STATE OF MINNESOTA
TRIBAL COURT OF THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA)
COMMUNITY

Robert Famularo,

Plaintiff,

vs.

Little Six, Inc. d/b/a Mystic Lake
Casino

Defendant.

Court File No. 350-99

MEMORANDUM OPINION

Defendant Little Six, Inc. ("LSI") filed a motion for summary judgment asserting that Plaintiff Robert Famularo has failed to allege facts sufficient to state a claim for negligence, and Defendant, therefore, is entitled to judgment as a matter of law. Because Plaintiff has failed to establish a prima facie case of negligence, Defendant's motion is granted.

I. FACTS

Plaintiff alleges that, on or about April 13, 1997, he slipped and fell outside the entrance to Little Six Casino, owned and operated by Defendant LSI, and sustained injuries as a result. Plaintiff was a customer of LSI and planned to spend about eight to twelve hours gambling, as was his custom. Plaintiff entered the building when it was still daylight. Plaintiff claims he walked from the parking lot past a covered, handicap-access ramp to the steps at the front entrance to the Casino. On his way inside, he noticed a downspout streaming water across the parking lot/walkway in his path to the door. The stream of water created a wet area approximately four feet wide.

The weather was clear and the temperature above freezing when Plaintiff entered the Casino. At some point while he was inside, the temperature dropped below freezing. It was dark outside when Plaintiff left the Casino eight to twelve hours later at 3:00 a.m., but he could still see water flowing from the downspout as he exited the building. On his way out of the Casino, Plaintiff again avoided the covered, handicap-access ramp and walked through the same wet spot, which had frozen. Plaintiff slipped and fell on the ice. Management told a security guard to get salt, and the guard returned with salt pellets and sprinkled them around Plaintiff.

Plaintiff acknowledges that Little Six, Inc. has a comprehensive monitoring program. During spring months when ice and snow are possible, a Property Services employee is assigned an on-call pager with a mandatory response time of under a half-hour to ensure that hazardous conditions can be abated quickly once they are reported.

II. ANALYSIS

This case arises from Plaintiff's claim that Defendant negligently injured Plaintiff by failing to maintain safe premises and failing to warn Plaintiff of a dangerous condition on the premises. Defendant brought a motion for summary judgment claiming that Plaintiff has failed to allege facts sufficient to establish a prima facie case of negligence. Rule 28 of the SMS(D)C Rules of Civil Procedure requires that summary judgment only be entered for the moving party if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Welch v. SMS(D)C, No. 036-94 (SMS(D)C Tr. Ct. Nov. 27, 1995). Summary judgment is not appropriate where there are disputed issues of material fact. Welch et al. v. SMS(D)C, No. 023-92 (SMS(D)C Tr. Ct. June 3, 1993). When considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-

moving party and give that party the benefit of all reasonable inferences drawn from the evidence. Barrientez v. SMS(D)C, No. 007-88 (SMS(D)C Tr. Ct. Sept. 7, 1990).

To establish a prima facie case of negligence, Plaintiff must allege facts sufficient to demonstrate (1) that Defendant owed him a duty, (2) that Defendant breached that duty, (3) that Defendant's breach was the proximate cause of plaintiff's injuries, and (4) that Plaintiff suffered actual injury. *See* Kostelnik v. Little Six, Inc., No. 019-97 (SMS(D)C Ct. App. March 17, 1998), at 5. Failure to allege facts sufficient to meet an essential element of a claim entitles Defendant to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

A business premises owner has a duty to keep the premises reasonably safe but is not an insurer of patrons' safety. *See* Anderson v. St. Thomas More Newman Center, 287 Minn. 251, 253, 178 N.W.2d 242, 243 (1970); Wolvert v. Gustafson, 275 Minn. 239, 241, 146 N.W.2d 172, 173 (1966). In cases of alleged premises liability for a plaintiff's slip and fall in a wet or icy area, a defendant property owner has no duty to ensure that all possible access routes are clear but only must provide suitable access to avoid liability. *See* Munos v. Applebaum's Food Market, Inc., 293 Minn. 433, 196 N.W.2d 921 (1972); McIlrath v. College of St. Catherine, 399 N.W.2d 173, 174 (Minn. Ct. App. 1987). Unless the dangerous condition alleged to cause plaintiff's injury resulted from the direct actions of the landowner or his or her employees, a negligence theory of recovery is appropriate only where the landowner had actual or constructive knowledge of the dangerous condition. Rinn v. Minnesota State Agr. Soc., 611 N.W.2d 361 (Minn. Ct. App. 2000) (citing Messner v. Red Owl Stores, 238 Minn. 411, 413, 57 N.W.2d 659, 661 (1953)). Constructive notice of a hazardous condition may be established through evidence that the condition had existed for an amount of time sufficient to constitute constructive notice, but speculation as to how long it had existed warrants judgment for the landowner. Rinn, 611

N.W. at 365 (citing Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323, 328 (Minn. 1993); Anderson v. St. Thomas More Newman Ctr., 287 Minn. 251, 253, 178 N.W.2d 242, 243-44 (1970)).

In this case, Plaintiff alleges that Defendant LSI negligently failed to provide a safe and reasonable alternative route to and from the building and that Defendant failed to warn him of the icy condition before he slipped and fell on it. Plaintiff argues that questions of material fact exist with regard to the reasonableness of an alternative route of ingress and egress, the Defendant's failure to warn him of the icy conditions, the nature of the icy conditions, and also with regard to the allegedly negligent design of the building entrance area. The Court disagrees. Accepting all of Plaintiff's contentions as true, Plaintiff fails to proffer facts sufficient to establish under the circumstances that Defendant breached its duty of care.

First, Plaintiff claims that the reasonableness of an alternative route presents a disputed issue of material fact. Plaintiff relies on Peterson v. W.T. Rawleigh Co., 274 Minn. 495, 144 N.W.2d 555 (1966), in which the plaintiff businessman was held to have stated a claim sufficient for a jury to find in his favor because his assumption of risk in walking across a slippery parking lot was justified in light of the lack of reasonable alternatives and the plaintiff's business related purpose for his visit. Rawleigh stands for the proposition that a possessor of land may be liable to invitees for physical harm caused to them by an open and obvious or known condition when the possessor should anticipate the harm despite such knowledge or obviousness. 274 Minn. at 497, 144 N.W.2d at 557-58. Rawleigh is distinguishable from the instant case, however, because unlike the Respondent Peterson in Rawleigh, Plaintiff Famularo had an alternative route to the one he took. Mr. Famularo could have chosen to avoid the water and walk on the covered handicap ramp, which was equally accessible from the lot where he parked. Plaintiff's case is

comparable to McIlrath v. College of St. Catherine, 399 N.W.2d 173 (Minn. Ct. App. 1990), in which the plaintiff claimed that the defendant College negligently failed to maintain her route of ingress to the campus bookstore. The evidence showed, however, that the plaintiff had not used the sidewalks that were undisputedly cleared for safe entrance to the building, and the Minnesota Court of Appeals upheld the trial court's grant of summary judgment to the defendant College.

In this case, Plaintiff asserts that he took the most direct route to the door, which was crossed by a stream of water, and no other reasonable alternative existed. Like the defendant College in McIlrath, however, Defendant LSI provides a safe alternative route of entrance to the building—a covered handicap entrance ramp, which Plaintiff Famularo chose not to use. Plaintiff would have had to turn and walk a longer distance in order to use the covered handicap entrance ramp provided, but the covered handicap ramp is provided, by law, for the very purpose of providing an alternative, safe route of entrance to the building. Plaintiff chose the direct route, but not the safest alternative. He had a choice, and that choice negates Plaintiff's contention that he had no reasonable alternative route of egress from the building.

Second, Plaintiff asserts that the reasonableness of Defendant's failure to warn him of the icy conditions presents a disputed issue of material fact. The Court acknowledges the existence of a disputed fact that would be material if Plaintiff alleged any negligent act or omission by Defendant. Plaintiff concedes, however, that Defendant has a comprehensive monitoring policy and a patrol whose duty is to identify and respond to hazardous conditions—and who did, in fact, respond to the condition in question by sprinkling salt pellets following Plaintiff's fall. Plaintiff does not suggest that Defendant deviated from its policy, or identified and failed to respond to the icy conditions. There is no evidence in the record, nor does Plaintiff claim any knowledge of the length of time that passed between the formation of perilous ice and the moment when

Plaintiff slipped and fell. It would be merely speculative to deduce when the wet area actually became hazardous and impossible to determine the point in time at which Defendant should be attributed constructive notice. Plaintiff's mere allegation that Defendant is liable because it negligently failed to warn him of the ice, absent any supporting factual allegations of negligent acts or omissions, is insufficient as a matter of law to withstand Defendant's motion for summary judgment.

Third, Plaintiff asserts that the condition of the wet area and lighting constitute disputed issues of material fact precluding summary judgment. Plaintiff and Defendant disagree about the exact depth and breadth of the wet area, as well as the intensity of lighting in the area. The Court disagrees that these issues are material. Plaintiff admits that the wet area was not hazardous when he walked through it on his way in. He did not notify management about a potential hazard. Plaintiff does not allege that the water was any deeper or wider when he left the building, only that it was frozen. Taking all of Plaintiff's allegations as true—that the water was "streaming" in a wide swath across the pavement before it froze, that it was dark outside and the area was only dimly lit—it still would be impossible to attribute constructive notice of the hazard to Defendant because of the impossibility of determining when the area became hazardous. Plaintiff appears to assert that Defendant should have been on notice that a wet area near the entrance could freeze, but it would be error to attach liability based on a duty to divine the concededly unpredictable weather conditions in Minnesota in April.

LSI only has a duty to its customers of reasonable care, not a duty to prevent all possible missteps. Plaintiff acknowledges that LSI has a comprehensive monitoring program. Plaintiff vaguely suggested in his deposition that the safety patrol was negligent—"he had to have known the ice was there"—but presents no further evidence. The fact that the temperature outside had

dropped by the time Plaintiff left the building was knowledge equally attributable to Plaintiff and Defendant. Defendant had no duty to warn Plaintiff of a condition known to him as soon as he walked outside and felt the relatively cold night air. The disputed conditions alleged by Plaintiff, therefore, do not present issues of material fact.

Finally, Plaintiff alleges the building was negligently designed. Plaintiff concedes that the building conforms to the Uniform Building Code standards, however, and Plaintiff does not present any evidence of a defect in the design that produced an unreasonable hazard. Plaintiff's entire negligence claim is based on speculation rather than material, factual allegations and cannot survive Defendant's Motion for Summary Judgment.

Defendant's Motion for Summary Judgment is granted.

IT IS SO ORDERED.

10/20/00
Date

Robert Grey Eagle
Hon. Robert A. Grey Eagle

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court for hearing on September 11, 2000 before the Honorable Robert A. Grey Eagle at the Courthouse of the Community Center in Shakopee, 2330 Sioux Trail N.W., Prior Lake, Minnesota. Richard Dahl, Esq. appeared on behalf of the Defendant Little Six, Inc. (LSI). David O'Connor, Esq. appeared on behalf of the Plaintiff.

The Court issues this Order following a thorough review of the record in this case and the materials contained therein.

IT IS HEREBY ORDERED:

1. Defendant's Motion for Summary Judgment is granted.

2. Defendant LSI was not negligent in providing reasonably safe access to the Little Six Casino in connection with Plaintiff's allegations in the case.

3. LSI was not negligent in addressing the weather, water, and lighting conditions outside Little Six Casino in connection with Plaintiff's allegations in the case.

4. LSI was not negligent in designing the parking lot or building structures at Little Six Casino.

5. Based on the foregoing conclusions of law, the Plaintiff's negligence claims against Defendant are hereby dismissed with prejudice.

Dated: 10/20/00

Robert Grey Eagle
Hon. Robert A. Grey Eagle
Judge of the Tribal Court