

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

VS.

CIVIL ACTION NO.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
AND FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE**

This cause came to be heard on the Motion for Summary Judgment filed by Defendant pursuant to Rule 56 of the Mississippi Rules of Civil Procedure, and the Court having considered said motion, the Plaintiff's Response to Motion for Summary Judgment and the supporting and opposing affidavits, materials, evidence and authorities submitted by the parties, and being fully advised in the premises, finds that there is no genuine issue as to any material facts, which material facts are as follows:

1. Prior to and at the time of the subject accident Defendant's train was lawfully occupying the crossing over in , Mississippi for a legitimate business purpose.

2. , which runs in a general east/west-north/south direction, is straight and flat for at least a quarter of a mile or farther from the crossing as it approaches the crossing from the east/west/north/south, the direction from which the Plaintiff was approaching the crossing immediately prior to and at the time of the accident.

3. The Plaintiff was very familiar with the crossing, having driven over the crossing on numerous prior occasions during daylight and darkness.

4. was properly marked with an advanced warning sign and pavement markings providing warning of the existence and general location of the crossing.

5. The crossing was protected by railroad crossbuck signs as required by Mississippi law.

6. There was no topographic or environmental characteristic of the crossing, the approach to the crossing from the east or the area in the immediate vicinity of the crossing which would adversely interfere with the visibility of a motorist approaching the crossing from the east/west/north/south or interfere with a motorist's ability in seeing a train occupying the crossing other than darkness itself.

7. The weather was clear at the time of the accident and there were no climatic conditions, other than darkness itself, which would have interfered with the view of an approaching motorist.

8. Other than the fact that the accident occurred during hours of darkness and that the crossing was dark at the time of the accident, there is no other reason that the Plaintiff, or any other motorist approaching the crossing from the east/west/north/south exercising reasonable

care and driving within the lawful speed limit, would not be able to see a train occupying the crossing in time to safely stop his/her vehicle before reaching the crossing.

9. The crossing is not extra hazardous to a vehicle approaching from the east/west/north/south during hours of darkness.

10. There is no genuine issue as to any material the Defendant is entitled to a judgment as a matter motorist fact and of law.

IT IS, THEREFORE, ORDERED AND ADJUDGED that judgment be, and the same is hereby, entered for and on behalf of Defendant _____, and it is further ordered and adjudged that this cause be, and the same is hereby, dismissed with prejudice at the cost of the Plaintiffs.

SO ORDERED AND ADJUDGED this the _____ day of _____, _____.

CIRCUIT JUDGE