

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

DWAYNE E. MITCHELL,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 93-1220
	)	
RICKEY D. KELLEY and NORFOLK	)	
SOUTHERN RAILWAY COMPANY,	)	
	)	
Defendants.	)	

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ORDER ON PLAINTIFF’S MOTION IN LIMINE

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The plaintiff, Dwayne E. Mitchell, has filed a motion *in limine* seeking to prohibit the defendants and their witnesses from presenting evidence or arguing at trial that a crossbuck sign placed at a railroad crossing constitutes a stop or yield sign that imposes a legal duty upon a motorist to stop. Defendants have responded to the motion.

Plaintiff anticipates that defendants will attempt to elicit testimony from their witnesses, and particularly from their expert witness, G. Rex Nicholson, to the effect that plaintiff had a legal duty to stop or yield upon approaching the railroad crossbuck sign.<sup>1</sup> Plaintiff correctly states that the question of what legal duty, if any, is created by a crossbuck

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<sup>1</sup> It is apparently undisputed that the vehicle plaintiff was driving in this case does not fall within the category of vehicles expressly required, by Tennessee statute, to stop at railroad crossings. See Tenn. Code Ann. § 55-8-147.

sign or by anything else is a question of law for the Court and may not be the subject of expert or other testimony.

Defendants, in their response to the motion, attempt to twist the issue raised by the plaintiff into something different entirely. Defendants spend eight pages explaining that under Tennessee law there is a common law duty imposed upon all motorists, including plaintiff, to:

first look and listen as he approache[s] a known railroad crossing and second to stop should a train be within a hazardous proximity to the crossing, the bell or whistle be clearly audible indicating the approach of a train, or should the motorist be unable to determine the possible location of an oncoming train without stopping, looking, and listening at a safe distance from the grade crossing.

(Def.'s Rep. at 8.) Defendants then ask the Court to rule, as a matter of law:

that in addition to statutory duties, if applicable, Plaintiff must act in accordance with the common law duties of long-standing imposed upon each and every driver approaching a known railroad crossing. . . . includ[ing] the duty to exercise the most extreme caution, except in limited circumstances which do not apply [in this case], and at a minimum that duty may be characterized as a duty to yield and further, to stop when necessary to preserve the safety of the occupants of the vehicle approaching the crossing.

Id.

This Court will not, on a motion *in limine*, rule on the precise legal duties imposed upon a motorist approaching a railroad crossing. In any event, defendants apparently concede plaintiff's point, acknowledging that "[t]echnically, the crossbuck sign alone does not require drivers of vehicles to stop, look, and listen." Id. at 5. However, while implicitly acknowledging that it is for the Court to decide what legal duties are imposed, defendants

apparently fail to concede that it would be improper to elicit testimony from their witnesses regarding those legal duties.

The Court GRANTS the motion *in limine* to the extent that it seeks to exclude testimony or any other evidence at trial regarding the specific legal duties imposed upon the plaintiff by a crossbuck sign or by anything else, as those issues are for the Court to determine. However, the Court DENIES the motion to the extent that it seeks to prohibit defendant from arguing to the jury that if plaintiff violated a duty created by a crossbuck sign (if any such duty exists) or by Tennessee law, his conduct constitutes negligence.

IT IS SO ORDERED.

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JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

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DATE