

APPENDIX TABLE OF CONTENTS

	Page
Ruling, United States District Court, Western District of Louisiana – Appendix A	App. 1
Ruling, United States Court of Appeals, Fifth Circuit – Appendix B	App. 7

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

RULING AND ORDER

(Filed Feb. 1, 2022)

Before the Court is a Motion for Summary Judgment Filed by defendant Union Pacific Railroad Co (“UPRR”). (Doc. 39). For the following reasons the motion is **GRANTED**.

I. BACKGROUND

Leo Blalock (“Leo”) was a chronic alcoholic with liver issues, and before 1:00 PM on June 27, 2019, Leo drank two quarts of beer. (Doc. 39-3 p 5; Doc. 39-4 p 22). At approximately 1:00 PM on June 27, 2019, Brenda Blalock (“Brenda”) called 911 after finding her husband “as white as a sheet” and unresponsive. (Doc. 39-3 p 6; Doc. 39-4 p 3). The Bunkie Fire Department arrived first shortly followed by Acadian Ambulance. (Doc. 39-3; Doc. 39-6 p 4; Doc. 39-8 p 7). During approximately the next forty-five minutes, Leo came in and out of consciousness several times, vomited blood, and

App. 2

was ventilated via a bag-mask resuscitator. (Doc. 39-4; Doc 39-6; Doc 39-8). When he was conscious, he repeated refused transportation to the hospital, but at approximately 1:58 PM, he acquiesced to seek treatment within a hospital. (Doc. 39-3 p 7; Doc. 39-4 p 20; Doc. 39-6 p 10; Doc. 39-8 pp 5, 8).

Emergency responders determined that treatment at the local Bunkie General Hospital was not an option, that Leo required transportation to Rapides Regional Medical Center in Alexandria, and that an air lift would be the fastest option to transport Leo to Rapides Regional Medical Center. (Docs. 39-6 pp 6-8, 39-8 p 15). Nonetheless, the closest helicopter pad was at Bunkie General Hospital making it the initial rendezvous point. (Doc. 39-8 p4). However, minutes before Leo acquiesced in allowing treatment within a hospital, a train belonging to UPRR came to a stop on a set of railroad tracks between Leo and Bunkie General Hospital. (Doc. 39-9 p11). As a result, a decision was made to intercept the helicopter by heading north on Highway 71. (Docs. 39-6 pp 6.8, 39.8 p 15). The newly chosen location was closer for the ambulance and would shorten the helicopter's flight to Rapides Regional Medical Center. (Doc. 39-6 p 13; Doc. 39-8 p 12). The ambulance arrived at the new location less than a minute before the helicopter. (Doc. 39-6 p 13). After preparing Leo for flight, the helicopter transported Leo to Rapides Regional Medical Center where he eventually died.

Brenda filed this tort suit against UPRR in the Louisiana 12th Judicial District in Avoyelles Parish.

(Doc. 1). Defendants removed to federal court and filed the instant motion for summary judgment claiming preemption and failure to show cause or contribution. (Docs. 1, 39).

II. SUMMARY JUDGMENT STANDARD

A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). A dispute of material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). We consider “all evidence in the light most favorable to the party resisting the motion.” Seacor Holdings, Inc. v. Commonwealth Ins. Co., 635 F.3d 680 (5th Cir. 2011) (internal citations omitted). It is important to note that the standard for summary judgment is two-fold: (1) there is no genuine dispute as to any material fact, and (2) the movant is entitled to judgment as a matter of law.

The movant has the burden of pointing to evidence proving there is no genuine dispute as to any material fact, or the absence of evidence supporting the non-moving party’s case. The burden shifts to the non-moving party to come forward with evidence which demonstrates the essential elements of his claim. Liberty Lobby, 477 U.S. at 250. The nonmoving party must establish the existence of a genuine dispute of material fact for trial by showing the evidence, when

viewed in the light most favorable to him, is sufficient to enable a reasonable jury to render a verdict in his favor. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986); Duffy v. Leading Edge Products, Inc., 44 F.3d 308, 312 (5th Cir. 1995). A party whose claims are challenged by a motion for summary judgment may not rest on the allegations of the complaint and must articulate specific factual allegations which meet his burden of proof. Id. “Conclusory allegations unsupported by concrete and particular facts will not prevent an award of summary judgment.” Duffy, 44 F.2d at 312, citing Liberty Lobby, 477 U.S. at 247.

III. LAW AND ANALYSIS

Despite its compelling nature, we decline to reach the merits of UPRR’s claim that Brenda has failed to show UPRR caused or contributed to the death of Leo because UPRR prevails on its first claim that Brenda’s suit is preempted by the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10101, *et seq.*

The Fifth Circuit has on several occasions held that § 10501(b) of the ICCTA preempts laws and remedies that have the effect of managing or governing rail transportation. Ezell v. Kansas City S. Ry. Co., 866 F.3d 294, 298-300 (5th Cir. 2017); Elam v. Kansas City S. Ry. Co., 635 F.3d. 796, 804-08 (5th Cir. 2011); Franks Inv. Co. LLC v. Union Pac. R. Co., 593 F.3d 404, 408-‘15 (5th Cir. 2010); Fribery v. Kansas City S. Ry. Co., 267 F.3d 439, 442-‘44 (5th Cir. 2001).

App. 5

Thus, Brenda's negligence *per se* claim for UPRR's violation of La. R.S. 48:391, making unlawful the voluntary obstruction of railroad crossings for a period in excess of twenty minutes, and UPRR's violation of Bunkie Local Ordinance § 21:10, making unlawful the same but for a period in excess of five minutes, is preempted because both La. R.S. 48:391 and Bunkie Local Ordinance § 21:10 attempt to manage or govern rail transportation. See, e.g., Elam, 635 F.3d at 807-'08 (holding that a negligence *per se* claim based upon a violation of Mississippi Anti-Blocking Statute was preempted by ICCTA); Ezell, 866 F.3d at 299 ("We agree with the district court that Elam squarely forecloses [plaintiff]'s negligence *per se* claim based on the Mississippi Anti-Blocking Statute."). Similarly, federal and state remedies that have the effect of regulating rail transportation are also preempted. Franks, 593 F.3d at 410; Elam, 635 F.3d at 807 (" . . . § 10501(b) completely preempts state laws (and remedies based on such laws) that directly attempt to manage or govern a railroad's decisions in the economic realm.") Accordingly, Brenda's negligence claim that the blocking of the rail crossing caused or contributed to Leo's death is preempted.

Finally, Brenda's negligence claim based upon UPRR's alleged violation of its own internal operating procedures is also preempted. Ezell, 866 F.3d at 299 ("Our analysis in Elam makes clear that [plaintiff]'s blocking claim based on [defendant]'s internal operating rules is preempted by the ICCTA as well.").

IV. CONCLUSION

For the reason's discuss above, UPRR's motion for summary judgment, (Doc. 39), is **GRANTED**, dismissing Brenda Blalock's claims against Defendant UPRR **with prejudice**.

THUS DONE AND SIGNED at Alexandria, Louisiana this 1st day of February, 2022.

/s/ Dee D. Drell

DEE D. DRELL, JUDGE
UNITED STATES
DISTRICT COURT

APPENDIX B
United States Court of Appeals
for the Fifth Circuit

No. 22-30100
Summary Calendar

BRENDA R. BLALOCK,

Plaintiff—Appellant,

versus

UNION PACIFIC RAILROAD COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
Western District of Louisiana
USDC No. 1:19-CV-1160

(Filed Oct. 20, 2022)

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

This action arises from Union Pacific Railroad Company’s (“Union Pacific”) alleged failure to unblock a railroad crossing for an ambulance that was

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

transporting decedent Leo H. Blalock (“Leo”) to the hospital. Leo’s wife, Brenda R. Blalock (“Brenda”) appeals the district court’s grant of summary judgment. We affirm.

I. FACTS & PROCEDURAL HISTORY

Around 1:00 p.m. on June 27, 2019, Brenda was at her home in Bunkie, Louisiana when she noticed that her husband Leo was “white as a sheet” and unresponsive. She called 911 and minutes later the Bunkie Fire Department arrived. The Acadian Ambulance followed shortly thereafter. The paramedics placed Leo in the ambulance, but he initially refused to go to the hospital. After some discussion, he eventually complied. Although Bunkie General Hospital (“Bunkie General”) was closest—just under three minutes from the Blalocks’ home—the paramedics determined Bunkie General could not provide the type of care Leo required, and instead, he needed to go to Rapides Regional Medical Center (“Rapides Regional”), in the city of Alexandria. The ambulance left the home at about 1:58 p.m. The plan was to drive Leo to a helipad that was located outside of Bunkie General where he would be transported by helicopter to Rapides Regional, but that plan quickly changed.

Union Pacific operates a railroad train that was stopped on a side track in Bunkie. En route to the helipad, paramedics noticed the railroad crossings were blocked. The paramedics did not wait and rerouted towards Alexandria. Thereafter, the fire

App. 9

department arranged for the new helicopter pick-up location to be at a landing zone intercept in Alexandria. Approximately eight minutes after the ambulance departed from the Blalocks' home, the ambulance and the helicopter met at the new landing zone intercept, and Leo was flown to Rapides Regional.

Meanwhile, minutes after the ambulance rerouted, a firefighter contacted Union Pacific and reported that an ambulance was unable to cross the tracks. Union Pacific points to evidence that a train dispatcher arranged to break the train. Brenda, on the other hand, alleges she was told that Union Pacific advised the fire chief or the police that they were "resting" and would not break the train. Nevertheless, the train was broken at 2:23 p.m., but by that time Leo was already with the helicopter. Leo later died at Rapides Regional.

In August of 2019, Brenda and her children sued Union Pacific in state court for negligence. They argued that Union Pacific was negligent for (1) blocking the railroad crossing for an impermissible amount of time; (2) "fail[ing] to recognize the obvious need of an individual in an ambulance traveling to a hospital for emergency medical treatment"; and (3) showing "callous indifference to the suffering of another human being by failing to move the train and/or make a break in the train which would allow passage to obtain critical emergency medical treatment." Union Pacific then removed the case to federal court based on diversity jurisdiction. Thereafter, Union Pacific filed a motion for summary judgment arguing (1) that Brenda's

negligence claims were preempted under the Interstate Commerce Commission Termination Act of 1995 (the “ICCTA”), 49 U.S.C. § 10101, *et seq.* and (2) lack of causation. Brenda and her children responded in opposition, only addressing the causation argument. The district court granted the motion, holding that any claim that the blocked railroad crossing contributed to Leo’s death was preempted, including the negligence claims arising under state and local anti-blocking statutes and Union Pacific’s internal operating rule. The district court declined to reach the causation argument. This appeal followed.

II. STANDARD OF REVIEW

This court “review[s] a district court’s grant of summary judgment *de novo*, applying the same standards as the district court.” *Hagen v. Aetna Ins. Co.*, 808 F.3d 1022, 1026 (5th Cir. 2015). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[R]easonable inferences are to be drawn in favor of the non-moving party.” *Robinson v. Orient Marine Co.*, 505 F.3d 364, 366 (5th Cir. 2007). However, “[s]ummary judgment may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence.” *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012). “We are not limited to the district court’s reasons for its grant of summary judgment and may affirm the district court’s summary judgment on any ground raised below and supported

by the record.” *Rogers v. Bromac Title Servs., L.L.C.*, 755 F.3d 347, 350 (5th Cir. 2014) (quotation and citation omitted).

III. DISCUSSION

It is well-settled that “the scope of appellate review on a summary judgment order is limited to matters presented to the district court.” *Keelan v. Majesco Software, Inc.*, 407 F.3d 332, 339 (5th Cir. 2005). For the first time on appeal, however, Brenda argues that (1) her simple negligence claims are not preempted under the ICCTA, (2) she was entitled to an evidentiary hearing prior to summary judgment, and (3) that the ICCTA violates her Seventh Amendment right to a trial by jury. The record does not indicate that these arguments were ever presented to the district court, and Brenda did not mention preemption in response to Union Pacific’s summary judgment motion. As a result, we hold that Brenda forfeited these arguments. *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

Nevertheless, summary judgment is also proper because Brenda failed to show that Union Pacific caused Leo’s injuries. Under Louisiana negligence law, she must show that “the defendant’s substandard conduct was a cause in fact of [his] injuries (the cause-in-fact element).” *Loiacano v. DISA Glob. Sols., Inc.*, 659 F. App’x 772, 775 (5th Cir. 2016) (per curiam) (quotation and citation omitted). Brenda’s primary argument is that if Union Pacific would have unblocked the crossing, Leo would have received medical care at Bunkie

App. 12

General that would have saved his life. As shown below, this contention is summarily rebutted by the evidence.

First, there is insufficient evidence to support Brenda's argument that Leo would have received life-saving care at Bunkie General. To the contrary, the paramedics made the decision that Bunkie General could not render the type of care Leo needed before leaving the Blalock's home. The paramedics were only headed to the helipad located outside of Bunkie General because it allowed them to transport Leo to Rapides Regional by helicopter. Brenda offers no evidence showing that Leo would have been admitted into Bunkie General and that the care he would have received would have been lifesaving. Instead, she relies solely on the testimony of Dr. L.J. Mayeux, M.D. a doctor not affiliated with Bunkie General or Acadian Ambulance. Dr. Mayeux testified that if Acadian Ambulance paramedics had the option, he was "certain" that "as he was deteriorating" they would have "checked him in the unit."¹ But this is mere speculation. Indeed, this assertion is contrary to the paramedic's own testimony that Bunkie General could not provide him the medical care he needed.

Second, there is insufficient evidence to support Brenda's claims that Union Pacific caused a delay in

¹ This argument is also misguided because the decision of which hospital to take Leo to does not implicate Union Pacific. The court notes that the district court already denied Brenda's motion to amend her pleadings to add the Acadian Ambulance as a defendant, and she cannot revive that effort here.

App. 13

Leo receiving medical care. The timespan from the Blalocks' home to the new rerouted landing zone was approximately eight minutes. Evidence shows that when the ambulance approached the railroad crossing and noticed it was blocked, paramedics immediately rerouted to Alexandria where the new landing zone and destination hospital were located. The paramedic testified that she did not "even waste like 30 seconds" and when asked did they wait at the track, she responded "[w]e didn't." The evidence also shows that Union Pacific was not notified about the emergency vehicle until *after* the ambulance had already rerouted. Therefore, at the time the ambulance needed to cross the railroad tracks, Union Pacific was not aware of Leo's emergency. And even if it were, it "would have been impossible" for the train to break within the "seconds" the paramedics were at the crossing. In the absence of sufficient evidence to the contrary, we conclude that Brenda has failed to show a genuine issue of material fact as to causation.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment in favor of Union Pacific.
