

PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 98-8436

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEPTEMBER 08, 2000
THOMAS K. KAHN
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D. C. Docket No. 96-03509-1-CV-MHS

CITY OF MARIETTA,

Plaintiff-Appellant,

versus

CSX TRANSPORTATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(September 8, 2000)

Before EDMONDSON, COX and MARCUS, Circuit Judges.

PER CURIAM:

This is our second opinion in this appeal in which the City of Marietta seeks to reverse summary judgment in favor of CSX Transportation on the City's claims arising from CSX's closure of two pedestrian railroad crossings. *See City of Marietta v. CSX Transp.*, 196 F.3d 1300 (11th Cir. 1999). In the first opinion, we asked the Georgia Supreme Court whether "the public [can] acquire a right against the State of Georgia, and hence against its lessee CSX, to use the crossings at Depot and Dobbs Streets, such that the streets may not be closed without Marietta's consent?" *Id.* at 1309.

The Georgia Supreme Court has now answered the question "in the negative." *City of Marietta v. CSX Transp.*, No. S00Q0515, ms. op. at 5 (Ga. July 10, 2000). As we observed in certifying the question, a "no" would be dispositive of all of the City of Marietta's Georgia-law claims. *See City of Marietta*, 196 F.3d at 1307-08. The Georgia Supreme Court has not corrected our reading of Georgia law on that point, and we therefore conclude that the district court's summary judgment in CSX's favor must be

AFFIRMED.