

United States Court of Appeals
For the Eighth Circuit

No. 17-2039

Jerry L. Donaldson

Plaintiff - Appellant

v.

Kansas City Southern Railway Company, The

Defendant - Appellee

Appeal from United States District Court
for the Western District of Arkansas - Hot Springs

Submitted: March 7, 2018

Filed: April 26, 2018

[Published]

Before LOKEN, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

In this diversity action, Jerry Donaldson appeals the adverse summary judgment decision issued by the district court in favor of Kansas City Southern Railway (Southern) as to Donaldson's claim that Southern negligently maintained the roadway at a crossing where its three tracks intersected a state highway.

Viewing the evidence in the light most favorable to Donaldson, we conclude that he established a genuine issue of material fact as to whether Southern negligently maintained the pavement. See W. Heritage Ins. Co. v. Asphalt Wizards, 795 F.3d 832, 836-37 (8th Cir. 2015); Depositors Ins. Co. v. Wal-Mart Stores, Inc., 506 F.3d 1092, 1094 (8th Cir. 2007). While Ark. Code Ann. § 27-67-214(b) limits Southern’s liability to maintain “that part of the roadway between [its] tracks and to the end of the cross ties on each side,” the case law interpreting the statute does not clearly indicate whether the area between the cross ties is covered. Cf. Untiedt v. St. Louis Sw. Ry. Co., 440 S.W.2d 251, 255 (Ark. 1969) (noting the duty of railroad company to maintain roadway is limited to portion of roadway between its tracks and to end of cross ties on each side). The district court may need to predict how the Arkansas Supreme Court would interpret the statute. See Jackson v. Anchor Packing Co., 994 F.2d 1295, 1301 (8th Cir. 1993).

Accordingly, we reverse the district court’s summary judgment decision, and remand this case for further proceedings consistent with this opinion.