IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSEMARY RUBINO	:	CIVIL ACTION
v.	:	
UNITED STATES OF AMERICA	:	NO. 97-3981

MEMORANDUM

Dalzell, J. August 4, 1998

After a nonjury trial today, this Memorandum will constitute our Rule 52(a) findings of fact and conclusions of law. For the reasons set forth below, we find in favor of the defendant.

The basic facts are undisputed.

This case involves a trip and fall accident which allegedly occurred on February 15, 1995 in the lobby of the Bustleton Post Office ("the Post Office") in Northeast Philadelphia. Plaintiff alleges that she tripped and fell on an upturned edge of a weather rug in the Post Office. The lobby area of the Post Office at the time of the accident was well-lighted and, at the time of the accident, had a light bluish grey tile floor that was covered here and there with reddish-colored safety rugs.

The parties agree that plaintiff was a business invitee, having gone to the Post Office to mail some cards. Ms. Rubino reported the fall and gave the information to Michael Sperduto, Customer Services Supervisor, that morning. Rosemary Rubino at the time of the accident was a 56 year old divorced

female, and was and is employed as a secretary and assistant auditor for the Iron Workers District Council.

We have jurisdiction over this action pursuant to the Federal Tort Claims Act ("FTCA"). 28 U.S.C. § 1346(b). The FTCA vests district courts with:

> exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . personal injury . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b). Therefore, as the accident occurred in Philadelphia the law of Pennsylvania governs the substantive issues of liability in this action.

Under Pennsylvania law, a plaintiff's claim must be predicated upon more than the mere fact that an accident occurred, and indeed it is impermissible to infer negligence from the fact that an accident occurred. See, e.g., Treadway v. Ebert Motor Co., 436 A.2d 994, 997-98 (Pa. Super. 1982); McDermott v. Travellers Air, 462 F. Supp. 1335, 1340, (M.D. Pa. 1979); Toppi v. United States, 332 F. Supp. 513, 518 (E.D. Pa. 1971). We must determine, therefore, whether the circumstances of the accident were such that the United States, if a private person, would be liable to Ms. Rubino under the Commonwealth's law. See Gales v.

United States, 617 F. Supp. 42 (W.D. Pa. 1985), aff'd, 791 F.2d 917 (3d Cir. 1986).

To establish negligence under Pennsylvania law, a plaintiff must show: (1) a duty or obligation, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct or failure to conform and the resulting injury; and (4) actual loss or damage sustained by the plaintiff. See Morena v. South Hills Health Sys., 462 A.2d 680, 684 n.5 (Pa. 1983); LaZur v. RVR Industries, Inc., 487 A.2d 29, 31 (Pa. Super 1985).

As to step one, the parties agree that Ms. Rubino, as a patron of the Post Office, was a business invitee of the United States, i.e., someone invited to enter the land for a purpose directly or indirectly connected with the business dealings with the possessor of the land. See Ott v. Unclaimed Freight Co., 577 A.2d 894, 896 (Pa. Super. 1990) (quoting Restatement (Second) of Torts § 332).

Section 343 of the Restatement (Second) of Torts, which Pennsylvania has adopted, sets forth the duty owed to invitees:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

> (c) fails to exercise reasonable care to protect them against the danger.

Myers v. Penn Traffic Co., 606 A.2d 926, 928 (Pa. Super. 1992)(quoting Restatement (Second) of Torts § 343). Ms. Rubino thus has the burden of proving that the Post Office breached this duty of reasonable care under the circumstances and that such a breach was a substantial factor in bringing about her injuries.

Ms. Rubino has not carried her threshold burden as to liability. In her testimony, plaintiff candidly admitted that she did not see the edge of the allegedly offending safety rug. This is perhaps not surprising because that morning she was with her five-year-old grandson, Nicholas, who she was taking to day care, and thus her attention may have been on Nicholas. She provided no evidence -- other than the fact of the accident -- that the rug presented any risk at all. Indeed, no other witness saw the alleged fall.

By contrast, the Post Office's witnesses without contradiction testified as to the consistent, daily efforts the Bustleton Post Office employees make to assure that their patrons are not subjected to unreasonably dangerous conditions. This evidence showed that three custodial employees throughout the day inspect the tile floor and rugs to assure that the public spaces are free of hazards.

In addition, there was a sharp contrast between the color of the tile floor and the reddish safety rugs. The lobby space where Ms. Rubino says she fell was well-lighted. The rugs

themselves have non-skid rubber backing, and the edge where plaintiff said she tripped was not curled or frayed in any way. The rug and the floor were dry. Mr. Renz, one of the custodians, credibly testified that the rugs were vacuumed, straightened and not askew when the Post Office opened for business that day, only a few minutes before Ms. Rubino says she tripped.

On this record, we hold that the Post Office breached no duty of care to Rosemary Rubino. We shall therefore enter judgment in favor of the Government.

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JUDGMENT

AND NOW, this 4th day of August, 1998, after a trial in this matter, and on the findings of fact and conclusions of law in the accompanying Memorandum, JUDGMENT IS ENTERED in favor of defendant United States of America and against plaintiff Rosemary Rubino.

BY THE COURT:

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Stewart Dalzell, J.