of Boston University, et al. (Lawyers Weekly No. 12-202-10) (4 pages) (Macdonald, J.) (Suffolk Superior Court) (Docket No. SUCV2006-03635-E) (July 29, 2010).