No. 127603

IN THE
SUPREME COURT OF ILLINOIS

ALEJANDRO QUIROZ, an Administrator of the Estate of Ricardo Quiroz, Deceased,

Plaintiff-Appellee

v.

CHICAGO TRANSIT AUTHORITY, a municipal corporation,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-20-0181.
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
No. 18 L 10344
The Honorable Brendan A. O'Brien, Judge Presiding

BRIEF OF AMICUS CURIAE NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION d/b/a METRA SUPPORTING APPELLANT CHICAGO TRANSIT AUTHORITY AND URGING REVERSAL

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Northeast Illinois Commuter Regional Commuter Railroad Corporation d/b/a Metra ("Metra") submits this brief in support of reversal of the appellate court's holding, which incorrectly applied the "discovered trespasser" standard by disregarding well established precedent that moving trains are open and obvious dangers. In doing so, the court not only misapplied Section 337 of the Restatement (Second) of Torts, but also placed an undue burden on the ability of railroads to operate in this state. The appellate court's decision contradicts established precedent, and if upheld, would result in an undue burden to Metra's commuter rail operations.

Metra is a governmental entity organized under the Regional Transportation Authority Act, 730 ILCS 3615/2.20, and operates one of the largest commuter rail systems in North America. *https://metra.com/ridership-data.* Its vast network of track spans throughout northeastern Illinois, servicing six counties, including Cook, DuPage, Will, Lake, Kane and McHenry counties. *Id.* Metra's rail system is comprised of over 1,100 miles of track, of which over 480 miles is passenger route. *Id.* Metra's service area is roughly equal to the size of the state of Connecticut. Metra provides transportation for more than 100 communities through its 242 rail stations, commuting 280,000 weekday passengers and over 90,000 weekend passengers. *Id.* In the five years preceding the COVID-19 pandemic, a yearly average of 78.14 million passenger trips were taken on Metra's lines.[1] Nearly all of Metra's track is at grade level, leaving Metra particularly vulnerable to trespassers.

[1] 2015 (81.6 million) https://metra.com/sites/default/files/assets/planning/ridership/2015_annual_report_standalone.pdf; 2016 (80.4 million) - https://metra.com/sites/default/files/assets/planning/ridership/ridership_report_-_2016_annual_standalone.pdf; 2017 (78.6 million) -https://metra.com/sites/default/files/assets/planning/ridership/ridership_report_-_annual_report_2017_standalone.pdf

Under well-settled precedent, a landowner does not owe a duty of reasonable care to trespassers, except to refrain from willful and wanton conduct. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 25. According to *Choate*, as well as many other decisions, moving trains are an open and obvious danger. *Id.* ¶ 35; *Park v. Northeast Illinois Regional Commuter R.R. Corp.*, 2011 IL App (1st) 101283, ¶ 18; *McDonald v. Northeast Illinois Regional Commuter R.R. Corp.*, 2013 IL App (1st) 102766-B, ¶ 25. The appellate court's ruling would impose on Metra the extremely burdensome and costly obligation of erecting and maintaining fencing or other barriers to prevent trespassers from entering its its tracks.

STATEMENT OF FACTS

Amicus Curiae Metra adopts the Statement of Facts of Defendant-Appellant Chicago Transit Authority.

ARGUMENT

I. THE APPELLATE COURT'S MISAPPLICATION OF THE DISCOVERED TRESPASSER RULE UNDERMINED THE OPEN AND OBVIOUS RULE WITH RESPECT TO MOVING TRAINS AND WOULD IMPOSE AN UNDUE BURDEN ON METRA'S COMMUTER RAIL OPERATIONS.

A. The Appellate Court's Ruling Is in Direct Conflict with Settled Precedent Establishing That Moving Trains Are Open and Obvious Dangers.

The appellate court's ruling below conflicts with this Court's well-established precedent with respect to the open and obvious rule, as well as other appellate court decisions relying on this clear precedent. The appellate court's decision should be reversed to avoid

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2018 (76.1 million)
https://metra.com/sites/default/files/assets/planning/ridership/2018_annual_ridership_report.pdf;
2019 (74.0 million)
https://metra.com/sites/default/files/assets/planning/annual_report_2019_standalone.pdf

creating discord within this Court's open and obvious rule jurisprudence and to provide guidance to lower courts and litigants on a frequently reoccurring issue.

It is well-settled that the question of whether a duty exists is within the province of the court to decide as a matter of law. *Bruns v. City of Centralia*, 2014 IL 116998, ¶¶ 12-13. A court analyzing whether a duty exists considers "whether defendant and plaintiff stood in such a relationship to one another that the law imposed upon defendant an obligation of reasonable conduct for the benefit of plaintiff." *Ward v. K Mart Corp.*, 136 Ill.2d 132, 140 (1990). The four factors relevant to the duty analysis are: (1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant. *Bruns*, 2014 IL 116998, ¶ 14. The open and obvious rule implicates the first two factors in the duty analysis: the foreseeability and the likelihood of injury. *Id.* ¶ 19.

In *Choate v. Indiana Harbor Belt Railroad Company*, 2012 IL 112948, this Court held as a matter of law that a moving train constituted an open and obvious danger in the context of a trespassing child attempting to jump aboard a moving freight train. *Id.* ¶ 35. In reversing the circuit court and the appellate court, this Court reasoned that the danger associated with a moving train "is so obvious that any child allowed at large can reasonably be expected to appreciate the risk involved in coming within the area made dangerous by it." *Id.* ¶ 32. This Court also recognized that the question of whether a condition is open and obvious goes directly to the analysis of whether the defendant owed a duty to the plaintiff, and therefore must be considered by the court when conducting the duty analysis. *Id.* ¶ 34 (noting "the circuit court should have considered in the first instance the obviousness of the danger of moving trains as it relates to the foreseeable risk of harm to plaintiff.").

In *Park v. Northeast Illinois Regional Commuter Railroad Corporation*, 2011 IL App (1st) 101283, the appellate court affirmed the circuit court's dismissal of the plaintiff's complaint in a case involving a pedestrian who was struck by a train while crossing the tracks at a station. *Id.* ¶ 5. Both the appellate court and the circuit court held as a matter of law that the danger presented by stepping in front of a moving train was open and obvious. *Id.* ¶¶ 16, 18. The appellate court also noted that the open and obvious nature of the moving train did not depend on the plaintiff's subjective knowledge, but rather on the objective knowledge of a reasonable person under similar circumstances. *Id.* ¶ 19.

Similarly, in *McDonald v. Northeast Illinois Regional Commuter Railroad Corporation*, 2013 IL App (1st) 102766-B, the appellate court reversed the circuit court's judgment on a verdict for the plaintiff in a case involving a pedestrian who was hit by an oncoming train while crossing in front of it at a station. *Id.* ¶ 6. The appellate court held that, consistent with *Choate*, the oncoming train as well as the tracks in front of it constituted an open and obvious danger that precluded recovery for the plaintiff. *Id.* ¶ 25.

This Court's decision in *Choate* noted that the obvious danger of moving trains must be considered by the court when it examines whether the defendant owed a duty to the plaintiff. 2012 IL 112948, ¶ 34. In this matter, the appellate court ignored the open and obvious danger presented by a moving train in its analysis of whether the defendant owed the plaintiff a duty. Moreover, the appellate court's focus on the subjective knowledge of the plaintiff conflicts with the principle illustrated in *Park* that, in cases involving open and obvious dangers, it is the objective knowledge of a reasonable person that is decisive, not the subjective knowledge of the plaintiff. *Park*, 2011 IL App (1st) 101283, ¶ 19; *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 86 (1st Dist. 2004).

The facts of the case before this Court fit squarely within this Court's decision in *Choate* and the appellate court decisions in *Park* and *McDonald*. All of these cases, like the matter here, involved a plaintiff confronting the open and obvious danger of a moving train. By ignoring this Court's decision in *Choate*, as well as earlier appellate court decisions, the appellate court below created a conflict in this Court's well-established open and obvious doctrine especially with respect to moving trains. The appellate court should be reversed.

B. The Appellate Court's Decision Would Impose the Burdensome and Costly Duty on Metra of Physically Preventing Trespassers from Accessing Hundreds of Miles of Railroad Track.

The appellate court's decision also ran afoul of Illinois precedent by failing to consider the third and fourth factors in the duty analysis: "the magnitude of the burden of guarding against the injury" and "the consequences of placing that burden on the defendant." *Bruns*, 2014 IL 116998, ¶ 14. Particularly relevant for this matter is this Court's determination that in analyzing the duties to be imposed on a transportation company, a court should consider the impact on the company's entire business operation. *Krywin v. Chicago Transit Authority*, 238 Ill.2d 215, 234 (2010) (In conducting duty analysis, "[the Court] may take judicial notice of the magnitude of the CTA's operations.").

If the appellate court's decision were upheld, Metra's operations would be severely hindered as a result of being subject to claims for injuries posed by open and obvious moving trains in circumstances where it is not reasonable to expect the presence of people. This Court's decision in *Choate* recognized that even children allowed at large are expected to appreciate the danger associated with moving trains. 2012 IL 112948, ¶ 35; *see also Park*, 2011 IL App (1st) 101283, ¶ 18. Under the appellate court's decision, Metra would no longer be

able to rely on the not-reasonably-foreseeable nature of persons failing to appreciate the open and obvious danger presented by moving trains.

As nearly all of Metra's railroad track is at grade level, in effect, Metra would be forced to protect its over 1,100 miles of railroad track, spanning six counties in Northeastern Illinois in a space roughly the size of Connecticut, from persons, vehicles, and objects not otherwise reasonably expected to be present. Such protection could only be achieved by fencing off all 1,100 miles of Metra's railroad track. This burden is not only financially impracticable, it would also severely disrupt Metra's ability to access its track with necessary heavy machinery. Indeed, this Court in *Choate* recognized that courts have generally declined to impose a duty on railroads to erect fences to guard against trespassing children, even though children are generally less expected to comprehend and avoid certain risks. *Choate*, 2012 IL 112948, ¶¶ 31, 43; *see also Illinois State Trust Co. v. Terminal R.R. Ass'n of St. Louis*, 440 F.2d 497, 501 (7th Cir. 1971). The appellate court's ruling would impose a considerable and unwarranted burden on railroad operators within this state and should therefore be reversed.

CONCLUSION

The appellate court's decision undermined the open and obvious rule with respect to moving trains and would impose a costly burden on Metra's commuter rail operations. For the foregoing reasons, Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra requests that this Honorable Court reverse the appellate court's ruling and affirm the circuit court's dismissal of the plaintiff's complaint.

Dated: 16 February 2022

Respectfully submitted,

/s/ Sue-Ann Rosen

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 2,355 words.

Dated: 16 February 2022

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