

Feature Article

Irina Dmitrieva
HeplerBroom LLC, Chicago

Illinois Appellate Court Clarifies the Legal Duty Rail Operators Owe to Trespassers on Train Tracks

We have all heard that bad facts make bad law. All the more refreshing is to see a case in which courts have followed the controlling legal precedent despite highly unfavorable facts. *Cole v. Chicago Transit Authority*, 2025 IL App (1st) 230797, which involved a fatal person vs. train collision, is one such case (plaintiff has filed a Petition for Leave to Appeal to the Supreme Court).

In *Cole*, a CTA customer, Nicole Smith, dropped her cell phone on train tracks at an “L” station platform in Chicago. 2025 IL App (1st) 230797, ¶ 3. Instead of calling a CTA customer support, she lowered herself to the train tracks, picked up the phone, and, once alerted to an approaching train, tried to lift herself back onto the platform, but was unsuccessful. *Id.* ¶¶ 9-10. Bystanders and a canine guard present on the platform did not help. She then began running towards a train to reach an employee-only staircase at the end of the platform. *Id.* It was broad daylight, and she was wearing a bright orange t-shirt. She also held a white plastic bag above her head. *Id.* ¶ 9.

The train operator, however, was distracted at the time—for approximately 11 seconds, he was looking outside the window of his cabin, laughing and gesturing at the traffic on a nearby expressway. *Id.* ¶ 11. Because his attention was distracted, the train operator did not see Mrs. Smith in time to avoid the collision. *Id.* ¶¶ 14-16. Mrs. Smith was unable to reach the staircase in time to avoid contact with the train and suffered fatal injuries. *Cole*, 2025 IL App (1st) 230797, ¶ 10. The CTA subsequently fired the train operator for violating internal safety rules. *Id.* ¶ 13. The CTA found that the train operator failed to devote his full attention to the proper performance of his duties and failed to bring his train to a smooth stop. He was also found in violation of a rule requiring operators to use the emergency brake to stop a train within the shortest possible distance. *Id.*

Plaintiff brought a wrongful death and survival action against the CTA, its train operator, and a canine guard company. *Id.* ¶ 3. With respect to the CTA, plaintiff claimed that its train operator failed to maintain a proper lookout, diverted his attention away from the tracks, and failed to notice Ms. Smith in time to stop the train and prevent the accident. *Id.* Evidence adduced in discovery showed that, if the train operator was on a look out while approaching the station, he likely would have seen Ms. Smith in time to stop the train in time to prevent the collision. *Id.* ¶¶ 14-16. Additionally, once the train operator saw Ms. Smith, he failed to apply the emergency brake because he was “in shock.” *Cole*, 2025 IL App (1st) 230797, ¶ 8. But he also testified: “I did the best that I could to stop that full train.” *Id.* ¶ 8.

At the close of discovery, all defendants moved for summary judgment claiming that they did not owe a duty to rescue Ms. Smith who was trespassing on the CTA’s train tracks at the time of her fatal injury. *Id.* ¶ 6. But the trial court denied summary judgment to the canine guard company and its guard, finding triable issues of fact regarding their conduct. *Id.* The court, however, entered summary judgment in favor of the CTA and its train operator, based on their lack of legal duty to Ms. Smith. *Id.* ¶ 23.

Specifically, the court found that the CTA and its train operator did not owe a duty of reasonable care to Ms. Smith because she was a trespasser who encountered an open and obvious danger on CTA tracks, *i.e.*, a moving rapid transit train. *Id.* ¶ 23. The only duty defendants owed her was to refrain from willful and wanton misconduct after discovering her on the tracks. *Id.* The court concluded that the evidence failed to show that the train operator’s conduct was willful and wanton. *Cole*, 2025 IL App (1st) 230797, ¶ 23. The court noted that the train conductor operated the train below the speed limit and applied the track brake within one second of returning his attention to the tracks in front of him. *Id.* ¶ 24. While this conduct could arguably be negligent, it could not rise to the level of willful and wanton. *Id.*

On review, the First District of the Illinois Appellate Court affirmed summary judgment in favor of the CTA and its train operator. *Id.* ¶ 72. At the outset, the appellate court explained that, because Ms. Smith trespassed onto CTA tracks, the only duty the CTA and its train operator owed to her was to refrain from willful and wanton conduct after discovering her on the tracks. *Id.* ¶¶ 42, 51. As a landowner, the CTA was not required to anticipate or guard against injuries resulting from “open and obvious” dangers, such as incoming trains. *Id.* ¶ 42. Relying on *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 32, the First District held that moving trains present open and obvious danger as a matter of law, whether or not a trespasser sees them. *Cole*, 2025 IL App (1st) 230797, ¶ 40. The *Cole* court held:

[T]here can be no question that a reasonable person exercising ordinary perception, intelligence, and judgment would recognize the risk of jumping from the platform area down onto [train] tracks even if a train was not immediately visible, since trains come frequently and quickly into the area.

Id. Plaintiff also argued that Ms. Smith was owed a duty of ordinary care as a discovered trespasser in a position of imminent peril, citing section 336 of the Restatement (Second) of Torts. *Id.* ¶ 49. Section 336 provides:

A possessor of land who knows or has reason to know of the presence of another who is trespassing on the land is subject to liability for physical harm thereafter caused to the trespasser by the possessor’s failure to carry on his activities upon the land with reasonable care for the trespasser’s safety.

Restatement (Second) of Torts § 336 (Am. L. Inst. 1965).

The appellate court ruled, however, that “Illinois has not adopted this section of the Restatement.” *Cole*, 2025 IL App (1st) 230797, ¶ 50. The court relied on *Quiroz v. Chicago Transit Auth.*, 2022 IL 127603, ¶ 27, which held that the CTA and its train operators had no duty to protect a trespasser inside the CTA subway tunnel from the risk of injury by a moving train. Citing *Quiroz*, the *Cole* court explained that the rule for a discovered trespasser is “indistinguishable from the rule that a landowner owes a trespasser a duty to avoid willfully or wantonly causing injury to the trespasser once aware of his peril.” *Cole*, 2025 IL App (1st) 230797, ¶ 50.

The appellate court then concluded, as a matter of law, that the CTA and its train operator did not engage in willful and wanton misconduct vis-à-vis Ms. Smith. *Id.* ¶ 53. The court stressed that “Ms. Smith chose to lower herself onto the tracks and place herself in a position of peril.” *Id.* ¶ 58. Once the train operator saw Ms. Smith on the tracks, he reacted immediately—“within one second, he released the train’s controller, triggering the ‘dead man’ brake, and engaged the track brake, bringing the train to a complete stop within 12 seconds.” *Id.* ¶ 56.

As for the train operator’s failure to look at the train tracks when approaching the station, the court again relied on *Quiroz* and explained: “Neither the CTA nor its operators owed [Ms. Smith] a duty to maintain a lookout for her in this unauthorized area or to rescue her from a position of peril that she had put herself in.” *Id.* ¶ 58. Since the train operator

had no duty to keep a lookout for trespassers, he did not engage “in willful and wanton misconduct because he [became] distracted and glance[d] away from the tracks for a matter of seconds.” *Id.* ¶ 59.

Thus, the appellate court reached its decision in *Cole* by applying the principles set forth by the Supreme Court in *Quiroz*, even though, plaintiff argued, *Quiroz* involved a somewhat different set of facts.

In *Quiroz*, a person ran into a CTA subway tunnel connecting Chicago and Grand Red Line stations, climbed into a hole in the wall and slept there for approximately two hours. Afterwards, he fell onto the CTA’s right-of-way next to train tracks and lay there, in the immediate proximity to moving trains. *Quiroz*, 2022 IL 127603, ¶ 3. Two trains passed him without making contact, but the third train struck the decedent, causing him fatal injuries. *Id.*

In *Quiroz*, the Supreme Court had no difficulty concluding that the decedent was a trespasser “because he entered an unauthorized area of the CTA’s subway tunnel without invitation, permission, or right. He then lay on the CTA’s right-of-way near or on the track in violation of a CTA ordinance that prohibits “entering or remaining upon any track or right-of-way.” *Id.* ¶ 15. The Supreme Court ruled that, as a landowner, the only duty the CTA owed to a trespasser was to refrain from willful and wanton misconduct. *Id.* ¶ 16. The CTA did not owe a duty to warn a trespasser of an open and obvious danger on its premises, *i.e.*, moving rapid transit trains. The court explained: “the CTA would have no reason to believe that a trespasser would not appreciate the danger posed by a moving rapid transit train.” *Id.* ¶ 23.

At the same time, the Supreme Court acknowledged that, despite the open and obvious nature of a moving train, “a duty of reasonable care may arise once the landowner discovers the trespasser in a position of imminent peril.” *Id.* ¶ 24. This exception became known as a “discovered trespasser in a position of peril” and was mentioned *in dicta* in *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 230 (1996). There, the Supreme Court provided as an example of a “place of danger” a trespasser discovered by a railroad on the tracks in the path of the railroad’s moving train. *Rhodes*, 172 Ill. 2d at 230. The Court indicated that under such a circumstance, the railroad would owe him a duty of ordinary care to avoid injuring him. *Id.*

The *Quiroz* Court did not apply the “discovered trespasser” exception, despite plaintiff’s allegation that the subway tunnel was illuminated and the decedent was in plain sight of the approaching CTA trains. *Quiroz*, 2022 IL 127603, ¶ 3. Instead, the Supreme Court performed a four-prong legal duty analysis, which considers: (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. *Id.* ¶ 13. The Supreme Court explained that the magnitude of the burden of guarding against such an injury and the consequences of placing the burden on the CTA would be “extremely high.” *Id.* ¶ 38. The court explained that, to identify the trespassers on its right-of-way and to protect them from the open and obvious risk of moving trains, the CTA and other train operators would “have to greatly modify their operations or operating procedures” and would potentially endanger passengers on board trains, who could sustain injuries when a train makes an emergency stop. *Id.* ¶¶ 37-39. In contrast, trespassers “are in the best position to avoid the injury by refraining from entering the open and obvious area made dangerous by the moving trains.” *Id.* ¶ 38.

Following *Quiroz*, plaintiffs sought to limit its holding to the unique facts at issue there—a trespasser falling asleep in a CTA subway tunnel where no reasonable person would expect to find intruders lying next to the tracks. Plaintiffs argued that the situation is different when it comes to tracks near platforms at CTA stations—because platforms is where passengers wait for incoming trains.

The fact that the appellate court resolved *Cole* based on the Supreme Court’s holding in *Quiroz* is significant, because it reaffirms that *Quiroz* is not limited to its unique facts. Train tracks and moving trains constitute open and obvious danger no matter where they are located—in a subway tunnel between stations or near the platform at a station. This holding is in line with earlier precedent, dismissing claims against Metra for colliding with persons who were standing or crossing tracks near passenger platforms.



In *Park v. Northeast Illinois Regional Commuter R.R. Corp.*, 2011 IL App (1st) 101283, and *McDonald v. Northeast Illinois Regional Commuter R.R. Corp.*, 2013 IL App (1st) 102766-B, decedents were struck by Metra trains as they attempted to cross at dedicated pedestrian crosswalks. The plaintiffs in those cases were invitees, rather than trespassers, but the courts found that the potential for injury from an oncoming train was open and obvious and, consequently, the railroads did not owe a duty of ordinary care.

The *Cole* holding also is significant because it made it clear that the only duty train operators owe to trespassers is to refrain from willful and wanton misconduct after actually discovering them on the tracks. This does not mean that train operators can just run people over, as plaintiffs have exaggerated in their arguments before the courts. Rather, as long as a train operator tries to stop the train to avoid the collision, after actually seeing a trespasser in the path of an oncoming train, this good faith effort satisfies any legal duty owed. As such, it precludes any liability for trespasser's injuries.

About the Author

Irina Dmitrieva is a partner with *HeplerBroom, LLC*. She focuses her practice on appellate litigation and critical trial motions. Irina has represented both government entities and private clients in federal and state appellate courts, including the Illinois Supreme Court, Illinois Appellate Court, and the U.S. Court of Appeals for the Seventh Circuit. Prior to joining HeplerBroom LLC, she handled all appeals on behalf of the Chicago Transit Authority.

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