

APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

John Albert Shine v. Wabash Railroad Company, 8 Ill. App. 2d 521

132 N.E.2d 41 (Ill. App. Ct. 1956) · No. Gen. No. 10,044 · Decided March 1, 1956

SUMMARY

The Illinois Appellate Court affirmed a \$50,000 negligence judgment against Wabash Railroad Company for injuries suffered by a child struck by a train on a pathway crossing the railroad's right of way. The court held that a prior settlement and release authorized by the Cook County Probate Court did not bar the action because the record affirmatively showed that court lacked jurisdiction to appoint the child's guardian. It further held that the evidence supported submitting the railroad's lookout duty and negligence to the jury and that the damages award was not excessive.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Court of Illinois, Third District                                                                                                                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Presiding Justice Hibbs; Hibbs                                                                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Illinois                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | March 1, 1956                                                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | Gen. No. 10,044                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Wabash Railroad Company appealed from a judgment entered on jury verdicts in favor of John Albert Shine in a negligence action. The railroad challenged the denial of its motion to dismiss based on a prior guardianship compromise and release, the denial of judgment notwithstanding the verdict and a new trial, the damages award, and the refusal of a proposed jury instruction.                                                   |
| STANDARD OF REVIEW    | The appellate court reviewed the denial of judgment notwithstanding the verdict, the denial of a new trial, whether the verdict was contrary to the manifest weight of the evidence, the excessiveness of damages, and the refusal of the proposed instruction. It held that determining whether the train crew maintained a proper lookout was for the jury and that the verdict was not contrary to the manifest weight of the evidence. |
| PRECEDENTIAL VALUE    | published opinion                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | Wabash Railroad Company v. John Albert Shine                                                                                                                                                                                                                                                                                                                                                                                               |

## TOPICS

negligence

duty of care

guardianship procedure

appellate procedure

standard of review

## PRACTICE AREAS

torts

railroad liability

guardianship and probate

appellate procedure

## QUESTIONS PRESENTED

1. Whether a prior settlement and release authorized by the Cook County Probate Court barred Shine's later negligence action when the guardianship record affirmatively showed that the minor resided outside Cook County and the probate court therefore lacked jurisdiction.
2. Whether the evidence supported a finding that the railroad breached a duty to maintain a proper lookout for persons using its tracks as a pathway in a populated area with the railroad's knowledge.
3. Whether the trial court erred in denying judgment notwithstanding the verdict or a new trial.
4. Whether the \$50,000 verdict was excessive.
5. Whether the trial court properly refused a jury instruction treating Shine solely as a trespasser to whom the railroad owed only a limited duty.

## HOLDINGS

1. A guardianship compromise and release does not bar a later action when the guardianship court's own record affirmatively shows that it lacked jurisdiction to appoint the guardian and authorize the settlement.
2. A railroad that knows, or should know, that adults and children regularly use its tracks as a pathway in a populated area owes a duty to maintain an adequate and sufficient lookout for persons on the tracks.
3. The trial court properly denied judgment notwithstanding the verdict and the motion for a new trial because the evidence supported the jury's finding of negligence and the verdict was not contrary to the manifest weight of the evidence.
4. The \$50,000 verdict was not excessive in light of the severe, permanent injuries to Shine's feet and legs.
5. The proposed instruction was properly refused because it treated Shine solely as a trespasser and ignored the railroad's heightened duty arising from the known and longstanding use of the tracks as a pathway; it also improperly directed a verdict.

## KEY QUOTATIONS

*"Nothing will be presumed, however, in favor of jurisdiction in the face of facts appearing in the mandatory record showing that it did not exist."* (at 528)

*"Where a railroad company has permitted the public to travel over its track for a considerable period of time and a considerable number of people have availed themselves of such use, the railroad company must keep a lookout for persons on its track."* (at 533)

*“Should we attempt to say that the engineer or other employees of the defendant did or did not maintain a proper lookout would be usurping the function of the jury.” (at 534)*

## FACTUAL BACKGROUND

On June 3, 1932, approximately twenty-two-month-old John Albert Shine was struck and run over by a Wabash train in Decatur, Illinois. The accident occurred near a beaten pathway across the railroad tracks that adults and children regularly used, and the railroad knew or should have known of that use. Members of the train crew saw an object near the track but initially believed it was a dog; the engineer recognized it as a child only when the train was approximately forty feet away and then applied the emergency brakes. Shine suffered permanent and severe injuries to both feet and legs.

## PROCEDURAL HISTORY

Shine filed an action in the Circuit Court of Christian County alleging that the railroad negligently injured him as a child near its tracks in Decatur. The railroad moved to dismiss based on a \$1,000 settlement and release authorized by the Cook County Probate Court while Shine was a minor; the motion was denied. After trial, the jury found the railroad negligent and awarded \$50,000, while rejecting willful and wanton liability. The trial court entered judgment on the verdicts, denied post-trial motions, and the appellate court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Balsewicz v. Chicago, B. & Q.R. Co., 240 Ill. 238
- Bostwick v. Skinner, 80 Ill. 147
- Blair v. Sennott, 134 Ill. 78
- Sharp v. Sharp, 333 Ill. 267
- People v. Brewer, 15 R.C.L. 895
- Old Wayne Life Ass'n v. McDonough, 204 U.S. 8
- People v. Cochran, 313 Ill. 508
- In re Cash, 383 Ill. 409
- Joy, Adm'r v. Chicago, B. & Q.R. Co., 263 Ill. 465
- Bernier, Adm'r v. Illinois Cent. R. Co., 296 Ill. 464
- McDaniels v. Terminal R. Ass'n of St. Louis, 302 Ill. App. 332