

United States Court of Appeals
for the Fifth Circuit

No. 22-30790
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2023

Lyle W. Cayce
Clerk

MARK JOSEPH MATARRESE,

Plaintiff—Appellant,

versus

ZURICH AMERICAN INSURANCE COMPANY; LOUISIANA -1
GAMING, *A Louisiana Partnership* IN COMMENDAM,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CV-1651

Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Plaintiff, Mark Joseph Matarrese, slipped and fell in a puddle of water as he was walking into the Boomtown Casino New Orleans. After de novo review, we agree with the district court that the allegedly hazardous condition (whether it was the puddle of water or algae contained therein) was open and

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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obvious.¹ Plaintiff agreed in his deposition that on the night in question the area was “pretty well lit.” The photographs of the puddle establish that the puddle was large and clearly visible. Furthermore, it was located at the base of the vehicular ramp leading to the porte cochere (i.e., the overhang under which *vehicles* drive for unloading) of the Boomtown Casino New Orleans. Under these circumstances, we conclude that “no reasonable juror could find that Defendants breached the duty owed to Plaintiff[.]”²

AFFIRMED.

¹ See *Farrell v. Circle K Stores, Inc.*, 359 So. 3d 467, 474 (La. 2023) (holding that courts should apply the risk/utility balancing test to make the determination whether a property owner breached a duty to keep the premises in a reasonably safe condition and clarifying that “[t]he likelihood and magnitude of the harm, includes a consideration of the open and obviousness of the condition.”).

² *Id.* at 479.