

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40056

ALEX MOORE and MINETTE MOORE,

Plaintiffs-Appellees,

ALEX MOORE,

Plaintiff-Appellee,
Cross-Appellant,

versus

COMMODORE CRUISE LINE LIMITED and
PLAYERS WORLD TRAVEL,

Defendants,

COMMODORE CRUISE LINE LIMITED,

Defendant-Appellant,
Cross-Appellee.

Appeals from the United States District Court for
the Eastern District of Texas
(1:93-CV-104)

(April 24, 1995)

Before POLITZ, Chief Judge, REAVLEY and BARKSDALE, Circuit
Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Commodore Cruise Line Limited ("Commodore") appeals the district court's judgment in favor of plaintiff Alex Moore in this maritime slip and fall case. We affirm.

BACKGROUND

Sixty-six year old Alex Moore fell and was severely injured on board a vessel owned by Commodore. Moore and his wife boarded the vessel for a cruise on November 17, 1991. After boarding and while the vessel was still at dock, the Moores were served lunch in the Harbor Grill restaurant, a dining room adjacent to the promenade deck at the stern of the vessel. After lunch, the Moores exited the grill and toured the promenade deck. When they attempted to reenter the interior of the vessel, Mr. Moore fell.

DISCUSSION

The parties dispute which door, of three doors entering the interior of the ship from the promenade deck, Moore attempted to use in reentering the ship. Moore claims that he used the door leading back into the Harbor Grill, close to the centerline of the ship. That door has a carpet-covered ramp concealed on the inside of a two to four-inch doorsill. Moore convinced the district court that his fall was caused by the unanticipated angle of the ramp encountered after stepping over the doorsill. Commodore claims that Moore attempted to reenter through a door on the port side of the ship which had no ramp and had a doorsill of only 3/4 inch.

The district court's conclusion that Moore attempted to reenter through the center door was not clearly erroneous. See

Fed. R. Civ. P. 52(a); White v. ARCO/Polymers, Inc., 720 F.2d 1391, 1395 (5th Cir. 1983). Moore's wife was the only witness testifying as to the location of the fall.¹ Mrs. Moore accompanied Moore and held him by his arm while the couple was aboard the ship. She testified that she and Moore attempted to enter through a sliding glass door with a high doorsill and a ramp on the other side. She says that the doorway had a warning sign. Only the center door had these characteristics. Mrs. Moore also testified that the door was near a kitchen area. This testimony supports the conclusion that the door used by the Moores led back into the Harbor Grill. Mrs. Moore testified that they were not reentering the Harbor Grill at the time of the accident. This statement is not necessarily inconsistent with her other testimony, because she may have meant that they did not intend to return to the Harbor Grill even though they wished to use the Harbor Grill doorway to reenter the ship. Or, she may simply have been mistaken about what area of the ship she and Moore would have entered if they had made it through the doorway. Fact finders are often called upon to resolve what may seem to be inconsistencies in the testimony of witnesses. The finding here was neither unreasonable nor clear error.

The district court properly concluded that Moore's fall was caused by the doorsill/ramp combination and that Commodore

¹ Moore had suffered a major stroke several years before this injury. The stroke left Moore unable to read or write. At the time of trial, he was unable to communicate answers to simple questions.

negligently allowed the dangerous situation to exist and negligently failed to provide sufficient warning. A shipowner owes to passengers the duty of exercising "reasonable care under the circumstances of each case.'" Smith v. Southern Gulf Marine Co. No. 2, Inc., 791 F.2d 416, 421 (5th Cir. 1986) (quoting Kermerac v. Compagnie Generale Transatlantique, 79 S.Ct. 406, 410 (1959)). Where the circumstances surrounding maritime travel are different than those encountered in daily life, added precautions or a high degree of care is what reason requires. Id. at 421 (citing Rainey v. Paquet Cruises, Inc., 709 F.2d 169, 171-72 (2d Cir. 1983)).

The district court found that the high doorsill with a ramp on the other side was an occurrence peculiar to travel at sea. That finding was not clearly erroneous. See Fed. R. Civ. P. 52(a); White, 720 F.2d at 1395. Expert witnesses for the plaintiff and the defense testified that the high threshold is necessary to separate wet decks from carpeted interiors to keep water out of the dry areas of a vessel. Moore's expert witness testified that such high doorway thresholds do not exist in everyday life on land.

Nor did the district court err in finding that Commodore failed to exercise the high duty of care required of it under all of the circumstances. Commodore allowed a dangerous passageway to exist on its vessel and failed to warn of the danger. The center doorway was dangerous in that an inclined ramp was attached to and unlikely to be visible behind a high doorsill.

The presence of the ramp was obscured, because it was covered by carpet matching the carpet covering the surrounding flat deck. The door did include a warning sign on the promenade side. But "Watch Your Step" only called attention to the high step presented by the doorway. It did not warn of the ramp on the other side. The ramp had no features which would warn passengers of its existence. Commodore could have placed red stripes on the ramp or covered the ramp in a different color carpet, but failed to do so.

Commodore had actual or constructive knowledge of the dangerous condition. The question to be asked regarding notice is whether Commodore should have known of the dangerous condition. Smith, 791 F.2d at 422. Commodore must have been aware of the structure of the doorsill and ramp found on its vessel. It should have known of the danger that the doorway structure created for passengers on its cruise ship, many of whom it knew would be elderly. Commodore failed to act with sufficient care given the circumstances of which it should have been aware.

In his cross-appeal, Moore asserts that the trial court erred in failing to award damages for past medical expenses. The district judge rejected those damages, either by deliberate decision or by oversight. No motion to reconsider was made by Moore. At this stage we cannot award the total, or any particular part, of the claimed medical expenses.

AFFIRMED.