

IN THE SUPREME COURT OF THE STATE OF MICHIGAN
APPEAL FROM THE COURT OF APPEALS

KIMBERLY CORL,
Personal Representative of the ESTATE OF BRADLEY SCOTT CORL,
DECEASED,
Supreme Court Case No. 150970
Court of Appeals Case No. 319004
Tuscola County Case No. 11-26733-NI
Hon. Amy Grace Gierhart

Plaintiff-Appellee,

-vs-

RAILAMERICA, INC.,
AND HURON AND EASTERN
RAILWAY COMPANY, INC.,

Defendants-Appellants.

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**SUPPLEMENTAL BRIEF
OF DEFENDANTS-APPELLANTS RAILAMERICA, INC., AND
HURON & EASTERN RAILWAY COMPANY, INC.**

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INTRODUCTION

This Supplemental Brief is in response to this Court's September 16, 2015, Order directing the parties to submit supplemental briefs addressing: (1) Whether the Court of Appeals decision conflicts with *Paddock v Tuscola & Saginaw Bay Railway Company*, 225 Mich App 526, 571 NW2d 564 (1997), and MCL 462.317 and (2) Whether *Paddock* was correctly decided.

As set forth below, there is a direct conflict between the decision below and *Paddock*, and *Paddock* was correct in holding that the duty to create a clear vision area at a railroad crossing lies with the road authority, not the railroad.

ARGUMENT

I. **The Court of Appeals' decision conflicts with *Paddock v Tuscola & Saginaw Bay Railway Company*, 225 Mich App 526 (1997) and MCL 462.317.**

There is no question that the Court of Appeals' decision below conflicts with *Paddock* and MCL 462.317, upon which *Paddock* was based.¹ The claims made by Plaintiff here are nearly identical to those made by the plaintiff in *Paddock*. In *Paddock*, the plaintiff sued the railroad claiming “vegetation at the accident site obstructed the view” of motorists such that the railroad was negligent for failing to clear the obstructing vegetation. *Id.*, 225 Mich App at 529-530.

Despite the similar claims, the Court of Appeals reached opposite conclusions below and in *Paddock*. Under the decision below, the railroad has a duty to determine the need for a clear vision area at a railroad crossing, but under the *Paddock* decision the railroad has no such duty. Thus, there is a direct conflict.

Both Plaintiff and the Court of Appeals attempt to distinguish *Paddock* by claiming that *Paddock* was limited to the duty to petition the road authority to act. The Court of Appeals went so far as to claim that “defendants essentially ask this Court to extend the holding in *Paddock* to state that a railroad has no duty to create a clear vision area,” *Corl v. Huron & Eastern Railway*, Case No. 319004 (2014), at 4. But this would not be an extension of *Paddock* at all; it was the holding in *Paddock*. The *Paddock* court held that, “Under the plain language of this statute, it is the

¹The decision here also conflicts with federal case law. *See Smith v. Norfolk S. Co.*, No. 14-CV-10426, 2014 WL 2615278, at *2 (E.D. Mich. June 12, 2014) (“it is the City, as the applicable ‘road authority,’ that Michigan law tasks with determining if a ‘clear vision area’ needs to be established at a ‘particular crossing’ so that motorists can safely observe the tracks and surrounding areas.”)

responsibility of the road authority—not the railroad—to determine the need for a clear vision area.” *Paddock*, 225 Mich App at 534. (Emphasis added.)

Moreover, the only reason for the plaintiff in *Paddock* to argue the railroad had a duty *to petition* the road authority to create a clear vision would be that the railroad itself had no duty to create a clear vision area. The argument rested on the premise that the road authority—not the railroad—had the responsibility for the creation of a clear vision area. Indeed, the stated basis for the *Paddock* decision was that “*where a railroad has no duty to do a certain act, it also has no duty to petition for someone else to do the act.*” *Paddock*, 225 Mich App at 534, *citing Turner v. CSX Transportation, Inc.*, 198 Mich App 254, 256-257, 497 NW2d 571 (1993) (Emphasis added.) The *Paddock* court clearly determined that pursuant to MCL 462.317, the duty to create a clear vision area belonged to the road authority, not the railroad.

Furthermore, until now, MCL 462.317 has never been understood to mean anything other than it is the duty of the road authority, not the railroad, to determine the need for a clear vision area. Plaintiff’s common law claims with respect to vegetation were clearly displaced by statute. Neither Plaintiff nor the Court of Appeals could find a single case decided after the 1994 enactment of MCL 462.317 suggesting that a railroad has some surviving common law duty to determine the need for clear vision areas at railroad crossings.

Thus, the decision below directly conflicts with *Paddock* and MCL 462.317.

II. *Paddock* was correctly decided.

Because whether *Paddock* was correctly decided was not an issue during the litigation, there is not a full and complete record to address that issue. Nevertheless, the parties are in agreement that *Paddock* was correctly decided and should not be reversed. Pursuant to MCL 462.31 and the Railroad Code of 1993, the duty to create a clear vision area rests with the road authority, not the railroad. As this Court has stated, the “paramount rule of statutory interpretation is that we are to effect the intent of the Legislature,” and that if “the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written.” *Wickens v. Oakwood Healthcare System*, 465 Mich 53, 60, 631 NW2d 686 (2001). “It is axiomatic that the Legislature has the authority to abrogate the common law” and “if a statutory provision and the common law conflict, the common law must yield.” *Trentadue v. Gorton*, 738 NW2d 664 (2007), citing *Hoerstman Gen. Contracting, Inc. v. Hahn*, 474 Mich 66, 74, 711 NW2d 340 (2006) and *Pulver v. Dundee Cement Co.*, 445 Mich 68, 75 n. 8, 515 NW2d 728 (1994). “In general, where comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter.” *Id.* (citations omitted.)

There is simply no question what the Legislature intended with respect to § 462.317 and the Railroad Code of 1993. It was comprehensive legislation “to

revise, consolidate, and codify the laws relating to railroads” and “*to prescribe powers and duties of certain state and local agencies and officials.*” Railroad Code of 1993, 1993 Mich. Legis. Serv. P.A. 354 (S.B. 646) (Emphasis added.) Consistent with the purpose and intent of the Railroad Code of 1993, “[u]nder the plain language of the statute,” the Legislature clearly prescribed that “the duty to consider corrective actions at a railroad crossing lies with the governmental entity with jurisdiction over the roadway, and not with the railroad.” *Paddock*, 225 Mich App at 534.

Under MCL 462.131, “To the extent provided in this act, the [Michigan Department of Transportation] shall have and exercise regulatory and police power over railroad companies in this state insofar as such power has not been preempted by federal law or regulation.” One of those powers is determining the need for a clear vision area at railroad crossing. Under MCL 462.317(1), “*If a road authority determines to establish a clear vision area as described in this section, the railroad and a road authority may agree in writing for clear vision areas with respect to a particular crossing. The portions of the right-of-way and property owned and controlled by the respective parties within an area to be provided for clear vision shall be considered as dedicated to the joint usage of the railroad and the road authority.*” (Emphasis added.) Thus, the duty to create a clear vision area only arises if the road authority determines to establish one.

The change in language from the prior version of the statute is informative. The prior statute applied “[w]henver the railroad company or railroad companies

and public authorities having jurisdiction over such highway shall agree” MCL 469.6. Conversely, the present statute only applies “[i]f a road authority determines to establish a clear vision area as described in this section” MCL 462.317(1).

Plaintiff argues that this changed and added clause is meaningless, but an “interpretation that renders language meaningless must be avoided.” *Nat’l Pride At Work, Inc. v. Governor of Michigan*, 481 Mich 56, 70, 748 NW2d 524, 534 (2008). “It is a cardinal rule of statutory interpretation that ‘effect shall be given to every word, phrase, or clause of a statute.’” *People v. Babcock*, 469 Mich 247, 276, 666 NW2d 231, 246 (2003), *citing Robertson v. DaimlerChrysler Corp.*, 465 Mich 732, 757, 641 NW2d 567 (2002). When construing a statute, every word “should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.” *Baker v. Gen. Motors Corp.*, 409 Mich 639, 665, 297 NW2d 387, 398 (1980). Following those rules of statutory construction, the added clause in MCL 462.317 has meaning, and its meaning is that the road authority, not the railroad, determines the need for a clear vision area.

This Court was correct when it held in *Turner* that “the duty to consider corrective actions at a railroad crossing lies with the governmental entity with jurisdiction over the roadway, and not with the railroad.” *Turner*, 198 Mich App at 256-257. The Court of Appeals in *Paddock* was similarly correct when it applied that rationale to the creation of clear vision areas under MCL 462.317.

CONCLUSION

As set forth above, (1) the decision below directly conflicts with *Paddock* and MCL 462.317, and (2) *Paddock* was correctly decided. Defendants respectfully request that this Court grant their Application for Leave to Appeal.

Respectfully Submitted,

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