

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13832
Non-Argument Calendar

DARLENE WAMPOLE,

Plaintiff-Appellant,

versus

CARNIVAL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cv-24361-KMM

Before LUCK, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Darlene Wampole appeals the district court's order granting summary judgment for Defendant-Appellee

Carnival Corporation (Carnival) on her negligence claims. After careful review, we find no error and affirm.

I.

In 2024, Wampole took a cruise on Carnival's ship, *Conquest*. While on the ship, Wampole walked along a teak wood deck next to a jacuzzi. The wood deck contained a hatch that opened below to allow for maintenance on the jacuzzi if needed. When Wampole was walking along that wood deck, she stepped on the hatch, and it "see-saw[ed]" and broke. Wampole fell into that gap. As a result of the fall, Wampole "sustained severe injuries, including, but not limited to, injuries to her shoulder, knee, and ankle, among other injuries."

Wampole sued Carnival for negligent failure to warn of dangerous condition and then to remedy; negligent design, installation, or approval of the subject floor and the vicinity; negligence for the acts of Carnival's crew, staff, employees, or agents, based on vicarious liability; and vicarious liability for the negligent design, installation, or approval of the subject surface and the vicinity against Carnival. Carnival moved for summary judgment, which the district court granted. The court found that Wampole had not

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shown that Carnival was on constructive notice as to a known dangerous condition and she failed to establish vicarious liability as to the last two claims. Wampole timely appealed.¹

II.

We review de novo the grant of summary judgment, viewing the evidence and drawing all reasonable inferences in favor of the nonmoving party. *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “Summary judgment is improper, however, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Guevara*, 920 F.3d at 720 (internal quotation marks omitted).

III.

Maritime law “governs the liability of a cruise ship for a passenger’s slip and fall.” *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015). To prevail on a maritime negligence claim, a plaintiff must show that “(1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff’s injury; and (4) the plaintiff suffered actual harm.” *Chaparro v.*

¹ On appeal, Wampole does not argue that the district court erred in its determination that she failed to establish vicarious liability, so those claims are not before us.

Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012) (per curiam). And “the owner of a ship in navigable waters owes passengers a duty of reasonable care under the circumstances.” *Sorrels*, 796 F.3d at 1279 (quotation marks omitted).

The reasonable care standard, “a prerequisite to imposing liability,” requires “that the carrier have had actual or constructive notice of the risk-creating condition.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Thus, a cruise-ship operator’s liability often “hinges on whether it knew or should have known about the dangerous condition.” *Guevara*, 920 F.3d at 720 (quotation marks omitted). “A maritime plaintiff can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures.” *Id.* (citation modified).

Wampole argues that there was sufficient evidence that Carnival had constructive notice of risk-creating conditions. She asserts that the report after her accident shows that the area was dangerous and that Carnival’s actions after the fact, specifically correcting the cause of the accident, shows constructive notice. Wampole then argues that the wood deck where the jacuzzi was located experienced high foot traffic such that a worker should have noticed degradation of the floor. She also contends that two work orders six months apart should have alerted Carnival to the tendency for rust and deck damage. We address each piece of evidence in turn.

First, when referencing the steps taken after Wampole’s accident for the area surrounding the hatch and jacuzzi, Wampole

argues that our case law supports the idea that corrective actions can establish notice. *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1265 (11th Cir. 2020) (“Evidence that a ship owner has taken corrective action can establish notice of a dangerous or defective condition.”); *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1288–89 (11th Cir. 2015) (finding that a jury could infer that the past behavior of putting warning signs about wet floor shows that the defendant had constructive notice of a dangerous floor when wet). While Wampole is correct, the corrective action she identifies, closing off the area for inspection and fixing the issue, is different from the corrective actions that we have identified as relevant to notice. In the cases that Wampole relies on, there is an ongoing issue that the defendant knew about, such as slippery floors when they are wet or obstruction of pathways when chairs are not properly positioned. But that is not the case here. Instead, Carnival fixed the issue that became apparent when Wampole fell, and Carnival had no reports of issues with that hatch or area around the hatch (the wood deck) that required it to take ongoing corrective actions. Thus, Wampole cannot use the corrective actions used by Carnival solely after Wampole’s accident to show that it had constructive notice.

Second, Wampole asserts that the area was known for high traffic, so a worker should have noticed the degradation. But Wampole does not point to any prior passenger complaints or reported issues about the area surrounding the hatch and jacuzzi that would alert Carnival to any potential safety concern. *See Guevara*, 920 F.3d at 723. In fact, Carnival testified that the floor around the

jacuzzi was cleaned and inspected daily. Carnival also explained that if there was any damage, the workers had to let the appropriate people know by completing a work order for the issue. There were no work orders for the deck around the jacuzzi, including the hatch area before Wampole's accident. The lack of reports indicates that it was not in a condition that invited corrective measures. *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1179 (11th Cir. 2020).

Third, Wampole references two work orders from 2022 related to the jacuzzi itself to counter the evidence that there were no work orders about the structural integrity of the hatch. In January 2022, a work order was entered to resolve a leak from the pump and a "rust casing." But the work only required accessing the pump from a door at the front of jacuzzi. In June 2022, a work order was entered for varnishing the wood that surrounded the jacuzzi—not the deck around the jacuzzi or the hatch as Wampole asserts. Neither of these work orders goes to any question of whether Carnival was on constructive notice that structural issues existed in the hatch. Wampole uses these two work orders to assert that because there was on-going moisture-related maintenance needed in that area, that Carnival knew there was a dangerous condition. Wampole seeks for us to adopt a broad view of constructive notice: that if there is moisture in an area on a cruise ship and two work orders that occurred around two years before her accident, that automatically means a cruise ship would be liable for any accident related to that area. We decline to do so.

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Wampole lastly asserts that even if none of those pieces of evidence on their own showed constructive notice, then considering them collectively and with Carnival's failure to meet industry standards² with the structure support needed for the hatch, Carnival was on constructive notice. But none of the evidence points to constructive notice of a dangerous condition.

Thus, the district court did not err in granting summary judgment to Carnival because Wampole has not shown that Carnival had constructive notice that the hatch was a dangerous condition.

AFFIRMED.

² Wampole does not argue nor could she argue that failure to meet industry standards alone is sufficient to have constructive notice of a dangerous condition. See *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1288 (11th Cir. 2015).