

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

Steven McAliley,)
)
Plaintiff,)
)
vs.)
)
Pickens Railway Company,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

ORDER

C.A. No. 2016-CP-04-01389

This matter is before the Court on a motion for summary judgment filed by Defendant Pickens Railway Company. A hearing on Defendant’s motion was held on November 16, 2017. Donald Smith appeared on behalf of the Plaintiff and Ronald K. Wray, II appeared on behalf of Defendant. Based upon the record before me and arguments of counsel, I find that Defendant’s motion for summary judgment is properly supported by the evidence and should be granted. Accordingly, for the reasons set forth below, Defendant’s motion for summary judgment is granted and judgment is hereby entered in favor of Pickens Railway Company.

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) and Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363

S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). “Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ.” *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion “must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. “Where evidence of the plaintiff’s *greater* negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Bloom v. Ravoira*, 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000). In other words, “where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006).

FINDINGS OF FACT

This case arises from an accident that occurred on Fant Street in Anderson between 1:00 p.m. and 2:00 p.m. on June 25, 2013. Plaintiff Steven McAliley was operating his motorcycle on Fant Street when he had an accident as he approached a railroad crossing owned and operated by Defendant Pickens Railway. It is undisputed that the accident occurred prior to Plaintiff’s motorcycle reaching the Fant Street railroad crossing. It is

further undisputed that the accident was not caused by any condition of the railroad track, nor was Plaintiff's motorcycle struck by a train or any other object on the track.

Plaintiff admits that as he was approaching the Fant Street crossing, he heard a train horn or whistle. Plaintiff also admits that he saw the railroad gates lowering at the crossing before he reached it. At the time of the accident, a train operated by a Pickens Railway Company crew was approaching the crossing at a speed less than 10 mph. The train was sounding its horn and, according to the train crew, the gates were properly lowered in accordance with federal law, the lights on the warning devices at the crossing were flashing and the bells on the warning devices were ringing. Plaintiff testified he never saw the train even though it is undisputed the train was present at the crossing.

When Plaintiff attempted to slow his motorcycle as he saw the gates at the crossing lowering, the back wheel of his motorcycle began to "wobble" from him applying the brakes, and Plaintiff was thrown over the handlebars of his bike. Plaintiff testified that he and his motorcycle went through the Fant Street crossing and landed on the other side of the tracks. Nevertheless, Plaintiff claimed that he never actually saw the train and could offer no testimony about the train speed or its location at the time of the accident. Despite the accident occurring at a busy time of day in downtown Anderson, no witnesses were identified who saw the accident and no one (including Plaintiff) reported any issues with the gates and lights at the crossing. In fact, Plaintiff never reported the accident to police and no accident report was ever prepared.

Jessie Sammons and David Corlis were the employees operating the Pickens Railway train on the day of the accident. Both Mr. Sammons and Mr. Corlis confirmed that the gates and lights at the crossing were properly operating and the gates were down prior to

Plaintiff reaching the crossing. Additionally, both witnesses saw Plaintiff approaching the crossing at a high rate of speed and saw him lose control of his motorcycle. According to the train crew, Plaintiff fell off the motorcycle and his body came to rest approximately sixty or seventy feet short of the railroad tracks.

Plaintiff presented no evidence of any prior problem or malfunction with the warning devices at the crossing. As noted, no one reported any issues with the warning devices on the day of the accident, and no one claims to have witnessed the accident when it occurred. It is undisputed that Pickens Railway did all inspections of the signals at the crossing as required by Federal Railroad Administration regulations and there is no evidence of any malfunction of the signals at the Fant Street crossing.

Medical records introduced by Defendant showed that on the evening prior to the accident, Plaintiff presented to the emergency room in Anderson complaining of weakness and dizziness. The records reflect that Plaintiff was in the emergency room from 4:00 p.m. until 7:55 p.m. The history Plaintiff provided to the hospital staff reflects that he had been feeling light-headed and disoriented for several days and had difficulty focusing. Plaintiff also reported that he felt off balance when trying to walk, that his vision was "spacey", and that he felt "weird and spacey". Additionally, Plaintiff's medical records show that he was admitted to Anderson Memorial Hospital from June 17-June 19, 2013, only a few days prior to the accident. These records indicate that on admission, Plaintiff reported dizziness and stated that he had visual disturbances in his left eye that rendered him partially blind before his vision returned.

CONCLUSIONS OF LAW

Pickens Railway has moved for summary judgment on a number of grounds. First, Pickens Railway argues that there is no evidence that it breached any duty of care owed the Plaintiff or that it proximately caused the accident and Plaintiff's alleged injuries. The Court agrees.

As the undisputed evidence recited above shows, Plaintiff never reached the railroad crossing prior to losing control and wrecking his motorcycle. Plaintiff introduced no evidence that any condition of the railroad tracks or any actions by the train crew caused him to lose control of his motorcycle. Plaintiff's primary argument is that he did not see the gates lowering at the crossing until he was almost on the crossing. However, Plaintiff's failure to see the gates lowering as he approached the crossing on Fant Street does not support a negligence claim against Pickens Railway. Plaintiff has offered no evidence that the gates malfunctioned or that they did not operate in accordance with federal regulations. More importantly, Plaintiff admitted that although he heard the train as it approached the crossing on the day of the accident, he never saw the train. Obviously, if Plaintiff did not see a train that was plainly visible and approaching the crossing, it may explain why he likewise did not see the gates and lights that were operating at the crossing. Regardless, Plaintiff's failure to observe the train and warning devices, and failure to maintain control of his motorcycle, is not a basis for imposing liability on Pickens Railway. As such, the Court finds that Pickens Railway did not breach any duty of care owed the Plaintiff that proximately caused this accident.

The Court also finds that the only reasonable inference to be drawn from the evidence is that Plaintiff's own negligence caused the accident and his injuries. The South

Carolina Supreme court has held that “[w]here evidence of the plaintiff’s *greater* negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Bloom v. Ravoira*, 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000). In other words, “where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006).

Here, the Court concludes that no reasonable jury could find that Plaintiff was less than 50% at fault for the accident. The undisputed evidence in this case shows that the gates at the crossing were down and operating prior to Plaintiff reaching the Fant Street crossing. Because the gates were down and functioning and the crew confirmed that they were working properly as the train entered the Fant Street crossing prior to the accident, the train was obviously occupying the crossing at the time of the accident. Although Plaintiff alleges that the gates came down too quickly, his allegation is unsupported by any evidence in this case, and Plaintiff himself admitted that he never actually saw the train and could not testify where it was at the time the gates came down or how fast it was going. Further, the undisputed evidence shows that Plaintiff’s motorcycle wrecked when he applied the brakes and lost control of his motorcycle. Based upon all of these facts, the Court concludes that no reasonable jury could find in favor of the Plaintiff in this case, and Pickens Railway is entitled to summary judgment.

Last, Pickens Railway argues that summary judgment is proper because Plaintiff’s claims are preempted by federal law. The Court agrees. The Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20101, et seq., “was enacted in 1970 in order ‘to promote safety in every area of railroad operations and reduce railroad-related accidents, and to reduce

deaths and injuries to persons” *CSX Transp. v. Easterwood*, 507 U.S. 658, 661 (1993). The Secretary of Transportation is authorized under the FRSA to “prescribe regulations and issue orders for every area of railroad safety[.]” *Id.*

The FRSA contains an express preemption provision to ensure that “[l]aws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable.” *Id.* (quoting 49 U.S.C. § 20106(a)(1)). Under this preemption clause, “[a] state-law negligence action is ‘covered’ and therefore preempted if a FRSA regulation ‘substantially subsume[s]’ the subject matter of the suit.” *Id.* (quoting *Nickels v. Grand Trunk Western R.R., Inc.*, 560 F.3d 426, 429 (6th Cir. 2009)). Once federal regulations have occupied an area pursuant to regulations promulgated by the Secretary of Transportation and/or Congress, the FRSA preempts further regulation by the state, whether the regulation is based in statute, an ordinance, or an award of state tort damages. *Easterwood*, 507 U.S. at 664.

The Secretary of Transportation has set forth a comprehensive set of regulations in 49 C.F.R. Part 234 that cover the safety and maintenance of highway rail grade crossing warning systems. *Phillips v. Omnitrax, Inc.*, C/A No. 1:14-cv-135 (LIA), 2016 U.S. Dist. LEXIS 135329, at *10 (M.D. Ga. Sept. 30, 2016). As such, these regulations preempt any state law claims covered by the subject matter of the regulations. *Id.*; see *Stone v. CSX Transp., Inc.*, 37 F. Supp. 2d 789, 797 (S.D.W. Va. 1999) (finding that the provisions of 49 C.F.R. Part 234 preempt state law claims based on the maintenance and inspections of grade crossing warning systems). 49 C.F.R. § 234.225 deals with the amount of warning time required to be given by grade crossing warning systems and states:

A highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time for the normal operation of through trains, before the grade crossing is occupied by rail traffic.

49 C.F.R. § 234.225. Therefore, if a grade crossing warning system gives at least 20 seconds of warning time, then any state law claim by a plaintiff alleging that more warning time should have been given is preempted by the FRSA.

The train crew from Pickens Railway confirmed that the warning system at the Fant Street crossing is a “20-second warning system,” and that there were no issues or delays with the system on the day of the accident. Dave Corliss is the principal signal maintainer for Pickens Railway and testified that he performed inspections of the Fant Street crossing in accordance with federal law and FRA regulations. Mr. Corliss stated that he was unaware of any issues or delays with the gates at the Fant Street crossing at the time of the accident. Mr. Corliss also testified that there is no doubt in his mind that before he entered the Fant Street crossing on June 25, 2013 he could see the gates down and the lights operating properly and that he did not observe any issues or problems with any of the warning systems at the Fant Street crossing. Jesse Sammons, the conductor on the train, also testified that he confirmed that the gates were down before the train entered the crossing.

Further proof that the gates and lights were working as intended is provided by the fact that despite that this accident occurred between 1:00 p.m. and 2:00 p.m. on a Tuesday, in an extremely busy street in downtown Anderson, no one else had any issues with the warning devices and no one, including Plaintiff, ever reported any issues with them. In fact, Plaintiff never even reported the incident to police after it occurred.

Considering all the evidence, the Court finds that there is no issue of fact regarding whether the warning devices complied with federal law. Plaintiff's claims are therefore preempted, and Pickens Railway is entitled to summary judgment.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Pickens Railway Company's motion for summary judgment be, and the same hereby is, granted. Judgment is hereby entered in favor of Pickens Railway.

R. Scott Sprouse
Circuit Judge

Dated this ____ day of December, 2017
Anderson, South Carolina



Anderson Common Pleas

Case Caption: Steven Mcaliley VS Pickens Railway Company
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s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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