

IN THE CIRCUIT COURT OF
CHARITON COUNTY, MISSOURI

ERIN BARTON, widow of)
BILLY DEAN BARTON, II, deceased,)
)
Plaintiffs,)

v.)

Case No.
JURY TRIAL DEMANDED
CLERK TO ISSUE SUMMONS

MARIANO RODRIGUEZ,)

Serve:)
2004 Pine Street)
Higginsville, MO 64037)

And)

CHARITON COUNTY, Missouri)

Serve Susan Littleton, County Clerk)
306 S. Cherry St.)
Keytesville, MO 65261)

Defendants.)

PETITION- WRONGFUL DEATH

Signed: /s/Steven L. Groves
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COUNT I – ROADMASTER MARIANO RODRIGUEZ

1. At all times relevant herein, including the present, Plaintiff is and was a resident

and citizen of the State of Missouri residing in Linn County. On June 27, 2022 and for many years before, Plaintiff was the spouse of decedent Billy Dean Barton, II, who was also a resident and citizen of Missouri residing in Linn County.

2. Defendant Mariano Rodriguez (hereinafter "Roadmaster Rodriguez") is presently, and was at all times relevant herein, a resident and citizen of the State of Missouri.

3. In Chariton County, Missouri, there is a public road called Porche Prairie Avenue/County Road 113, which intersects two parallel main line BNSF Railway Company ("BNSF") tracks, over which trains operate at high speeds in both directions.

4. At the Porche Prairie Avenue/County Road 113 grade crossing (DOT# 005284Y) ("Porche crossing"), BNSF freight trains operate at speeds of 70 mph and Amtrak intercity passenger trains operate at speeds of up to 90 mph. More than 60 freight trains and/or intercity passenger trains traverse this crossing every day.

5. In June 2022, and for some time prior, Roadmaster Rodriguez was a manager in BNSF's "Engineering" or "Maintenance of Way" department. His duties for BNSF encompassed responsibility for various sections of BNSF's right of way (the tracks and areas around the tracks), including the safety of locations on the right of way where streets and roads cross over the tracks at grade, which are known as "grade crossings." These duties include inspection for dangerous conditions, remediation of such dangerous conditions, and maintenance of the crossings.

6. The Porche crossing was part of the territory of track for which Roadmaster Rodriguez was responsible, and one of his duties was and is to ensure the safety, proper inspection and maintenance of that crossing and the conditions on the railroad's right of way. He committed the acts and omissions herein alleged within the scope of his employment.

7. Roadmaster Rodriguez also supervised and managed other railroad workers who

inspected, tested and maintained the Porche crossing.

8. At all times relevant herein, the Porche crossing had impaired "sight triangles" and an excessively small crossing angle where the road and the tracks intersect. The small crossing angle caused impaired visibility for motor vehicle drivers approaching the crossing. A driver approaching this crossing should be provided unimpaired visibility to allow observation of a train approaching the crossing at the same time as the motor vehicle. The unimpaired view must be sufficient for the driver to see the train, react, and stop short of the crossing when a train is approaching.

9. At all times relevant herein, the Porche crossing also had sloped approaches, brush, trees and vegetation blocking a full view of oncoming trains in some quadrants, and seasonal crops in surrounding fields that would further block a driver's visibility, all of which added to the difficulty of a driver approaching the crossing to observe whether a train was simultaneously approaching and to take appropriate action. Additionally, the surfaces of the crossing were narrow, rough and poorly maintained, which further distracts motor vehicle drivers and made driving over the crossing difficult. These conditions at the crossing created an ultra-hazardous crossing. These conditions had existed for years before June 27, 2022.

10. Despite the deficiencies of the crossing, the Porche crossing did not have active warning devices such as bells, gates or lights at the crossing to warn motorists that a train was imminently approaching. Instead, the crossing only had crossbucks or signs indicating that railroad tracks were nearby. Gates and flashing lights work on a circuit that provides approximately thirty (30) seconds of warning that a train is actually and imminently approaching the crossing to warn the drivers and prevent intrusion onto the tracks when trains are hazardously near the crossing.

11. Train braking systems typically operate using air brakes, which take time to begin

braking and, given the weight and length of trains that used the crossing and speeds travelled, it could take up to one (1) mile to completely stop a freight train and takes several seconds for any train to even begin slowing down. This fact makes a properly guarded, inspected and maintained crossing critical for safety.

12. Passive warning devices, such as crossbuck signs, provide no warning to drivers as to whether a train is actually coming down the tracks and is posing an imminent hazard to any vehicle approaching the grade crossing.

13. Prior to this collision, Roadmaster Rodriguez knew or should have known that the Porche crossing posed a grave danger to the public due to the geometry of the crossing (the acute angle at which the road crosses the tracks); the steep incline on the road on both sides of the tracks; vegetation and brush that obstruct the view down the tracks; high volume of train traffic; high speed of the trains; the use by farming equipment or large, slow vehicles, hazardous materials vehicles and trains hauling hazardous materials and passenger trains; rough condition of the crossing; and the fact that the crossing did not have active warning devices such as lights and gates.

14. Roadmaster Rodriguez had a duty to independently evaluate the crossing (and its crossing corridor) to determine whether the crossing had unsafe features, such as the roadway and tracks being skewed or an excessively short crossing angle, steep incline on approaches to the tracks, sight obstructions at the crossing, type of vehicles using the crossing, type of trains using the crossing, high train speed limit, and number of trains per day.

15. Roadmaster Rodriguez knew or should have known that the areas surrounding the Porche crossing were not adequately clear of brush, trees, debris and other visual obstructions or visual clutter. These obstructions to visibility create safety hazards for motorists using the crossing and were located on the railroad's right of way or were sufficiently close to it such that the adjacent

property owners should have been contacted to allow for removal of same.

16. Roadmaster Rodriguez, as a manager with responsibility for the safety, maintenance and inspection of the Porche crossing, knew or should have known that the crossing was dangerous and required the “highest level of protection,” such as lights and gates. Yet, he did nothing to ameliorate the danger to motorists or train occupants (crew and passengers) to ensure that gates and lights were installed at the crossing. Additionally, Roadmaster Rodriguez did not have a flagman at the crossing to warn motorists of oncoming trains, did not have vegetation, brush and debris removed from the line of sight at the crossing; did not repair or maintain the rough crossing and did nothing to slow down trains that were traversing the crossing.

17. On June 27, 2022, at approximately 12:42 p.m., Billy Barton attempted to drive a Kenworth 2900 dump truck (“dump truck”) on Porche Prairie Avenue and over the Porche crossing in a northward direction.

18. At that same time, an Amtrak intercity passenger train was traveling generally northeasternly toward Chicago on one of BNSF’s main line tracks at a speed of approximately 90 miles per hour through the city of Mendon, Missouri.

19. Due to the aforementioned lack of visibility, improper inspection, maintenance and inadequate warning, Billy Barton did not see or hear the train coming with adequate warning to safely cross the tracks.

20. The dump truck, with Billy Barton inside, was struck by the Amtrak train and mangled due to the speed and force of the collision.

21. As a result, he sustained severe injuries which caused conscious pain and suffering, and ultimately resulted in his death.

22. At the time of his death, Erin and Billy Barton were married. As Billy’s spouse,

Erin has the right under Missouri law to bring this action. 537.080.1(1) RSMo.

23. Roadmaster Rodriguez was negligent as aforesaid, and also, in one or more of the following particulars:

- a. Negligently and carelessly failed to warn motorists, including Billy Barton, regarding when trains were actually approaching the Porche crossing and were within dangerous proximity;
- b. Negligently and carelessly failed to keep the right-of-way reasonably safe for the motoring public;
- c. Negligently and carelessly failed to adequately inspect and maintain the crossing and right of way;
- d. Negligently and carelessly failed to follow his employer BNSF Railway Company's own rules, standards and guidelines regarding grade crossing safety;
- e. Negligently and carelessly failed to inspect and maintain the Porche crossing in a safe and reasonable condition due to the angle of the crossing, steep inclines on the roadway approaching the crossing, number and speed of trains, hazardous materials and passenger trains going over the crossing, and vegetation and debris obstructing the views approaching the crossing;
- f. Negligently and carelessly failed to identify the Porche crossing as a dangerous crossing, evaluate the warning devices at the crossing for potential upgrades, and bring the crossing to the attention of proper governmental authorities;
- g. Negligently and carelessly failed to independently have adequate warning devices, including flashing lights or automatic gates at the Porche crossing;
- h. Negligently and carelessly failed to maintain the Porche crossing and right-of-way or property in a safe and reasonable condition in violation of common law and 7 CSR 265-8.130;
- i. Negligently and carelessly failed to comply with industry and AREMA standards related to the crossing;
- j. Negligently and carelessly failed to properly inspect, test or maintain the right of way at and adjacent to the Porche crossing;
- k. Negligently and carelessly failed to manage the railroad workers under his supervision with regard to the Porche crossing; and
- l. Was otherwise negligent and careless.

24. As a direct and proximate result of Roadmaster Rodriguez's negligence in causing or contributing to cause the June 27, 2022 collision described herein, Plaintiff Erin Barton suffered the wrongful death of her husband Billy (who sustained conscious pain and suffering), and she is entitled to such damages as the trier of facts may deem fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, including loss of earnings capacity, funeral and burial expenses, and the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support and mental anguish. In addition, the trier of facts may award such damages as the deceased may have suffered between the time of injury and the time of death and for the recovery of which the deceased might have maintained an action had death not ensued. The mitigating or aggravating circumstances attending the death may also be considered by the trier of the facts to assess aggravated damages. Erin and Billy's children have likewise suffered the loss of their father.

25. Roadmaster Rodriguez's negligence alleged herein caused or directly contributed to cause Billy Barton's death.

26. In and before June 2022 Roadmaster Rodriguez knew or should have known of the dangerous conditions present at the Porche crossing, alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendant Mariano Rodriguez for a fair and reasonable sum in excess of Twenty-five Thousand Dollars (\$25,000), together with prejudgment interest, for costs herein incurred; and for such other and further relief as the Court may deem just, equitable or proper.

COUNT II – CHARITON COUNTY, MISSOURI

27. Plaintiff adopts the allegations set forth in Count I as if set forth fully herein.

28. Chariton County, Missouri is a County in the state of Missouri.

29. Chariton County is responsible for properly designing, building, inspecting, repairing and maintaining its roads, which includes the approaches to the Porche crossing.

30. The approaches to the Porche crossing were steep due to the railroad tracks and were not the natural lay of the land.

31. Because of the unnaturally hazardous nature of railroad grade crossings, standards have been adopted for the design and construction of roads approaching tracks. These standards can be found in the American Railway Engineering and Maintenance-of-Way Association (“AREMA”) and the American Association of State Highway and Transportation Officials (“AASHTO”). They provide that the surface of the roadway approaching a crossing should not be more than three (3) inches above or below the elevation of the top rail, at a point thirty (30) feet from the outermost rail. Similarly, Missouri regulations provide that the surface of the roadway should not be more than three (3) inches above or six (6) inches below the elevation of the top rail, at a point thirty (30) feet from the outermost rail (or that the road must comply with AREMA standards). The approaches to the Porche crossing were not in compliance with these standards/regulations which made the approaches dangerous to use.

32. Porche Prairie Road/County Road 113 in the area approaching the Porche crossing was in a dangerous condition at the time of the aforementioned collision and for a long time prior to the collision. Physical defects in the road made it dangerous and unsafe for use by motor vehicle drivers, including Billy Barton on the day of the collision.

33. These conditions were or should have been known by the Chariton County Road Authority before the collision.

34. Citizens concerned for the safety of the motoring public as well as trains, railroad employees and passengers had reported the dangerous nature of the crossing to the Chariton

County Road Authority well in advance of June 27, 2022 which made what happened foreseeable.

35. As a direct and proximate result of the Chariton County Road Authority's negligence in causing or contributing to cause the June 27, 2022 collision described herein, Plaintiff Erin Barton suffered the wrongful death of her husband Billy (who sustained conscious pain and suffering), and she is entitled to such damages as the trier of facts may deem fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, including loss of earnings capacity, funeral and burial expenses, and the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support and mental anguish. In addition, the trier of facts may award such damages as the deceased may have suffered between the time of injury and the time of death and for the recovery of which the deceased might have maintained an action had death not ensued. The mitigating or aggravating circumstances attending the death may also be considered by the trier of the facts to assess aggravated damages. Erin and Billy's children have likewise suffered the loss of their father.

36. Chariton County Road Authority's negligence caused or directly contributed to cause Billy Barton's death.

37. In and before June 2022, the Chariton County Road Authority's knew or should have known of the dangerous conditions present at the Porche crossing, alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendant Chariton County, Missouri, for a fair and reasonable sum in excess of Twenty-five Thousand Dollars (\$25,000), together with prejudgment interest, for their costs herein incurred; and for such other and further relief as the Court may deem just, equitable or proper.

COUNT III – SURVIVAL ACTION

38. Plaintiff adopts the allegations set forth in Count I and Count II as if set forth fully herein.

39. As a direct and proximate result of the Defendants' negligence in causing or contributing to cause the June 27, 2022 collision described herein, Plaintiff Erin Barton suffered the wrongful death of her husband Billy (who sustained conscious pain and suffering), and she is entitled to such damages as the trier of facts may deem fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, including loss of earnings capacity, funeral and burial expenses, and the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support and mental anguish. In addition, the trier of facts may award such damages as the deceased may have suffered between the time of injury and the time of death and for the recovery of which the deceased might have maintained an action had death not ensued. The mitigating or aggravating circumstances attending the death may also be considered by the trier of the facts to assess aggravated damages. Erin and Billy's children have likewise suffered the loss of their father.

WHEREFORE, Plaintiff prays for judgment against Defendants Mariano Rodriguez and Chariton County, Missouri, for a fair and reasonable sum in excess of Twenty-five Thousand Dollars (\$25,000), together with prejudgment interest, for their costs herein incurred; and for such other and further relief as the Court may deem just, equitable or proper.

Respectfully submitted,

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