IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Carolyn Anderson, as independent administrator of the estate of Jerome Anderson, deceased,	)	
Plaintiff,	)	
v.	)	No. 18 L 1172
Chicago Transit Authority, a municipal corporation,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

A legally cognizable duty is an indispensable element of any negligence action. In this case, the plaintiff's decedent died after he fell from an 'L' platform while suffering an insulin reaction and struck his head on the third rail. Despite these exceptionally tragic events, the defendant owed the decedent no duty to prevent this occurrence. The defendant's motion must, therefore, be granted and the case dismissed with prejudice.

Facts

On June 1, 2017, Jerome Anderson allegedly paid his fare and walked down to the platform at the Chicago Transit Authority's (CTA) Kedzie-Homan Blue Line station. A CTA surveillance video shows Jerome arriving on the platform at approximately 9:00 a.m. He is then seen standing on the platform for about 40 minutes while multiple trains in both directions stop and leave the station. During that time, Jerome appears intermittently to be uneven on his feet, but he does not act erratically or approach other persons. At one point, he walks toward an open train door, but he fails to board. Also on the platform during this time are various CTA employees, including several who

appear to be train operators, one who appears to be a maintenance employee, and another whose job is unclear. At no time does Jerome speak to any CTA employees nor they to him. Also, at no time do any CTA employees approach Jerome. At approximately 9:45 a.m., Jerome loses his balance and falls backward off the platform. His body turns as he falls, and his head lands face down on the third rail. As a result, Jerome is electrocuted and dies.

Carolyn Anderson, Jerome's sister, filed this lawsuit as the independent administrator of Jerome's estate. Count one of her complaint is brought pursuant to the Wrongful Death Act, and alleges that the CTA, as a common carrier, owed Jerome, as a customer-passenger, the highest duty of care for his safety. Carolyn claims that the CTA breached its duty by failing to: (1) approach Jerome and assess his condition "despite him exhibiting clear signs and symptoms of experiencing a medical emergency;" (2) summon medical aid or render assistance "despite him exhibiting clear signs and symptoms of experiencing a medical emergency;" (3) turn off power to the electrified third rail or take any other measures "after learning that [Jerome] was stumbling along the Kedzie-Homan Blue Line platform;" (4) notify emergency response personnel that Jerome needed medical assistance; and (5) monitor properly the platform for the safety of its paying customers. Count two is brought pursuant to the Survival Act and presents the same factual allegations and legal claims as count one.

Counts three and four are brought as simple negligence causes of action under the Wrongful Death and the Survival Acts respectively. These counts allege that the CTA owed Jerome a duty because he was a business invitee. The claims presented in both counts are identical to those in counts one and two.

On May 24, 2018, the CTA filed a motion to dismiss. The CTA argues that it owed Jerome no duty because Illinois does not impose on common carriers duties to assess passengers' medical conditions and intervene on their behalf. According to the CTA, no duty existed because monitoring all passengers at the Kedzie-Homan station, let alone all 145 rail stations, would be impractical. The CTA argues alternatively that it owed Jerome as a trespasser no duty other than to

refrain from willful and wanton conduct. Finally, the CTA argues that the highest standard of care allegations must be stricken because Jerome was not riding in, boarding, or alighting from a CTA vehicle.

In response, Carolyn argues she has stated a legal duty. According to Carolyn, Jerome was a passenger of a common carrier as well as a business invitee and, therefore, enjoyed a special relationship with the CTA. According to Carolyn, that special relationship required the CTA to: (1) protect Jerome from an unreasonable risk of physical harm, and; (2) render first aid after the CTA knew or had reason to know that Jerome was ill and to care for him until he could be cared for by others.

Analysis

The CTA's brings its motion to dismiss pursuant to Code of Civil Procedure section 2-619(a)(9). *See* 735 ILCS 5/2-619(a)(9). Such a motion admits a complaint's legal sufficiency but asserts affirmative matter to defeat the claim. *See Bjork v O'Meara*, 2013 IL 114044, ¶ 21; *Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Affirmative matter includes the absence of a legal duty. *See Lang v. Silva,* 306 Ill. App. 3d 960, 970 (1st Dist. 1999); *Milz v. M.J. Meadows, Inc.*, 234 Ill. App. 3d 281, 287 (1st Dist. 1992). A court considering a 2-619 motion must accept as true all well-pleaded facts and reasonable inferences arising from them, *see Doe v. Chicago Bd. of Ed.*, 213 Ill. 2d 19, 23-24 (2004), but not conclusions unsupported by facts. *See Pooh-Bah Enter., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009); *see also Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17.

A complaint must be both legally and factually sufficient to withstand a motion to dismiss. To be legally sufficient, a complaint must set forth a legally recognized cause of action, one in which: (1) the defendant owed the plaintiff a duty; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff's injury. *See Iseberg v. Gross*, 227 Ill. 2d 78, 86-87 (2007); *Vaughn v. City of West Frankfort*, 166 Ill. 2d 155, 158 (1995). The question of whether the defendant owed the plaintiff a duty is a question of law for the court to decide. *See Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 21.

To determine whether the defendant owed the plaintiff a duty, a court must analyze whether a relationship existed between the plaintiff and the defendant for which the law would impose a duty. *See Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Dir.*, 2012 IL 112479, ¶ 22 (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006)). The "relationship" is "a shorthand description for the analysis of four factors: (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 the burden on the defendant." *Id.* (citing *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18). A court's analysis of the duty element focuses on the policy considerations inherent in these four factors and the weight accorded to each based on the case's particular circumstances. *Id.*

As a general proposition, there exists no duty to protect or rescue a stranger. *See Simpkins*, 2012 IL 110662, ¶ 18, (citing *Rhodes v. Illinois Cent. Gulf R.R.*, 172 Ill. 2d 213, 232 (1996)). Yet "every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act. . . ." *Widlowski v. Durkee Foods*, 138 Ill. 2d 369, 373 (1990). Even in the absence of such an act or a course of conduct, an individual may owe another an affirmative duty if there exists a "special relationship" between them. *See Rhodes*, 172 Ill. 2d at 232. "Such duties are . . . premised upon a relationship between the parties that is independent of the specific situation which gave rise to the harm." *Simpkins*, 2012 IL 110662, ¶ 20. Two such special relationships are that between a common carrier and its passengers and between a business owner and the public invited into the premises. *See Marshall*, 222 Ill. 2d at 438.

As to the latter relationship, a business owner is liable for the harm suffered by invitees if but only if the owner:

> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
(c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts, § 343; *see Genaust v. Illinois Power Co.*, 62 Ill. 2d 456, 468 (1976). At the same time, Illinois recognizes an exception to the general rule for open-and-obvious conditions. As the Restatement also provides:

> A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

Restatement (Second) of Torts § 343A(1). The open-and-obvious exception is based on the commonsense idea that some property conditions are so large and obvious that a reasonably observant person is expected to see and avoid them and, because no reasonable person would encounter such defects, the landowner has no duty to remedy or warn of its dangers. *See, e.g., Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 424 (4th Dist. 2008). Obvious dangers include fire, drowning in water, falling from a height, and moving trains. *See Choate v. Ind. Harbor Belt R.R.*, 2012 IL 112948, ¶ 32. Whether a condition is open and obvious depends on the objective knowledge of a reasonable person, not the plaintiff's subjective knowledge or lack of knowledge. *See Bonner v. City of Chicago*, 334 Ill. App. 3d 481, 484 (1st Dist. 2002) (light pole base was open and obvious despite plaintiff's attention directed to men he feared would steal his bag of money); *see also Prostran v. City of Chicago*, 349 Ill. App. 3d 81 (1st Dist. 2004) (construction site was open and obvious despite plaintiff's visual impairment).

As to the common carrier relationship, it is uncontested in this case that the CTA is a common carrier. *See Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 227 (2010); *Fujimura v. Chicago Transit Auth.*, 67

Ill. 2d 506, 513 (1977). Courts have recognized that the CTA, as a common carrier, owes its passengers a heightened duty of care. *See McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶ 76; *Skelton v. Chicago Transit Auth.*, 214 Ill. App. 3d 554, 572 (1st Dist. 1991). This heightened duty of care is "premised on the carrier's unique control over its passengers' safety." *McNerney*, 2017 IL App (1st), ¶ 76; *see also Krwyin*, 238 Ill. 2d at 226-27 (citing *Sheffer v. Springfield Airport Auth.*, 261 Ill. App. 3d 151, 154 (4th Dist. 1994)). To that end, a common carrier owes its passengers duties:

> (a) to protect them against unreasonable risk of physical harm, and
> (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.

Restatement (Second) of Torts, § 314A(1)(a)-(b) (1965) (adopted by *Marshall*, 222 Ill. 2d at 438). The same Restatement section provides that: "A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation." *Id.* at § 314A(3).

Illinois courts take an expansive view of who qualifies as a passenger of a common carrier. *See Pence v. Northeast Ill. Reg'l Commuter R.R.*, 398 Ill. App. 3d 13, 17 (1st Dist. 2010). "[T]o come within the definition of a passenger, it is not necessary for the individual to have come into physical contact with the train." *Id.* Rather, "Illinois courts have long held that a contractual relationship between passenger and carrier begins when the passenger has presented himself at the proper place to be transported with the intention of becoming a passenger and is then either expressly or impliedly accepted by the carrier for transportation." *Id.; see also Del Real v. Northeast Ill. Reg'l Commuter R.R.*, 404 Ill. App. 3d 65, 72 (1st Dist. 2010). "Although it is unnecessary for a person to possess a ticket in order to be a passenger, possession of a ticket does not, by itself, create the passenger-carrier relationship." *Pence,* 398 Ill. App. 3d at 17.

Even if Jerome was a CTA passenger while he waited on the 'L' platform, the CTA argues that it did not owe Jerome the heightened standard of care after he fell from the platform. According to the CTA, at that point, Jerome was no longer a passenger but a trespasser to whom the CTA owed no duty except to refrain from willful and wanton conduct. In other words, passenger status and trespasser status are mutually exclusive. The CTA made the same argument unsuccessfully in *Eshoo v. Chicago Transit Auth.*, 309 Ill. App. 3d 831, 835 (1st Dist. 1999). There, the jury found that the plaintiff's decedent was still a business invitee even after he left the platform to urinate on the train tracks. *See id.* As explained further below, the CTA's absolute distinction between passenger and trespasser status is neither rational nor relevant as a matter of law.

A trespasser is defined as a person who "enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise." Restatement (Second) of Torts § 329 (1965). Illinois courts have employed similar language. *See, e.g., Illinois Cent. R.R. v. Eicher*, 202 Ill. 556, 560 (1903); *Grimwood v. Tabor Grain Co.*, 130 Ill. App. 3d 708, 711-12 (3d Dist. 1985). Courts have also inferred that a trespass requires some degree of intent since a trespasser enters property "without permission, invitation, or other right, and intrudes for some purpose of his own, or at his convenience, or merely as an idler." *Trout v. Bank of Belleville*, 36 Ill. App. 3d 83, 87 (5th Dist. 1976) (trespasser includes motorcyclist driving on bank parking lot without approval); *see also Cockrell v. Koppers Indus., Inc.*, 281 Ill. App. 3d 1099, 1104 (1st Dist. 1996) (trespassers include workers straying from intended worksite).

The Restatement (Second) of Torts distinguishes between various types of trespass and non-trespass. For example, liability is imposed on intentional trespassers even if the trespass is otherwise harmless because trespass interferes with the right to exclusive possession. *See* Restatement (Second) of Torts § 158 (1965). In contrast, a negligent trespass claim will lie only if "the presence of the thing or the third person upon the land causes harm to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest." *See id.* at § 165 & cmt. *b*. Finally, a person is not

liable for an unintentional, non-negligent trespass even if the entry causes harm to a legally protected interest. *See id.* at § 166. Indeed, such a set of facts "*removes the actor from the class of trespassers* and relieves him from the burdens incident thereto. . . ." *Id.* at § 166, cmt. *c* (emphasis added). *See also Dial v. O'Fallon*, 81 Ill. 2d 548, 553-54 (1980).

In this case, Jerome belongs to the class of non-trespassers because his conduct was unintentional and non-negligent. Jerome did not intend to have, and was not negligent in having, an insulin reaction; he did not intend to fall, and was not negligent in falling, from the platform; he did not intend to strike, and was not negligent in striking, his head on the third rail. Since Jerome was not a trespasser as a matter of law after he fell from the platform, the CTA cannot claim his status to the contrary as affirmative matter in support of its motion to dismiss.

The conclusion that Jerome was both a passenger and a non-trespasser does not, however, defeat the CTA's argument. Rather, this conclusion properly focuses this court's attention on the central issue – whether the heightened duty of care the CTA owed Jerome both as a passenger and business invitee extends to the claims Carolyn has charged in her complaint. For that answer, this court turns to the four elements of a duty analysis.

As to the first factor – reasonable foreseeability – a duty exists only if the *injury* is reasonably foreseeable. While common carriers and business owners specifically owe a duty to protect passengers and invitees from unreasonable risks of harm, *see* Restatement (Second) of Torts, § 314A(1) & (3), no defendant owes a duty to protect a plaintiff from an injury resulting from "freakish, bizarre, or fantastic circumstances." *Bogenberger*, 2018 IL 120951, ¶ 46 (quoting *Doe-3*, 2012 IL 112479, ¶ 31). It is plain that diabetes is not a freakish, bizarre, or fantastical medical condition; it is, rather, an unfortunately common, chronic, often progressive, and pernicious disease. Given the number of persons who ride the 'L' on a daily basis, it is plainly foreseeable that a passenger somewhere might suffer an insulin reaction while waiting on a platform.

Jerome was not, however, injured by a danger on the Kedzie-Homan platform. Rather, he was injured only after he fell from the platform at such an angle and at such a speed that his body traveled far enough so that his head struck the electrified third rail. This tremendously tragic event is simply not the type of injury process the CTA should reasonably foresee as a result of a passenger-invitee suffering an insulin reaction (or any other emergent medical condition). Illinois law is plain that a defendant is not negligent for failing to guard against a foreseeable risk of a particular injury occurring in a particular way. *See Cunis v. Brennan*, 56 Ill. 2d 372, 377-78 (1974) (no duty owed to prevent remote possibility of bizarre injury arising from auto accident). As another court stated: "the foreseeability of an occurrence does not *ipso facto* create a duty to take all measures necessary to prevent its occurrence." *Osborne v. Sprowls*, 84 Ill. 2d 390, 396 (1981) (no duty to prevent bystander's injuries from player catching football in particular way).

As to the second factor – the likelihood of injury – it is doubtless that serious bodily injury or death would result from even the slightest physical contact with the third rail. This factor's importance is, however, diminished to the point of irrelevance given the unlikelihood that a CTA passenger suffering an emergent medical event would come into contact with the third rail. In short, the likelihood of injury does not factor into the duty calculus in this case.

The third factor – the magnitude of the burden in guarding against the injury – must be addressed with regard to the specific claims Carolyn raises in her complaint, that the CTA owed Jerome a duty to: (1) assess his condition; (2) summon medical assistance; (3) turn off power to the third rail; and (4) monitor the platform for the safety of customers. The first claim, that the CTA owed Jerome a duty to assess him, runs counter to Illinois law that physical assessments and evaluations of emergent medical conditions fall within the ambit of first responders. *See Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 345 (1st Dist. 2008); *see also* Emergency Medical Services (EMS) Systems Act, 210 ILCS 50/1 – 33. This court is unaware of any case imposing such duties on another class of employees and, doubtless, doing so as to

CTA employees would be exorbitantly expensive. A further legal concern is that imposing medical assessment and evaluation services on the CTA would go far beyond the scope of powers statutorily authorized by the legislature. *See generally* Metropolitan Transit Authority Act, 70 ILCS 3605/1 – 33.

Carolyn's second claim, that the CTA should have sought emergency medical assistance, does not, by itself, constitute a substantial burden. Indeed, calling 9-1-1 is the type of conduct expected of a common carrier-business owner if a medical emergency occurs. *See* Restatement (Second) of Torts, § 314A(1)(b) ("to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others"). Yet Carolyn appears to be seeking to impose a duty far more burdensome than calling 9-1-1. It is possible to infer from the complaint that Carolyn is seeking to impose on CTA employees the burden of *first* assessing a passenger's condition accurately and *then* calling 9-1-1. Those predicate acts would require CTA employees to assess accurately the passenger's condition; in other words, distinguishing an insulin reaction from medical conditions with potentially similar presentations such as intoxication, adrenal and pituitary disorders, anorexia, and others.

It is possible that this court is reading Carolyn's complaint too narrowly. If so, a broader reading is equally problematic. Were CTA employees required to assess all passengers in a far more cursory and general way – "Does this person look okay to me?" – such an inquiry would have to be made thousands of times each day by all CTA employees and would take them away from their other duties. In short, a broader reading of the complaint would also lead to untenable burdens of time and cost on the CTA.

Carolyn's third claim that the CTA had a duty to turn off power to the third rail is similarly overly burdensome. While the pleadings do not indicate the procedure necessary to cut power to any particular section of the third rail, even if such a response were simple, the predicate of knowing when to cut power would still be extremely burdensome. CTA employees would continuously have to assess all passengers on an 'L' platform and judge whether the medical condition

of any one of them warranted turning off electrical power on the off chance that she or he might fall from the platform and strike the third rail. Such an extraordinary assessment program goes far beyond any burden currently imposed on a public transportation system.

Carolyn's fourth claim – a duty to monitor the platform for customer safety – improperly conflates two separate concepts. The CTA, as a common carrier and a property owner, plainly owes a duty to inspect the platform for defective conditions that could injure passenger-invitees. The CTA does not, however, owe a duty to passenger-invitees to conduct medical assessments. Here, Jerome was not injured by anything on the platform; rather, he was injured by the third rail, an object well off and below the platform. Given the need for passenger access to trains and electrical current to move them, Carolyn's claim is seeking a fundamental and unjustified redesign of the 'L' system.

The fourth duty factor – the consequences of placing additional burdens on the defendant – also balances in the CTA's favor. To accept Carolyn's expansive view of the CTA's duty would have substantial and detrimental policy consequences in at least two obvious ways. First, the additional burdens on CTA employees could potentially apply to other public service providers: cleaning crews removing gum wads on walking surfaces would have to inquire whether a customer's yellow sclera are the result of Isoniazid toxicity; water main crews would have to call for blood-lead-level testing of lethargic children playing on the block; mosquito abatement personnel would have to look for signs of West Nile virus in persons living in sprayed areas. Second, imposing additional burdens on CTA employees would likely result in overcompensation based on false positive assessments. In other words, the mere fact that a customer on an 'L' platform might be suffering an insulin reaction and might fall from a platform would frequently lead the CTA to cut off electrical current to the third rail. Such events would undermine the CTA's fundamental purpose of providing public transportation services, increase commuting times, and swell public dissatisfaction.

In short, the duties Carolyn identifies in her complaint and asks this court to acknowledge are, as a matter of law, not recognized in

Illinois. The wholly unintentional and non-negligent nature of Jerome's uncontrollable conduct in falling from the platform does not justify the application of new duties either to common carriers or business owners. Rather, Jerome's unexpected and innocently confused behavior only amplifies the pathos engendered by his untimely and tragic death.

Conclusion

For the reasons presented above, the CTA's motion to dismiss is granted and this case is dismissed with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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