IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

BETTY J. DAHL,	*	
	*	3-99-CV-90203
Plaintiff,	*	
	*	
v.	*	
	*	
LADY LUCK BETTENDORF, L.C.,	*	MEMORANDUM OPINION
	*	AND ORDER
Defendant.	*	
	*	

Before the Court is Defendant's Motion for Summary Judgment on the sole count in Plaintiff's Complaint, violation of 46 App. U.S.C. 491 (2000). Under this maritime statute Plaintiff essentially claims that she slipped and fell because of Defendant's negligence. The Court, mindful of the admonition that summary judgment should be granted in negligence cases only in exceptional circumstances, grants Defendant's motion.

I. Background

This lawsuit arises out of Plaintiff, Betty Dahl, and her grandson's, Jeff Dahl, visit to Lady Luck Casino, owned by Defendant, Lady Luck Bettendorf, L.C ("Lady Luck"). While at Lady Luck Casino, Betty Dahl broke her hand by falling in front of a slot machine. Betty Dahl and Jeff Dahl were the only witnesses.

Betty Dahl does not remember much about the incident. She remembers simply walking up to a slot machine at the end of an aisle, that a woman just left, and sliding on something. In her deposition she stated:

> Q: So is your answer that at no time you felt anything wet or sticky?
> A: I don't–I didn't feel that, What I felt was what happened to me, but I just had to slide on something. That's what I'm trying to tell you. I did slide, and I didn't

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> sit on the stool which they–I think they said in their report that I was sitting on a stool. I did not.

Betty Dahl Depo. at 36. She also remembers that, as she fell, she put her hand on the stool in front of the slot machine she wanted and fell into another woman or stool; she claims that she was not facing the slot machine when she fell. Because of the pain involved in breaking her hand, Betty Dahl says she does not remember any more.

Jeff Dahl was the only other person who saw what happened. He remembers a lot more about the incident than his grandmother. Jeff recalls walking toward the slot machine with her. He says that when he walked past it he saw that there was some moisture on the base of the slot machine, some moisture on the floor next to it, and a paper cup lying next to it all. Jeff states that he did not say anything to his grandmother because he thought she would see it. In his deposition he stated:

> Q: And when was it that this surface with some wetness on it attracted your attention?
> A: Maybe a couple minutes before it happened. I wasn't gone from her more than maybe 30 or 40 seconds at that.
> Q: Okay. So before the fall you saw the surface with the moisture?
> A: Uh-huh.

Jeff Dahl Depo. at 14. He continued walking past the slot machine, without his grandmother, in order to get some hand wipes. On his way back to his grandmother, he saw her fall. However, he says that to him it looked as if his grandmother might have been attempting to sit on the stool when she fell. In his deposition, Jeff stated as follows:

> Q: Now, is there anything about the stool or its design you can think of that might have caused the fall?
> A: The only other thing I could thought (sic) of is like when I was coming around, it happened so quick that Grandma tried to get up on it and had her foot there and slid.
> Q: Had her foot on that little support piece [of the stool]?
> A: Yeah, trying to lift herself up on it.

Q: Did you see her trying to get onto it like that?
A: I seen her when she was falling so–
Q: Where were her feet in relation to that spot where you think you saw moisture?
A: Two, three inches away from it. She was probably where the stool–
. . .
Q: Was the stool between her and that inclined piece of metal where you saw the moisture?
A: Yes.

Id. at 23-24. Jeff also remembers that before he and his grandmother walked over to the slot machine, he saw a waitress walk by it with a full tray of drinks. This is all anyone saw or remembers about the incident.

II. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." An issue is "genuine," "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if the dispute over it might affect the outcome of the suit under the governing law. *Id.*

The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323; *Anderson*, 477 U.S. at 248. In meeting its burden, the moving party may support his or her motion with affidavits, depositions, answers to interrogatories, and admissions. *See Celotex*, 477 U.S. at 323. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate the specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *Celotex Corp.*, 477

U.S. at 322-323; *Anderson*, 477 U.S. at 257. In order to survive a motion for summary judgment, the nonmoving party must present enough evidence for a reasonable jury to return a verdict in his or her favor. *Anderson*, 477 U.S. at 257.

On a motion for summary judgment, the Court is required to "view the evidence in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences." *United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990). The Court does not weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 252. The Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *Id.*

The First Circuit has adeptly described the function of summary judgment in civil cases:

> Summary judgment has a special place in civil litigation. The device "has proven its usefulness as a means of avoiding full-dress trials in unwinnable cases, thereby freeing courts to utilize scarce judicial resources in more beneficial ways." In operation, summary judgment's role is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required.

Wynne v. Tufts Univ. School of Medicine, 976 F.2d 791, 793-794 (1st Cir. 1992) (citation omitted).

III. Discussion

Betty Dahl actually sues under 46 App. U.S.C. § 491 (2000), which states:

> Whenever damage is sustained by any passenger or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel shall be liable to each and every person so injured, to the full amount of damage if it happens through any neglect or failure to comply with the provisions of title 52 of the Revised Statutes, or through known defects or imperfections of the steaming apparatus or of the hull; and any person sustaining loss or injury through the carelessness, negligence, or willful misconduct of any master, mate, engineer, or pilot, or his neglect or refusal to obey the laws governing the navigation of such steamers, may sue such master, mate, engineer, or pilot, and recover damages for any such injury caused by any such master,

mate, engineer, or pilot.

However, because there is not much caselaw interpreting this statute and its negligence standard, the Court will apply Iowa caselaw in determining whether Betty Dahl makes out a prima facie case of negligence sufficient to withstand Lady Luck's summary judgment motion. *See Pritchett v. Kimberling Cove, Inc.*, 568 F.2d 570, 575 n.6 (8th Cir. 1978) (stating that "admiralty courts may apply state law by express or implied reference or when the federal law of admiralty is incomplete).

The Court is aware of the Iowa Supreme Court's admonition against granting summary judgment in negligence cases. *Rieger v. Jacque*, 584 N.W.2d 247, 250-251 (Iowa 1998) ("Although questions of negligence and proximate cause are ordinarily for the jury to decide, they may be decided as a matter of law in exceptional cases.") Nonetheless, the Court thinks that summary judgment is appropriate in this case. This is because in order to establish that Lady Luck was negligent, Betty Dahl must prove the following: (1) Lady Luck knew or by the exercise of reasonable care would have discovered the moisture, and should have realized that it involved an unreasonable risk of harm to its customers; (2) Lady Luck should have expected that the customers would not discover or realize the danger, or would fail to protect themselves against it; and (3) Lady Luck failed to exercise reasonable care to protect the customers against the danger. *Richardson v. Commodore, Inc.*, 599 N.W.2d 693, 696 (Iowa 1999). Summary judgment is also appropriate because Betty Dahl must establish that Lady Luck's negligence was a proximate cause of her injury. *See Hasselman v. Hasselman*, 596 N.W.2d 541, 545 (Iowa 1999) (citation omitted). Betty Dahl fails to establish a genuine issue of material fact as to whether Lady Luck was negligent and as to whether Lady Luck's alleged negligence was a proximate cause of her injury.

No reasonable juror could infer from the evidence presented that Lady Luck was negligent. In *Ling v. Hosts Incorporated*, 164 N.W.2d 123, 127 (Iowa 1969), the court held that the evidence did not support a verdict for the plaintiff where no witness claimed to have seen the water the plaintiff alleged to have slipped on until after the plaintiff fell. In *Kramer v. F.W. Woolworth Co.*, 255 Iowa 633, 637-638, 123 N.W.2d 572, 574-575 (Iowa 1963), the court held that a directed verdict was appropriate where the only evidence presented concerning the gum spot that the plaintiff claimed was the cause of her fall was the plaintiff's testimony that she observed the gum spot after her fall and it appeared old. Jeff Dahl's testimony provides evidence that, if believed, could only establish that the moisture was on the ground for at most two minutes before Betty Dahl fell. That is simply not enough time to give Lady Luck constructive notice.

Jeff Dahl's testimony about a waitress coming by the slot machine before the fall does not add anything. Jeff Dahl states that a waitress walked by the slot machine with a full tray of drinks before his grandmother fell. He speculates that the waitress may have spilled the drink herself. This speculation establishes that Jeff Dahl did not see the spilled drink before the waitress walked by. In other words, this testimony provides no reasonable basis for inferring the waitress had actual knowledge of the spill (by spilling the drink herself) or for inferring that the waitress walked by the spilled drink and thus had constructive knowledge (in that she should have seen the spill). The observation adds nothing other than opportunity for speculation. For example, in *Walls v. Jacob North Printing Co., Inc.*, 618 N.W.2d 282, 284 (Iowa 2000) the Iowa Supreme Court was recently confronted with a situation wherein a witness overheard a conversation about moving a ladder and soon thereafter saw the top of the ladder slanted. The court held that summary judgment was appropriate because any finding of who moved the ladder

(there were two defendant companies) and that someone actually did move the ladder and failed to replace without exercising due care could not be made without "rank speculation." *Id.* at 285-86. *Cf. Dennett v. City of Des Moines*, 347 N.W.2d 691, 692 (Iowa Ct. App. 1984) (holding that the defendant's own testimony that the deterioration that had taken place along the crack in the sidewalk would take a long time and testimony that trucks frequently crossed over the sidewalk at that point was sufficient to support a finding of constructive notice as to the crack in the sidewalk). Viewing the facts in a light most favorable to Betty Dahl, the only reasonable inference is that the moisture was present for two minutes before the fall. The Court believes that this evidence fails to create a genuine issue of material fact with respect to negligence.

Nor could any reasonable juror infer from the evidence presented that Lady Luck's alleged negligence was the proximate cause of Betty Dahl's injury. The element of proximate cause actually consists of two elements: "(1) 'the defendant's conduct must have in fact caused the plaintiff's damages,' and (2) '[t]he policy of the law must require the defendant to be legally responsible for the injury.'" *Hasselman*, 596 N.W.2d at 545 (alteration in original) (quoting *Gerst v. Marshall*, 549 N.W.2d 810, 815 (Iowa 1996)). And the Iowa Supreme Court has said that "[w]hen a jury is left to speculate on whether the defendant's conduct in fact caused the plaintiff's damages, the evidence is insufficient to support a finding of proximate cause." *Id.* at 546 (holding that a directed verdict was proper where the only evidence on causation was the plaintiff's testimony that the ladder he was on went down vertically when he fell and that he would have noticed if the clamps were not properly secured).

Betty Dahl fails to show that a reasonable juror could infer that Lady Luck's alleged negligence was the cause her injury. In *Randol v. Roe Enterprises, Inc.*, 524 N.W.2d 414, 416 (Iowa 1994), the plaintiff fell in the defendant's parking lot as she stepped off the pavement and

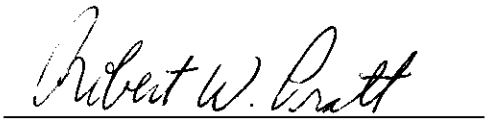
onto gravel. Although the plaintiff had no idea why she fell, the court held that the location of her fall, the nature of the terrain where she fell, and how she fell (head over heels) generated a genuine issue of material fact as to proximate cause. *Id.* at 417. The evidence in this case is different than the evidence in *Randol* though. In this case, the only evidence about the location of Betty Dahl's fall is Jeff Dahl's testimony that her feet were actually not in contact with the moisture when she fell. Also, no inference can be drawn from the way Betty Dahl fell. Jeff Dahl, the only witness to the fall, testified that from what he saw his grandmother might have actually slipped on the support piece of the stool while attempting to sit down. Jeff Dahl Depo. at 23, 32. The Court thus thinks that summary judgment is appropriate in this case not only because Betty Dahl has failed to create a genuine issue of material fact with respect to negligence, but because she has also failed to create a genuine issue of material fact on whether any alleged negligence on the part of Lady Luck actually caused her injury.

IV. Conclusion

Defendant's Motion for Summary Judgment (Clerk's #12) is **granted**. The case is **dismissed**.

IT IS SO ORDERED.

Dated this 9th day of January, 2001.



ROBERT W. PRATT,
U.S. DISTRICT JUDGE