IN THE SUPREME COURT OF FLORIDA

FLORIDA POWER CORPORATION

Defendant/Petitioner, Case No. 95-122

v. 5th DCA CASE NO. 97-2039

WILLIAM WEBSTER

Plaintiff/Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FIFTH DISTRICT
CASE NO. 97-2039

PETITIONER'S INITIAL BRIEF

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CERTIFICATE OF TYPE SIZE AND STYLE

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STATEMENT OF THE CASE AND FACTS

The subject lawsuit arises out of a collision that occurred on October 11, 1995, between a motor vehicle operated by Respondent, William Webster, and a freight train operated by CSX Transportation, Inc. The train in question consisted of two (2) locomotive engines and ninety (90) railroad cars. The subject grade crossing is located at County Road 495, near Crystal River, Florida, and is owned by Petitioner, Florida Power Corporation. At approximately 5:15 a.m. that morning, the Respondent, while driving his motor vehicle southbound on County Road 495, struck the side of the 90th car of CSX's freight train which was fully occupying the crossing as it was traveling in a westbound direction.

At the time of the accident the unrefuted evidence established that the train was moving through the crossing at 15 M.P.H. with its lights burning, horn blowing and bells ringing. The Respondent was driving his vehicle at an approximate speed of 40 to 45 M.P.H., with its headlights on, windshield wipers activated and radio off. The weather conditions that morning were foggy and drizzly.

Respondent's Second Amended Complaint alleged that Petitioner failed to maintain the flashing signals located at the grade crossing in a manner that would have warned him of the presence of a train proceeding through said crossing. Specifically, Respondent contended that as he headed south approaching the

crossing the railroad warning lights were flashing but then ceased flashing as he neared the crossing.

Petitioner filed a Motion for Summary Judgment contending that as a matter of law it owed no duty to warn Respondent of a moving train fully occupying a railroad crossing pursuant to the Standing Train Doctrine. By Order dated July 11, 1997, the trial court granted Petitioner's Motion. Respondent appealed the granting of Summary Judgment. The Fifth District Court of Appeal in Webster v. CSX Transportation Inc., et al., 725 So. 2d 465 (Fla. 5th DCA 1999), reversed the trial court's order. Petitioner sought discretionary review of that opinion asserting conflict between that decision and the decision of the Second District Court of Appeal in Massey v. Seaboard Air Line Railroad Co., 132 So. 2d 469 (Fla. 2d DCA 1961), cert. discharged 142 So. 2d 296 (Fla. 1962). By Order dated September 16, 1999, this Court accepted jurisdiction.

ISSUE PRESENTED FOR REVIEW

Whether The District Court Erred in Reversing the Trial Court's Order, Granting Summary Judgment for Florida Power Corporation, by Failing to Apply The Standing Train Doctrine.

SUMMARY OF THE ARGUMENT

The Fifth District Court of Appeal in Webster v. CSX Transportation, Inc. et al., 725 So. 465 (Fla. 5th DCA 1999), erred in reversing the trial court's granting of summary judgment in favor of Florida Power Corporation. The court failed to properly apply the Standing Train Doctrine to the facts of the case creating an express and direct conflict with the Second District's decision in Massey v. Seaboard Air Line Railroad Co., 132 So. 2d 469 (Fla. 2d DCA 1961), cert. discharged 142 So. 2d 296 (Fla. 1962). The Massey decision was based on the legal precedent established by this Court in Brown v. Loftin, 18 So. 2d 540 (Fla. 1944). Brown held that a motorist who proceeds headlong into a moving train fully occupying a railroad crossing cannot complain of negligence due to a lack of special warning of the presence of said train. The Second District in Massey correctly applied the Standing Train Doctrine in granting the railroad defendant's motion for summary judgment under facts identical to those in the instant case, i.e. a moving train fully occupying the crossing with a vehicle striking the same at a point indicating that the train had been running across said crossing for a period of several minutes.

The Fifth District refused to follow the Brown precedent by expressly disagreeing with the Massey decision. In so doing it mistakenly interpreted this Court's opinion in Hutton v.Atlantic Coast Line Railroad Co., 92 So. 2d 528 (Fla.

1957) as a repudiation of the Standing Train Doctrine; when in fact, the Hutton case simply created a conditional exception to the Standing Train Doctrine in cases where the facts involve **stationary** railcars blocking the crossing. Since the facts in Webster involve a **moving** train fully occupying the crossing, like in Massey, not a stationary railcar, like in Hutton, the Fifth District erred by failing to apply the Standing Train Doctrine as established in Brown and correctly applied by Massey.

ARGUMENT

The trial court below granted petitioner's motion for summary judgment based upon the Standing Train Doctrine. Brown v. Loftin, 18 So. 2d 540 (Fla. 1944); Massey v. Seaboard Air Line RR Co., 132 So. 2d 469 (Fla. 2nd DCA 1961) cert. discharged 142 So. 2d 296 (Fla. 1962). In its decision, the trial court found that there was no genuine issue as to any material fact surrounding the collision between plaintiff's vehicle and the train. Specifically, the court found that it was undisputed that the plaintiff's vehicle struck the 90th car of a train that was moving through and fully occupying the crossing. Under these facts, the trial court correctly applied the Standing Train Doctrine, as established by Brown and related in Massey, which holds that a motorist who proceeds headlong into a moving train fully occupying a railroad crossing cannot complain of negligence due to a lack of special warning of the presence of the train. The Fifth District, failing to properly

distinguish the facts in Webster from those in Hutton v. Atlantic Coast Line Railroad Co., 92 So. 2d 528 (Fla. 1957), misapplied the Standing Train Doctrine and erroneously reversed the trial court's order.

A review of the distinguishing facts between Brown and Hutton will highlight the Fifth District's error in failing to apply the Standing Train Doctrine in the present case. The Brown case involved an action against the railroad for the death of a passenger in an automobile that collided into the seventeenth car of a thirty-two car freight train, which was moving through the grade crossing. The collision occurred around 1:00 a.m., during a period of dim out regulation controlling the lights on automobiles, and on a crossing that was not equipped with warning signals. The plaintiff in that matter alleged that the railroad was negligent for failing to install warning signals, signboards or other warning devices at this crossing. The trial court held that the complaint failed to state a cause of action based on the Standing Train Doctrine.

On appeal before this court, it was contended that the absence of a signboard or other warning devices at this crossing combined with the dim out regulations controlling lights on automobiles constituted questions of fact submitable to a jury. However, this Court held that "the absence of signboards, flashlight signals and other warning devices about the railroad crossing are insufficient reasons under the peculiar circumstances of this controversy." Id. at 541. Precisely because the facts

in Brown involved a moving train fully occupying the crossing, this Court went on to state:

> "If a driver of an automobile fails or omits, when approaching a railroad crossing, to see or observe a moving freight train on a railroad crossing directly in front of the driver of the car and across the highway he is travelling, when the freight train consists of thirty or more cars, then a serious doubt arises and must exist as to whether or not lawfully required signs and signals at such crossing would prove efficacious."

Brown at 541. Consequently, this Court in Brown, applied the Standing Train Doctrine to factual circumstances involving a moving train fully occupying the crossing which in its opinion made its application even more appropriate. Indeed, this Court's reference to the size of said freight train, i.e. consisting of thirty or more cars, makes it patently clear that it considered the moving aspect of such a large train to be a key element in providing adequate warning of its presence upon the crossing.

Moreover, the Brown court rejected the plaintiff's contention that the painting of the lights of the automobile, except a narrow strip, in accordance with the dim out regulations prevented the driver from seeing the freight train then on the crossing. On this issue, the Court stated that "the answer to this contention is that greater care and caution should have been exercised by the driver at or near the crossing because of his inefficient lights". Id. at 541. This conclusion is in keeping with the long established principle that where a train fully occupies a

railroad crossing, a motorist has a duty to keep his car under control so as to avert a collision. Atlantic Coastline Railroad Co. v. Weir, 58 So. 641 (Fla. 1912). In Weir, this Court stated that:

> The drivers of vehicles on public highways are required by law to exercise due care and should have (their) vehicles in control on approaching a railroad grade crossing and (should) use reasonable ordinary care to discover approaching trains.

Id. at 642. Furthermore, this duty continues even where railroad crossing warning devices are not present or operational. The mere non-operation or the mere presence of automatic signals, including gates, at a railroad crossing cannot and should not under ordinary circumstances relieve a motorist of the duty and responsibility to use due care and to look and listen. Weeks v. Atlantic Coastline Railroad Co., 132 So. 2d 315, 316 (Fla. 1st DCA 1961).

After the Brown case, this Court in Hutton v. Atlantic Coast Line Railroad Co., 92 So. 2d 528 (Fla. 1957) engrafted certain qualifying criteria upon the Standing Train Doctrine capable of removing its strict application **when the facts of those cases warrant jury consideration i.e. stationary railcars blocking the crossing**. The accident in Hutton involved a stationary gondola car standing motionless on and completely blocking the crossing. Additionally, the plaintiff in Hutton claimed that he could not see the gondola car with which the automobile collided until the moment of impact because of a dip in the road of the highway as

it approached the crossing. Moreover, the railroad bell was not ringing either before, during, or after the moment of impact. Under these circumstances, the Hutton Court concluded that it was appropriate to apply the rationale of the factually similar case of Atlantic Coastline Railroad Co. v. Johnston, 74 So. 2d 689 (Fla. 1954) (Johnston also involved an automobile colliding with a stationary railcar blocking the grade crossing for a brief period of time during nighttime hours). In Johnston, this Court held that the determination of whether the driver of the automobile was solely negligent for the accident turned on the proof of various factors.[1] These factors included: 1) whether or not the crossing was hazardous; 2) visibility at the time and place of the accident; 3) location of the locomotive and flat cars at the time of the accident; and, 4) condition of the approach at the crossing. Id at 689. Considering the particular facts in Johnston, this Court stated:

> "Under such circumstances, if a highway is to be blocked, ordinary prudence would require that a flagman be placed so as to guard the crossing while it is blocked. If not possible to do this much, certainly flares or lights of some kind should have been placed to warn travelers. Such was the factual situation that confronted the jury and we are not prepared to say that the verdict was erroneous."

Johnston at 691. Given the factual similarities between Hutton and Johnston, i.e. automobiles colliding against railcars standing on the crossing blocking their path,

[1] While the facts in Johnston lend themselves to an application of the Standing Train Doctrine, this principle was not discussed in the case as a legal defense to the Plaintiffs' claims. The issue in Johnston was simply whether the evidence sustained the verdicts.

the Hutton court applied the Johnston criteria in reversing the trial court's granting of defendant's motion for judgment notwithstanding the verdict.

In so doing, the Hutton court held that:

> "it is clear that the jury could have believed testimony and could have accepted evidence tending to prove that, **under the facts of this case**, the mere presence of the gondola car on the railroad crossing was not warning enough for these plaintiffs."

Hutton at 531 (emphasis added).

However, the conclusion in Hutton does not represent a repudiation of the Standing Train Doctrine. Instead, Hutton only established a conditional exception, in cases where the facts involve railcars standing on the crossing, requiring other factors to be considered to determine **whether** the doctrine should be applied. The **consideration** of these factors, however, would not necessarily preclude application of the Standing Train Doctrine. More importantly, the consideration of these factors only occurs in a factual situation that include railcars standing on the crossing; a factual scenario not present in the instant case.

This modification to the Standing Train Doctrine was fully recognized by the Second District in Massey when it considered a case involving a vehicle colliding with a moving freight train. In Massey, the deceased's father alleged that the deceased had been a passenger in an automobile that collided with the 110th, 111th and 112th cars of a long freight train which was crossing the intersection. The railroad moved for summary judgment on the basis of the pleadings and

various affidavits and depositions under the principles of the Standing Train Doctrine. The lower court granted the motion for summary judgment finding the Brown case controlling. In its decision, the Second District considered the same argument made by respondent in the present case. However, the court concluded that Hutton and Johnston did not involve an accident with the particular facts present in Massey, and the instant case:

> "namely a running train and plaintiff striking same at a point indicating that the train had been running across a given point for three or four minutes."

Massey at 471. In concluding that the facts fell squarely within the rule of Brown, the court stated:

> "in such a case **the moving train is a more obvious warning** to vehicles on the highway than a train standing across the road."

Id. at 471 (emphasis added). A careful reading of the Second District's opinion in Massey plainly reveals that it correctly distinguished Hutton and rightfully applied the Standing Train Doctrine as set forth in Brown.

Additionally, this Court also concluded that the facts in Hutton were distinguishable to those in Massey when it discharged the Writ of Certiorari previously issued in Massey. Massey v. Seaboard Air Line Railroad Co., 142 So. 2d 296 (Fla. 1962). This Court in that opinion rejected Petitioner's assertion that conflict existed between the Second District's decision in Massey and the earlier Brown decision as subsequently modified by Hutton; Johnston; Horton v.

Louisville & N.R. Co., 61 So. 2d 406 (Fla. 1952); Goff v. Atlantic Coast Line R.R. Co., 53 So. 2d 777 (Fla. 1951). Distinguishing the facts in Hutton and its progeny from those in Brown and Massey, this Court stated:

> "None of the cited cases involves facts on all fours with those reflected by this record, and we are not persuaded that judgment for Defendant upon the facts which are recited in the opinion of the District Court necessarily constitutes the application of a principle of law contrary to any established by those cases. In short, the decision was reached upon full consideration of those principles and a determination that they did not govern the particular facts at bar."

Massey at 296. Accordingly, this Court has already decided that the facts involved in Brown and Massey, i.e. a moving freight train, are completely distinguishable from those in Hutton which entailed a stationary train. This factual distinction was not made by the Fifth District in Webster thus precipitating the misapplication of the Standing Train Doctrine and its outward refusal to apply the same as the Massey court had done.

In its decision, the Fifth District reversed the granting of summary judgment in favor of Petitioner and did so in express and direct conflict with the holding in Massey:

> "Because we disagree with Massey we reverse the judgment in favor of FPC and remand for further proceedings."

Webster at 465. This ruling, however, is erroneous because it refuses to follow the legal precedent established by this Court in Brown and applied in Massey. The decision in Massey, this Court has already found, is a correct application of Brown.

As the pertinent facts in Webster are identical to those in Massey and Brown, the trial court's decision below represents the appropriate application of this doctrine.

Furthermore, contrary to the Fifth District's interpretation, Hutton does not represent a clear repudiation of the Standing Train Doctrine. Instead, Hutton established a factually specific exception to the general rule in cases where the facts involve non-moving trains. In other words, Hutton establishes nothing more than a conditional exception to the Standing Train Doctrine in cases where railcars are in fact standing on the crossing blocking the path of oncoming motorists.

The facts in the present case, however, are not such as would trigger the Hutton exception to the Standing Train Doctrine. Here, as in Massey, "we are compelled to agree with the lower court that this case falls squarely within the rule of Brown v. Loftin…" Massey at 471. The trial court in Webster was therefore correct in entering summary judgement in favor of Petitioner, Florida Power Corporation, under the Standing Train Doctrine.

CONCLUSION

The Fifth District erred in reversing the trial court's order granting summary judgment to Petitioner. By failing to distinguish the facts in Webster from those in Hutton, the Fifth District misapplied the Standing Train Doctrine as established in Brown and related in Massey. As the facts in this case involve a moving train fully occupying the crossing, the Fifth District's decision in Webster is in direct and

express conflict with the decision in Massey. This conflict must be resolved in favor of Petitioner as Massey represents a correct application of the Standing Train Doctrine as established by this Court in Brown. Accordingly, the Fifth District's decision in Webster should be reversed and the trial court's order granting summary judgment to Petitioner, Florida Power Corporation, affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to **Michael Shea, Esq**., 410 W. Platt Street, Tampa, FL 33606, **Scott Murphy Esq.,** 200 E. Robinson Street, Suite 555, Orlando, FL 23801 and **A.J. Melkus, Esq.,** 410 Ware Blvd., Suite 1101, Tampa, FL 33619, on this _____ day of October, 1999.

DANIEL A. AMAT