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United States District Court, N.D. Illinois, Eastern Division.
Lauren KNIGHT, Plaintiff,
v.
GRAND VICTORIA CASINO, Defendant.

No. 98 C 8439.
Sept. 27, 2000.

MEMORANDUM OPINION AND ORDER

KENNELLY, J.

***1** Lauren Knight worked for the Grand Victoria Casino as a games dealer on its M/V Grand Victoria, a riverboat casino docked on the Fox River near Elgin, Illinois. Knight also served as a "cultural ambassador," training new employees and participating in orientation seminars, as well as serving as an informational resource for new employees while she was on the job dealing cards. At least as of November 1997, the M/V Grand Victoria regularly cruised on the Fox River,[FN1] though it is not clear if or how often the boat cruised while Knight was working.

FN1. In 1997, Illinois law prohibited gambling while a riverboat was docked, *see* 230 ILCS 10/11(a)(1) (1997), which meant, as a practical matter, that riverboat licensees had to offer excursion cruises at least part of the time the casinos were open. The law has since changed such that gambling may be authorized whether or not the licensee conducts excursion cruises. *See* 230 ILCS 10/3(c) (2000).

On November 17, 1997, Knight drove to the casino to attend a cultural ambassador training class at Grand Victoria's land-based pavilion, a building connected on one side via a covered walkway to a parking garage used by casino patrons and connected on the other side to the dock where the M/V Grand Victoria is moored. Knight was not scheduled to work as a dealer that day; Grand Victoria would pay her that day solely for attending the training class. Before clocking or signing in-Knight, like all hourly employees, had to clock or sign in at the start of her shift and clock or sign out at the end of her shift-Knight slipped on some ice on the walkway between the parking garage and the pavilion and fell, sustaining soft tissue injuries of the neck, hip, back and leg. Knight immediately told her supervisor, Sharon McGill, about her fall, and the two of them, along with a security officer who investigated the accident site, completed an accident report that same day documenting the incident.

On December 31, 1998, Knight sued Grand Victoria under the Jones Act for negligence and under general admiralty and maritime law for unseaworthiness and maintenance and cure. Shortly thereafter, on January 15, 1999, Knight requested a leave of absence from January 18, 1999 to March 1, 1999 because of the "complete disability" she suffered as a result of the fall; she indicated on her leave form that she wanted the time off for possible back surgery. The company granted Knight's leave request and answered the complaint on March 10, 1999.

Meanwhile, March 1 came and went and Knight failed to return to work. When she finally showed up on March 12, 1999 she was told that she had been terminated effective March 11 for failing to return from her leave of absence as scheduled. Upon learning that she was fired, Knight amended her complaint to add a count alleging that Grand Victoria fired her in retaliation for filing the initial complaint; she also appealed her termination, consistent with Grand Vic-

toria's internal policy, to a "Board of Review" (a panel of four employees from different departments), which upheld the company's decision.

Grand Victoria moved for summary judgment on all of Knight's claims, and, in her response to that motion, Knight expressly abandoned her retaliatory discharge and unseaworthiness claims. *See* Plaintiff's Memorandum in Response to Defendant's Motion for Summary Judgment, p. 1. Thus, the Court considers the motion with respect to her Jones Act and maintenance and cure claims only.

DISCUSSION

***2** The Court will enter summary judgment only if the factual record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). In ruling on a summary judgment motion, the Court accepts as true the nonmovant's evidence and draws all justifiable inferences in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The Court will deny summary judgment if "a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248.

1. *Knight's Claim of Negligence Under the Jones Act*

The Jones Act provides that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury...." 46 U.S.C. § 688(a). Grand Victoria argues that it is entitled to summary judgment on Knight's Jones Act claim because Knight was not a "seaman" when she fell. In *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548 (1997), the United States Supreme Court reviewed the test for determining seaman status:

The essential requirements for seaman status are twofold. First, ... an employee's duties must contribut[e] to the function of the vessel or to the accomplishment of its mission.... Second, and most important for our purposes here, a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature. *Papai*, 520 U.S. at 554 (quoting *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995)).

Knight presumably would have no trouble satisfying the first requirement and Grand Victoria has not challenged her on this score; the function of the riverboat on which Knight worked was to entertain and, as a blackjack dealer, she clearly contributed to that mission. At issue in this case is whether Knight can satisfy the second requirement, referred to in the cases as the "substantial connection" requirement.

The Supreme Court explained in *Papai* that the purpose of the substantial connection requirement is to give full effect to the remedial scheme created by Congress and to separate seabased maritime employees (who are entitled to Jones Act protection) from land-based workers "who have only a transitory or sporadic connection with a vessel in navigation" and therefore are not "regularly expose [d] to the perils of the sea." *Id.* at 555 (quoting *Chandris*, 515 U.S. at 368). The Court reasoned that for the requirement to serve that purpose, "the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea"; "Jones Act coverage is confined to ... those workers who face regular exposure to the perils of the sea." *Id.* at 555, 560.

Grand Victoria argues that Knight cannot meet this test because, on the night of her accident, her duties consisted solely of attending a cultural ambassador training session at Grand Victoria's land-based pavilion. But the Court does not look solely at what Knight's job was that night; the Court must weigh "the total circumstances of an individual's employment ... to determine whether [s]he had a sufficient relation to the navigation of vessels and the perils attendant thereon." *Chandris*, 515 U.S. at 370. Based on the

total circumstances of Knight's employment-her employment as a dealer on the cruising casino,[FN2] as well as a cultural ambassador charged with training and answering questions while she performed her dealer duties-a reasonable trier of fact could conclude that Knight's connection to the vessel was substantial enough to put her under the Jones Act's protective umbrella. [FN3]

FN2. In *Biering v. Harvey's Iowa Management Co., Inc.,* No. 8:99CV48, 2000 U.S. Dist. LEXIS 9100 (D. Neb. June 28, 2000), a case cited by Grand Victoria, the plaintiff worked the night shift as a blackjack dealer on one of the defendant's riverboat casinos. Because the boat never cruised at night, the district court held that "her employment did not require her to transverse the navigable waterways of the Missouri River" and did not expose her to "the perils of the sea." *Id.* at *7. Accordingly, the court held, the plaintiff did not attain seaman status and was not entitled to Jones Act protection. *Id.* The same cannot necessarily be said of Knight; Grand Victoria has not alleged that the casino remained docked at all times during Knight's shifts. In fact, neither party has offered any evidence as to whether Knight actually "transversed the navigable waterways" of the Fox River. Knight alleges that the boat regularly took excursion cruises, but she does not allege that it did so during her shifts.

FN3. The Court declines Knight's invitation to hold that, as a matter of law, Knight *is* entitled to seaman status and protection under the Jones Act. The question of seaman status is a mixed question of law and fact, which should be taken from the jury only if "the facts and the law will reasonably support only one conclusion." *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 356 (1991). That is not the case here; it will be up to a jury to decide whether Knight can show that her connection to the M/V Grand Victoria was "substantial in terms of both its duration and its nature" (i.e., that her duties took her to sea). *See Papai,* 520 U.S. at 555.

***3** Grand Victoria also argues that it is entitled to summary judgment on Knight's Jones Act negligence claim even if she is a seaman because Knight cannot prove the essential elements of her claim; specifically, Grand Victoria argues that Knight cannot show that any breach of duty on its part caused her accident. To prevail on a Jones Act claim against her employer, a seaman must establish (1) personal injury in the course of her employment; (2) negligence by her employer; and (3) causation to the extent that her employer's negligence was the cause "in whole or in part" of her injury. *Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F.3d 432, 436 (4th Cir.1999); *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 335 (5th Cir.1997) (*en banc*). The Court finds that Knight has introduced enough evidence for a jury to conclude that she has satisfied each element.

On the first element, the question is not whether she was injured-her medical records make clear that she was-but whether she was injured in the scope of her employment. Knight came to Grand Victoria's property on November 17, 1997 not to pursue her own private interests but to attend a training seminar; the company paid her for her services that day (or it would have had she not been injured). From this, a jury could conclude that Knight was injured in the course of her employment. *See Braen v. Pfeifer Oil Transportation,* 361 U.S. 129, 132-33 (1959) (the fact that an injury does not occur on the vessel is not controlling; a seaman acts as much in the course of his employment or in the service of his ship when boarding or going to and from the ship as he is while on board at high sea); *Wilson v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 841 F.2d 1347, 1355 (7th Cir.1988) (an act may be within the scope of employment when it is "a necessary incident of a day's work"-i.e., not un-

dertaken for a private purpose and having some causal relationship to the job). *See also Bavaro v. Grand Victoria Casino*, No. 97 C 7921 (N.D.Ill.Dec. 30, 1998) ("many cases hold that an injury to an employee while entering upon and leaving the employer's premises in the course of arriving at or departing from work is a necessary incident to employment and thus within its course.") (citing *Erie Railroad Co. v. Winfield*, 244 U.S. 170, 173 (1917); *Schneider v. National Railroad Passenger Corp.*, 854 F.2d 14, 17 (2d Cir.1988)).

On the second and third elements, the law suggests that Knight should at least be able to take her case to a jury. First, a Jones Act employer has a duty to provide "a reasonably safe place to work" and may be held liable for breach of this duty "when it knows or should know of a potential hazard in the workplace, yet fails to exercise reasonable care to inform and protect its employees." *Moreno v. Grand Victoria Casino*, 94 F.Supp.2d 883, 893 (N.D.Ill.2000) (citing *Bailey v. Central Vermont Railway*, 319 U.S. 350, 352-53 (1943); *Gallose v. Long Island Railroad Co.*, 878 F.2d 80, 84-85 (2d Cir.1989)). "Reasonable care is determined in light of whether or not a particular danger was foreseeable." *Moreno*, 94 F.Supp.2d at 893 (citing *Gallick v. Baltimore & Ohio Railroad Co.*, 372 U.S. 108 (1963); *Syverson v. Consolidated Rail Corp.*, 19 F.3d 824, 826 (2d Cir.1994)). And foreseeability is a fact issue, which should be sent to the jury for resolution as long as "the proofs justify with reason the conclusion that employer negligence played any part ... in producing the injury or death for which damages are sought." *Moreno*, 94 F .Supp.2d at 894. *See also*, 841 F.2d at 1353 ("whether the employer was negligent is a triable issue for the jury where the evidence-read most favorably to the employee-shows that the employer is even slightly negligent.").

***4** Additionally, a Jones Act plaintiff's burden for getting to a jury on the causation issue is "very light," often described as "featherweight." *See Cella v. United States*, 998 F.2d 418, 427 (7th Cir.1993) (citing cases). "The plaintiff must merely establish that the employer's acts or omissions played some part, no matter how small, in producing the employee's injury." *Id.* at 428. *See also Hernandez*, 187 F.3d at 436 (the standard of causation is relaxed in that a Jones Act employer is liable whenever that employer's "negligence played any part, even the slightest, in producing the injury or death for which damages are sought").

Under these relaxed standards, Knight has offered enough evidence to survive summary judgment on her Jones Act claim. Knight established that Grand Victoria was responsible for maintaining the parking garage and pedestrian walkway in which Knight fell and that in the week leading up to Knight's accident it had performed snow and ice removal and salting activities, presumably to prevent accidents such as Knight's from happening. *See* Defendant's Response to Request for Admissions, ¶¶ 4-5; Defendant's Answers to Supplemental Interrogatories, ¶¶ 2-3 (attached respectively as Exhibits B and C to Plaintiff's 12(N)(3)(b) Statement of Additional Facts Requiring Denial of Summary Judgment). Additionally, Knight testified that at the time of the accident "[i]t looked to me like it [the pavement of the parking surface between where she parked her car and the pedestrian walkway] had been cleared, and this part that I fell on was not cleared." Knight Deposition, p. 100 (attached as Exhibit A to Defendant's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment). She also testified that she saw snow piled up against the walls of the parking garage. *Id.*, p. 104. The accident report prepared in connection with her fall confirms her testimony; the section Knight completed states that she slipped on ice, and the security report section (which states that the accident site was checked on November 17 but does not say what time it was checked) states that the "ground had snow covering and wet no ice was noted at this time." *See* Exhibit E to Plaintiff's 12(N)(3)(b) Statement of Additional Facts Requiring Denial of Summary Judgment. Knight also introduced weather records to support her

claim; they confirm that rain, snow and ice pellets fell and accumulated on November 15 and 16, 1997 and that the temperature remained below freezing on November 17, 1997. *See* Exhibit D to Plaintiff's 12(N)(3)(b) Statement of Additional Facts Requiring Denial of Summary Judgment.

Although the question of whether Knight has offered enough to survive summary judgment on the negligence and causation issues is close, the Court finds that the evidence could support a jury finding that Grand Victoria undertook to keep the pedestrian walkway free of snow and ice, that they failed to do so on November 17, 1999, and that that failure caused, at least in some part, Knight's accident. This finding admittedly reflects the notion that summary judgment in Jones Act cases is to be "cautiously granted, and 'if there is to be error at the trial level it should be in denying summary judgment in favor of a full live trial." ' *Moreno*, 94 F.Supp.2d at 893 (quoting *Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 772 (9th Cir.1981)).

***5** Lastly on the Jones Act claim, Grand Victoria argues that Knight is precluded from recovering because she willingly and knowingly parked her car in a garage intended for patrons, not employees; in fact, Grand Victoria argues, it specifically instructed its employees not to park there. Even if true, this would not bar Knight's claim; contributory negligence may serve to reduce the amount of money to which Knight may ultimately be entitled, but it is not a complete bar to recovery. *See Kelley v. Sun Transportation Co.*, 900 F.2d 1027, 1031-32 (7th Cir.1990) (the fact that a seaman is guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to him); *Moreno*, 94 F.Supp.2d at 885 (contributory negligence is not a complete bar to recovery under the Jones Act, although it may operate to reduce the amount of the damage award).

2. *Knight's Claim for Maintenance and Cure*

Maintenance and cure "are rights given to seamen as incidents of their employment." *Mullen v. Fitz Simons & Connell Dredge & Dock Co.*, 191 F.2d 82, 85 (7th Cir.), *cert. denied*, 342 U.S. 888 (1951). "Maintenance means subsistence during disability"; it involves a per diem living allowance, paid so long as the seaman is outside the hospital and has not reached the point of 'maximum cure." ' *Smith v. Apex Towing Co.*, 949 F.Supp. 667, 670 (N.D.Ill.1997) (quoting *Mullen*, 191 F.2d at 85; *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 399 (5th Cir.1979)). "Cure means medical care and attention"; it involves the payment of therapeutic, medical, and hospital expenses ... until the point of 'maximum cure." ' *Id.* The duty to pay maintenance and cure is liberally interpreted "for the benefit and protection of seamen." *Vaughn v. N.J. Atkinson*, 369 U.S. 527, 531-32 (1962). A shipowner's liability for maintenance and cure is "among 'the most pervasive' of all and ... [is] not to be defeated by restrictive distinctions nor 'narrowly defined." ' *Id.* at 532 (quoting *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 735 (1943)). "A shipowner must pay maintenance and cure for any illness or injury which occurred, was aggravated, or manifested itself while the seaman was in the ship's service"; the benefits are "payable even though the shipowner is not at fault, and regardless of whether the seaman's employment caused the injury or illness." *Smith*, 949 F .Supp. at 670 (quoting *Stevens v. McGinnis*, 82 F.3d 1353, 1357-58 (6th Cir.1996), *cert. denied*, 519 U.S. 981 (1996)). *See also Rufolo v. Midwest Marine Contractor, Inc.*, 912 F.Supp. 344, 351-52 (N.D.Ill.1995) ("the United States Supreme Court has held that this ancient maritime duty arises irrespective of the absence of shipowner negligence and regardless of whether the illness or injury is suffered in the course of the seaman's employment.") (citing *Vella v. Ford Motor Company*, 421 U.S. 1, 4-5 (1975)). In short, "a seaman's recovery of maintenance and cure for injuries suffered while in the service of the vessel is a virtual certainty in the absence of wilful misbehavior on his part." *Rufolo*, 912 F.Supp. at 352.

***6** Despite these pronouncements that mainte-

nance and cure are essentially automatic once seaman status is established, Grand Victoria argues that Knight is not entitled to maintenance and cure because she was not on duty at the time of her accident and because she was coming to work to attend a training seminar. These facts according to Grand Victoria, compel the conclusion that Knight was not "in the service of a ship" when she fell. But this argument reads the phrase "in the service of the ship" too narrowly. The phrase does not mean "performing duties at that particular time that would serve the ship's mission" (though even if it did, we would be hard pressed to find as a matter of law that Knight was pursuing her own private interests when she showed up at the casino that day, *see* *Wilson*, 841 F.2d at 1355); rather, it is the equivalent of "in the course of employment" or "during the employment relationship." *See* *Braen*, 361 U.S. at 132-33; Steven B. Belgrade & Robert H. Griffith, *Litigating Riverboat Casino-Related Injuries in Illinois*, 84 Ill. B.J. 252, 253 (May 1996). And, as we have already noted, "a seaman is as much in the service of his ship when boarding it on first reporting for duty ... or going to and from the ship while on shore leave, as he is while on board at high sea." *Braen*, 361 U.S. at 132. *See also Bavaro*, No. 97 C 7921 ("many cases hold that an injury to an employee while entering upon and leaving the employer's premises in the course of arriving at or departing from work is a necessary incident to employment and thus within its course.").

It is undisputed that Knight came to the casino on November 17, 1997 to participate in a training seminar for cultural ambassadors; under the circumstances, the Court finds that Knight has presented sufficient evidence for a jury to find that she was acting "in the service of the ship" when she fell. Of course such a finding would be predicated on Knight being able to establish that she was a seaman and therefore eligible for maintenance and cure in the first place, which, as we have already ruled is also a question to be answered at trial.

CONCLUSION

For the reasons explained above, Grand Victoria's motion for summary judgment [15-1] is denied. The parties are reminded that the final pretrial order in the form prescribed by Local Rule 16.1 is due on October 30, 2000.

N.D.Ill.,2000.
Knight v. Grand Victoria Casino
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