

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 170146-U

NO. 4-17-0146

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 17, 2018

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

SHARANDA HARPER, Individually, and as Parent,	)	Appeal from
Guardian, and Next Friend of J'RIEHA HARPER, a	)	Circuit Court of
Minor,	)	Macon County
Plaintiff-Appellant,	)	No. 14L62
v.	)	
DECATUR TRANSIT MANAGEMENT, INC., an	)	Honorable
Illinois Corporation, and STEVEN L. DERRICKSON,	)	Albert G. Webber,
Defendants-Appellees.	)	Judge Presiding.

---

JUSTICE DeARMOND delivered the judgment of the court.  
Presiding Justice Harris and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in granting defendants' motion for summary judgment.

¶ 2 In May 2014, plaintiff, Sharanda Harper, individually and as parent, guardian, and next friend of J'Rieha Harper, a minor, filed a negligence complaint against defendants, Decatur Transit Management, Inc. (Decatur Transit), and Steven L. Derrickson. In October 2016, defendants filed a motion for summary judgment, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting summary judgment in favor of defendants. We affirm.

¶ 4 I. BACKGROUND

¶ 5 This appeal arises from an incident on August 7, 2013, when J'Rieha was struck and injured by a vehicle after exiting a Decatur Transit bus. In May 2014, plaintiff filed a

negligence complaint against defendants, alleging they breached their duty to J'Rieha by failing to warn bus passengers concerning approaching traffic, permitting passengers to cross the street in front of the bus, and failing to stop the bus at its usual and customary stop at the intersection of Martin Luther King Jr. Drive and Marietta Street. As a result of defendants' alleged negligent acts or omissions, the complaint alleged J'Rieha was struck by an automobile and suffered serious injuries.

¶ 6 The following facts are taken from the parties' discovery depositions and affidavits. At the time of the accident, Decatur Transit, in addition to transporting paying passengers, transported school children during the school year. On August 7, 2013, shortly after 4 p.m., Derrickson was driving a public transit bus near the intersection of Martin Luther King Jr. Drive and Marietta Street in Decatur. Martin Luther King Jr. Drive is a four-lane street with northbound and southbound traffic, separated by a center median, and with designated areas for parallel parking. An unmarked crosswalk for pedestrians is located approximately 40 to 50 feet south of the bus stop.

¶ 7 Derrickson stopped at the customary position where the stop would normally take place. The bus had a door near the driver and another door near the back. A sign above the rear door warned riders not to walk in front of the bus. Derrickson did not see J'Rieha exit the back door, but he saw someone crossing in front of the bus in his peripheral vision. He first saw J'Rieha "around the middle of the intersection diagonal from the bus" after she got hit by an automobile. Derrickson stated J'Rieha "didn't go directly in front of my bus" because he would have seen her, "so she had to cross up at a diagonal crossing."

¶ 8 Decatur police sergeant Jon Quehl conducted an accident reconstruction and found J'Rieha did not use the crosswalk. Instead, she ran "at an approximately 45 degree angle"

from the corner of the bus across the right-hand driving lane of Martin Luther King Jr. Drive. As she began to cross, “the bus temporarily obscured her vision” of a vehicle, driven by Theo Boston, traveling southbound in the left-hand lane. After running approximately 14 feet diagonally across the street, “her ability to see vehicles traveling southbound in the left-hand driving lane would no longer have been obscured.” J’Rieha “continued running approximately 11.74 feet diagonally from where the stopped bus no longer obscured Boston’s vision of her, to where she was struck by Boston’s vehicle.” Quehl estimated the speed of Boston’s vehicle at the time of impact was between 32 and 33 miles per hour.

¶ 9 J’Rieha stated the day of her accident was the first time she rode the city bus to school. A freshman in high school, J’Rieha took the bus from school to go to her aunt’s house. She did not recall seeing any signs when she rode the bus that day. She also did not remember getting off the bus or being hit by the car. J’Rieha suffered injuries to her head, back, and leg.

¶ 10 Paul McChancy, the mass transit administrator, testified transit buses do not have stop arms. After two previous incidents and the accident in question, transit officials discussed ways to prevent similar types of occurrences. Suggestions aimed at minimizing accidents included education in school, requiring passengers to exit the rear door, and public service announcements. The discussion ultimately led to the placement of signs on the back of buses to warn drivers to be careful of children crossing in front of the buses.

¶ 11 In October 2016, defendants filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2016)). Therein, defendants stated that, while Derrickson owed her a duty to stop at a place where J’Rieha could safely alight, he fulfilled that duty by stopping the bus at the designated stop. However, defendants did not owe a duty to (1) prevent her from running at a 45-degree angle from the bus

across the street, (2) prevent her from crossing the street other than in a pedestrian crosswalk, (3) warn her of the dangers of crossing outside of a pedestrian crosswalk, or (4) warn her of the dangers of crossing a four-lane street without looking both ways. Even if defendants had a duty to warn J'Rieha about the dangers of crossing in front of a stopped bus, they did so with the placement of the warning sign above the rear passenger door. Defendants also contended J'Rieha failed to exercise ordinary care for her own safety when she ran across the street.

¶ 12 In her response, plaintiff argued defendants owed J'Rieha a duty of ordinary care. Moreover, plaintiff contended the sufficiency of the warning sign was an issue for the trier of fact.

¶ 13 In January 2017, the trial court issued its ruling on defendants' motion for summary judgment. The court found the bus was stopped at a marked and established bus stop, where J'Rieha then exited. At that point, J'Rieha was "beyond the physical control" of defendants.

"As noted in *Mitchell v. City of Chicago*, 221 Ill. App. 3d 1017[, 583 N.E.2d 60] (1st Dist. 1991)[,] once a passenger exits a carrier at the end of a journey, the duty of the carrier to the passenger is one of ordinary care. No act or omission of the Defendants in controlling or failing to control the movement of the Plaintiff's minor after she exited the bus is demonstrated here, nor is a duty defined or pleaded, per *Mitchell*."

The court concluded defendants owed no duty to warn J'Rieha, stating, in part, as follows:

"Here, the Court must be cognizant of the realities of operating a municipal bus. Dozens of passengers may be present at any one

time, with possibly hundreds every day. Passengers get on and off the bus, of all ages, languages, sight and hearing abilit[ies], and abilit[ies] to comprehend. To require a bus company to affirmatively warn each and every passenger of all [dangers] associated with public transit with reasonable assurance of every individual's comprehension would place a tremendous, if not impossible burden, on the company and public. The transit system itself would be ground to a halt as warnings were dispensed. The Court cannot say here that the Defendants' warnings were inadequate to any duty which might exist."

The court found the evidence indicated J'Rieha ran in front of the bus at a 45-degree angle and across almost two lanes of traffic before she was struck by Boston's vehicle 26.07 feet from the front of the bus. The court stated "at some point, the passenger/carrier relationship becomes so attenuated as to vanish," and while J'Rieha was 14 years old, "children are taught from a much earlier age to look both ways before crossing a street." The court granted defendants' motion for summary judgment. This appeal followed.

¶ 14

## II. ANALYSIS

¶ 15 Plaintiff argues the trial court erred in granting summary judgment in favor of defendants. We disagree.

¶ 16

### A. Standard of Review on Summary Judgment

¶ 17

"Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' "

*Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). “Summary judgment is a drastic remedy and should be allowed only when the right of the moving party is clear and free from doubt.” *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291, 730 N.E.2d 1119, 1127 (2000). “Accordingly, where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact.” *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 424, 706 N.E.2d 460, 463 (1998). “On appeal from a trial court’s decision granting a motion for summary judgment, our review is *de novo*.” *Bowles v. Owens-Illinois, Inc.*, 2013 IL App (4th) 121072, ¶ 19, 996 N.E.2d 1267.

¶ 18 B. Negligence and Summary Judgment

¶ 19 “To recover damages based upon negligence, a plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff’s injury.” *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225, 938 N.E.2d 440, 446 (2010). “A legal duty refers to a relationship between the defendant and the plaintiff such that the law imposes on the defendant an obligation of reasonable conduct for the benefit of the plaintiff.” *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22, 980 N.E.2d 58. In the absence of a duty on the part of a defendant, the plaintiff cannot recover. *Choate*, 2012 IL 112948, ¶ 22, 980 N.E.2d 58. Whether the defendant owes a duty to the plaintiff is a question of law for the court to decide. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114, 649 N.E.2d 1323, 1326 (1995).

“The touchstone of the duty analysis is to ask whether the plaintiff and defendant stood in such a relationship to one another that the

law imposes on the defendant an obligation of reasonable conduct for the benefit of the plaintiff. The inquiry involves 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.” *Krywin*, 238 Ill. 2d at 226, 938 N.E.2d at 447.

¶ 20 C. A Common Carrier’s Duties

¶ 21 Courts have found “[a] common carrier must exercise the highest degree of care for its passengers.” *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 17, 923 N.E.2d 854, 857-58 (2010) (citing *Skelton v. Chicago Transit Authority*, 214 Ill. App. 3d 554, 573 N.E.2d 1315 (1991)); see also *Gaines v. Chicago Transit Authority*, 346 Ill. App. 3d 346, 349, 804 N.E.2d 653, 656 (2004) (noting the highest-degree-of-care standard but also stating the common carrier “cannot be an absolute insurer of the safety of its passengers”). “The passenger to whom the carrier owes the duty to exercise the highest degree of care is one who is in the act of boarding, is upon, or is in the act of alighting from, the carrier’s vehicle.” *Katamay v. Chicago Transit Authority*, 53 Ill. 2d 27, 29, 289 N.E.2d 623, 625 (1972). “The only duty, if any, that is owed by a common carrier to protect its passengers from injuries that might be sustained after they safely alight from the vehicle of conveyance is one of ordinary care.” *Trevino v. Flash Cab Co.*, 272 Ill. App. 3d 1022, 1028, 651 N.E.2d 723, 727 (1995). “ ‘A carrier is liable to its passenger only for injuries which are caused by its negligence; it is not liable for injuries which result from a cause beyond its control.’ ” *Carlson v. Chicago Transit Authority*, 2014 IL App (1st) 122463, ¶ 28, 10 N.E.3d 426 (quoting *Nilsson v. Checker Taxi Co.*, 4 Ill. App. 3d 718, 722, 281 N.E.2d 721, 723 (1972)).

¶ 22 In the case *sub judice*, J'Rieha safely disembarked from the bus at a designated stop. She was not injured until she left that spot by running into the street in front of the bus. Once J'Rieha safely exited the bus, defendants' duty to exercise a high standard of care terminated. Plaintiff, however, argues defendants owed a duty of ordinary care to J'Rieha, regardless of whether she was on or off the bus. "When a passenger on a common carrier ceases to be a passenger is not clearly defined by law[, as it] depends on varying circumstances such as the location of boarding or debarking." *Jones v. Chicago & Northwestern Transportation Co.*, 206 Ill. App. 3d 136, 138, 563 N.E.2d 1120, 1121 (1990).

¶ 23 In *Crutchfield v. Yellow Cab Co.*, 189 Ill. App. 3d 1091, 1093, 545 N.E.2d 961, 962 (1989), the decedent rode a Chicago Transit Authority (CTA) bus to attend a dance at her school. The decedent exited the bus at the designated stop, walked around the left front of the bus, and was then struck by a vehicle. *Crutchfield*, 189 Ill. App. 3d at 1093, 545 N.E.2d at 962. The decedent's mother filed suit, alleging the defendants were negligent in the placement of the bus stop and for failing to provide warnings notifying approaching traffic that bus passengers would be crossing the street. *Crutchfield*, 189 Ill. App. 3d at 1093-94, 545 N.E.2d at 962. The trial court granted summary judgment. *Crutchfield*, 189 Ill. App. 3d at 1094, 545 N.E.2d at 962-63.

¶ 24 On appeal, the question centered on what duty, if any, was owed by the City of Chicago and the CTA to provide safety to passengers disembarking from CTA buses at designated stops. *Crutchfield*, 189 Ill. App. 3d at 1094, 545 N.E.2d at 963. The First District noted a common carrier "owes its passengers the highest degree of care while they are leaving a bus \*\*\* and that the duty continues until passengers have a reasonable opportunity to reach a



place of safety[.] \*\*\* Once that has occurred, the carrier then has only a duty of ordinary care.”  
*Crutchfield*, 189 Ill. App. 3d at 1094, 545 N.E.2d at 963.

¶ 25 The First District found the decedent safely disembarked from the bus at the designated stop, and she was not injured until after she left that spot and stepped into the street in front of the bus. *Crutchfield*, 189 Ill. App. 3d at 1095, 545 N.E.2d at 963. Thus, once she safely disembarked the bus, “the CTA’s duty to exercise a high standard of care terminated.”  
*Crutchfield*, 189 Ill. App. 3d at 1095, 545 N.E.2d at 963. The court also stated it knew “of no duty imposed upon a common carrier to move away immediately after discharging passengers so as to permit a clear view of the roadway,” and “the CTA has no duty to protect its passengers from obvious street dangers.” *Crutchfield*, 189 Ill. App. 3d at 1095, 545 N.E.2d at 963. As the CTA’s duty to the decedent “was fully performed when she stepped off of the bus and arrived safely at the bus stop designated by the City,” the First District found summary judgment was proper. *Crutchfield*, 189 Ill. App. 3d at 1095, 545 N.E.2d at 964.

¶ 26 In *Mitchell*, 221 Ill. App. 3d at 1018, 583 N.E.2d at 61, the plaintiff boarded a CTA bus, paid his fare, and purchased a transfer entitling him to transfer from the bus to a CTA train. The bus stopped at the designated stop, which was located 100 feet from the nearest intersection and directly across from an elevated train station. *Mitchell*, 221 Ill. App. 3d at 1018, 583 N.E.2d at 61. The plaintiff exited from the front door of the bus, checked for traffic, crossed the street midblock in front of the bus, and was struck by a car. *Mitchell*, 221 Ill. App. 3d at 1019, 583 N.E.2d at 61.

¶ 27 The plaintiff filed a negligence complaint against the CTA, the City of Chicago, and the driver of the car, alleging the CTA breached its duty, *inter alia*, by failing to warn him against crossing in the middle of the street and failing to warn motorists of pedestrians crossing

the street at that point. *Mitchell*, 221 Ill. App. 3d at 1019, 583 N.E.2d at 61. The trial court granted summary judgment in favor of the defendants. *Mitchell*, 221 Ill. App. 3d at 1020, 583 N.E.2d at 62.

¶ 28 On appeal, the First District noted “ ‘when the carrier discharges the passenger at an intermediate point or at the end of the journey, be it in a public place or otherwise, the duty to exercise the highest degree of care is suspended and \*\*\* is resumed when the passenger presents himself to the conveyance of the carrier within the time and at the place fixed by the contract.’ ” *Mitchell*, 221 Ill. App. 3d at 1020-21, 583 N.E.2d at 62 (quoting *Rotheli v. Chicago Transit Authority*, 7 Ill. 2d 172, 178 130 N.E.2d 172, 175 (1955)). Looking at the facts of that case, the court found the CTA did not breach its duty of ordinary care. *Mitchell*, 221 Ill. App. 3d at 1021, 583 N.E.2d at 62. In affirming the grant of summary judgment, the court stated the plaintiff was safely discharged at the designated bus stop, and “[t]he CTA has no duty to protect its passengers from obvious street dangers.” *Mitchell*, 221 Ill. App. 3d at 1021, 583 N.E.2d at 62.

¶ 29 Plaintiff alleged defendants breached their duty of ordinary care by failing to warn J’Rieha of the dangers of crossing in front of the bus. However, we find no such duty of care existed under these circumstances. J’Rieha exited the bus safely, and she was no longer a passenger at the time she was hit by Boston’s car. As in *Crutchfield* and *Mitchell*, defendants had no duty to protect passengers from obvious street dangers, and they cannot be held liable for injuries that resulted from causes outside their control.

¶ 30 Plaintiff relies, in part, on *Diaz v. Chicago Transit Authority*, 174 Ill. App. 3d 396, 528 N.E.2d 398 (1988), and *Garrett v. Grant School District No. 124*, 139 Ill. App. 3d 569, 487 N.E.2d 699 (1985). In *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 400, the plaintiff, a passenger of a CTA bus, gestured to the driver to make a stop at a restaurant instead of the

regular bus stop. The driver complied and stopped the bus at an angle approximately three feet from both the regular stop and from the curb. *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 400. The plaintiff exited, stepped in the street, and crossed in front of the bus. *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 400. Because of the angle of the bus, the plaintiff's view of the street and any oncoming traffic was obstructed. *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 400. The bus driver gestured that it was safe for the plaintiff to continue across the street, but when the plaintiff proceeded in front of the bus, he was struck by a car. *Diaz*, 174 Ill. App. 3d at 398-99, 528 N.E.2d at 400.

¶ 31 The plaintiff brought a personal injury action against the driver of the car and the CTA. *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 399. A jury found in the plaintiff's favor and, although finding him partly at fault, awarded him damages. *Diaz*, 174 Ill. App. 3d at 398, 528 N.E.2d at 399. On appeal, the CTA argued the plaintiff failed to present evidence that it caused or contributed to his injuries. *Diaz*, 174 Ill. App. 3d at 399, 528 N.E.2d at 400. However, the First District upheld the jury verdict, finding the bus driver allowed the plaintiff to disembark in a spot different from the normal stop and signaled him to continue in front of the bus to cross the street. *Diaz*, 174 Ill. App. 3d at 399, 528 N.E.2d at 400.

¶ 32 In *Garrett*, 139 Ill. App. 3d at 572, 487 N.E.2d at 700, the driver of a school bus stopped near an intersection to allow students, including the plaintiff, to disembark. To get home, the students had to cross railroad tracks, and the plaintiff tripped on a rail in an ungraded, unpaved area of the tracks and suffered injury. *Garrett*, 139 Ill. App. 3d at 572, 487 N.E.2d at 701. The plaintiff filed suit, alleging the school district's bus driver negligently required her to disembark the bus at an unsafe place, which required her to cross an unreasonably dangerous railroad crossing. *Garrett*, 139 Ill. App. 3d at 572-73, 487 N.E.2d at 701. The school district

moved for summary judgment, which the trial court granted. *Garrett*, 139 Ill. App. 3d at 573-74, 487 N.E.2d at 702.

¶ 33 In looking at whether the school district satisfied its duty to the plaintiff, the appellate court found the school district had a duty to select a discharge point that did not needlessly expose students to serious hazards. *Garrett*, 139 Ill. App. 3d at 576, 487 N.E.2d at 703. While the school district's duty to render to the plaintiff the highest degree of care had terminated—as she had safely alighted the bus and reached a reasonable place of safety—it still owed her a duty of ordinary care. *Garrett*, 139 Ill. App. 3d at 578, 487 N.E.2d at 705. The court found the school district “had the duty to provide her with a reasonably safe means of egress from the point of debarking.” *Garrett*, 139 Ill. App. 3d at 578, 487 N.E.2d at 705. In concluding summary judgment was improper, the Second District found a genuine issue of material fact existed as to whether the school district fulfilled its duty of ordinary care because, in part, the district knew the majority, if not all, of the students had to cross the tracks, which had no pedestrian crosswalk, and the students often crossed the tracks other than on the pavement when there was vehicular traffic. *Garrett*, 139 Ill. App. 3d at 578-79, 487 N.E.2d at 705.

¶ 34 We find plaintiff's cases distinguishable. In *Diaz*, the bus driver stopped the bus in a different spot from the normal stop and then signaled to the plaintiff to continue in front of the bus to cross the street. Here, Derrickson stopped the bus at the designated stop, J'Rieha safely disembarked, and Derrickson did not wave or signal to her to cross in front of the bus. In *Garrett*, the school district knew the students would have to cross the tracks, sometimes at unpaved areas, after they exited the bus. In this case, no evidence indicated Derrickson knew where J'Rieha was going after she disembarked. To hold defendants responsible on these facts—where J'Rieha safely exited the bus at the designated stop—would render them an

absolute insurer of a passenger's safety in limitless ways. As defendants' duty to J'Rieha was fully performed when she stepped off the bus and arrived safely at the bus stop, we find the trial court properly granted summary judgment in favor of defendants.

¶ 35

### III. CONCLUSION

¶ 36

For the reasons stated, we affirm the trial court's judgment.

¶ 37

Affirmed.