



Quiroz v. Chicago Transit Authority: An Illinois Supreme Court Analysis Regarding the Duty of Care

By Emilee Bramstedt on October 25, 2022

It is longstanding law in Illinois that a possessor of land does not owe a duty of care to an adult trespasser on his land except to refrain from willfully and wantonly injuring that trespasser.[1] For example, a railroad operator is not expected to keep a lookout for persons on a railroad track that's away from populated areas and public crossings, where persons are not expected or anticipated to be.[2] Similarly, it has long been held that a possessor of land is not required to foresee an injury caused by an open and obvious condition. Illinois courts have held that a moving train is an open and obvious danger.[3]

Nevertheless, until this month, there had been some disagreement between Illinois courts regarding the duty of care owed to a trespasser in light of the Illinois Supreme Court's adoption of the exception found in the Restatement (Second) of Torts § 337. Specifically, Section 337 provides:

[a] possessor of land who maintains on the land an artificial condition which involves a risk of death or serious bodily harm to persons coming in contact with it, is subject to liability for bodily harm caused to trespassers by his failure to exercise reasonable care to warn them of the condition if (a) the possessor knows or has reason to know of their presence in dangerous proximity to the condition, and (b) the condition is of such a nature that he has reason to believe that the trespasser will not discover it or realize the risk involved.

Now, three decades after its adoption of Section 337, the Illinois Supreme Court has addressed whether the exception found in Section 337 requires a possessor of land to warn a trespasser of an open and obvious danger.

Case Background

In *Quiroz v. Chicago Transit Auth.*, 2022 IL 127603, the Illinois Supreme Court was faced with the question of whether the Chicago Transit Authority (CTA) owed a duty of care to Ricardo Quiroz, who was struck and killed by a CTA train. Quiroz trespassed into a CTA subway tunnel and fell next to the tracks before being struck by a train. In the ensuing wrongful death action, the estate alleged both negligence and willful and wanton conduct. The estate claimed that the CTA owed Quiroz a duty of care and violated that duty when it failed to notify train operators of his presence in the tunnel and failed to stop trains so Quiroz could be rescued. The estate alleged that the location where Quiroz fell was well lit, with security cameras nearby. Moreover, claimed the estate, at least two trains had previously passed Quiroz in the tunnel before the accident in question. The estate alternatively averred that the CTA acted willfully and wantonly when neither train operators nor security personnel saw Quiroz, despite his being clearly visible.

The CTA sought dismissal under 735 ILCS 5/2-615, arguing that Quiroz was a trespasser; therefore, the CTA did not have a duty to protect him from open and obvious dangers such as moving trains. In opposition, the estate argued that because Quiroz was a discovered trespasser in a position of peril, a duty existed under Restatement (Second) of Torts § 337. The circuit court held that the estate could not satisfy the second prong of Section 337, and therefore the CTA did not owe a duty to Quiroz. The circuit court dismissed the lawsuit, and the estate appealed.

The First District Appellate Court reversed and remanded, holding that a duty was sufficiently pleaded because a landowner who discovers a trespasser in a place of danger must use ordinary care to avoid injury to that trespasser. The court held that the complaint sufficiently alleged that the CTA knew, or had reason to know, of Quiroz's presence on the train tracks and that Quiroz either did not or could not recognize the danger and remove himself from harm. Therefore, the First District concluded that both prongs of Section 337 were satisfied. The Illinois Supreme Court granted the CTA's petition for leave to appeal.

The Illinois Supreme Court Decision

The Illinois Supreme Court began its analysis by recognizing that a landowner owes a duty of reasonable care to all of those who enter the landowner's premises *except for trespassers*. Here, noted the court, there was no dispute that Quiroz was trespassing – he entered the area without invitation, permission, or right, and violated a CTA ordinance in the process. The court further acknowledged the longstanding rule that a landowner is not required to foresee and protect against an injury if the potentially dangerous condition is open and obvious. Even though trespassers are afforded little protection, a landowner does, however, have a duty to refrain from willfully and wantonly injuring a trespasser.

However, the court held that a moving train is an open and obvious condition, and Section 337 was inapplicable because Quiroz, a trespasser, was reasonably expected to appreciate and avoid the danger. Therefore, the supreme court held that the appellate court erred in finding a duty of ordinary care under Section 337.

The estate alternatively argued that despite the moving train being an open and obvious danger, a duty arose once CTA personnel discovered Quiroz was in a position of imminent peril. The estate pointed to Restatement (Second) of Torts § 336, which provides that “[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 care on his activities upon the land with reasonable care for the trespasser's safety.” The supreme court rejected this argument for several reasons.

First, Illinois has never adopted Section 336. (Notably, only 12 jurisdictions have.) Second, caselaw from other jurisdictions applying Section 336 was clearly distinguishable from the present case. For example, in several cases a train operator became aware of and observed a trespasser on train tracks in a position of peril and *that same train operator* had sufficient time to warn the trespasser, stop the train, and avoid injury, but nevertheless failed to do so.^[4] Here, the estate did not allege that the train

operator of the train that hit Quiroz discovered him and failed to act accordingly to avoid hitting him, nor did the estate claim that the train operator acted willfully and wantonly *after discovering Quiroz on the tracks*. Indeed, nothing in the complaint alleged that the operator of the train that ultimately hit Quiroz was aware of Quiroz's presence. Because a train operator does not have a duty to keep a lookout for a trespasser on the tracks or in a tunnel, the Illinois Supreme Court concluded that neither the CTA nor the train operator owed a duty to Quiroz.

The Illinois Supreme Court declined the estate's invitation to broaden the duty of care to one that essentially includes a duty to rescue. Indeed, the estate sought to hold liable CTA personnel who may have seen Quiroz but failed to rescue him from a perilous situation. Consistent with *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 227-28 (1996), the court reiterated that there is no legally recognized common-law duty to aid an injured stranger unless the defendant was the one who caused the injuries or a special relationship exists. Here, there was no special relationship between the CTA and Quiroz, and the CTA certainly did not put Quiroz in the position of peril. For these reasons, and because imposing such a duty on the CTA would result in costly, ineffective, and potentially dangerous burdens on the CTA, the supreme court held that the CTA owed no legally recognized duty of ordinary care to rescue a trespasser from his fall onto CTA tracks in an unauthorized area, given the open and obvious danger of the train.

For similar reasons, the court held that the CTA also did not owe a duty to keep a lookout or monitor its security cameras for trespassers in real time.

Takeaway

The Illinois Supreme Court rightfully refused to extend the duty of care owed to trespassers on train tracks to include a duty to rescue the trespasser from an open and obvious dangerous condition once his presence may become known. If the CTA was expected to stop all of its trains every time it was unclear whether an object on the tracks was a human being, such operations would undermine the rapid transit system and create a huge burden on CTA. This could result in higher costs, ineffective travel, or even injury to its passengers. For similar reasons, the CTA cannot be expected to monitor its security cameras in real time 24 hours a day, 7 days a week, 365 days a year, with the intent of stopping the rapid transit system any time it is unclear whether an object on the tracks is a human. Ultimately, while train operators still have the duty not to injure a trespasser willfully and wantonly, that duty does not extend to rescuing a trespasser in an unauthorized area near the open and obvious danger of a moving train.

[Click here to read the entire Opinion issued by the Illinois Supreme Court.](#)

[1] See *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 116 (1995).

[2] See *Joy v. Chicago Burlington & Quincy R.R. Co.*, 263 Ill. 465, 468 (1914).

[3] See *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 35.

[4] See, e.g., *Joy v. Chicago Burlington & Quincy R.R. Co.*, 263 Ill. 465, 468 (1914); *Illinois Central R.R. Co. v. Noble*, 142 Ill. 578, 587-88 (1892); *Chicago Terminal R.R. Co. v. Kotoski*, 199 Ill. 383, 387-88 (1902).

Tags: Duty of Care, Illinois Appellate Court, Illinois Supreme Court