

FIFTH DIVISION  
December 28, 2012

No. 1-10-3832

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e) (1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

KEVIN BALLARD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 07 L 8014
	)	
AMERICAN COMMERCIAL LINES, INC.;	)	
AMERICAN COMMERCIAL BARGE LINES, LLC;	)	
LOUISIANA DOCK COMPANY, LLC, RANDY	)	
ROGERS, RONALD E. NOVAK, MARIO ZEPEDA,	)	
RAYMUNDO ROJAS, and VICTOR GUZMAN,	)	Honorable
	)	James C. Murray Jr.,
Defendants-Appellees.	)	Judge Presiding.

---

JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice McBride and Justice Taylor concurred in  
the judgment.

**ORDER**

¶ 1 *HELD:* Trial court order granting summary judgment to defendants affirmed; under the general maritime law, the defendants did not owe a duty of care to an injured longshoreman to monitor mooring lines during repair operations.

¶ 2 Plaintiff Kevin Ballard filed a complaint seeking damages for injuries he suffered while performing repair work on a barge. He appeals from a circuit court order granting summary judgment for the defendants. For the reasons set forth below, we affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 Plaintiff Kevin Ballard was employed by R & G Maintenance and Welding Services, Inc. (R & G), of Kankakee, Illinois. One of Ballard's duties for R & G was to periodically inspect the hulls and decks of barges for cracks or holes, then patch and weld them as needed. Ballard suffered injuries while repairing a barge docked on the Chicago Ship and Sanitary Canal in Lemont, Illinois, on June 19, 2006.

¶ 5 On the day of Ballard's injury, nine barges were designated for inspection and repair. The barges were numbered 1 through 9. All nine of the barges were moored to the dock. The employer, R & G, requested that a towboat remove barge 3 from the dock so that it could be taken to dry dock where it could be safely repaired. The crew of the towboat, the M/V Jack Crowley, disconnected barge 3 from the other barges and the dock, then moved barge 3. After barge 3 was moved, there was a gap between barges 2 and 4.

¶ 6 Ballard's injury occurred while he was welding a crack

1-10-3832

on the hull of barge 1. Ballard was lying on his stomach on top of a walkway area with his head, right shoulder, right arm and foot, hanging over the side of the barge. Ballard's right foot was crushed when the stern of barge 1, the barge he was repairing, came into contact with the bow of barge 2.

¶ 7 Ballard filed his first amended complaint alleging the defendants were negligent under Illinois common law and under the Longshore and Harbor Workers Act (the Act) (33 U.S.C. §901 *et seq.* (2004)). Ballard named the following as defendants: the owner of the barge he was working on, American Commercial Barge Lines, Inc. (ACBL); the owner of the tugboat Jack Crowley, Louisiana Dock Company, LLC (LDC) and its crew; Louisiana Dock Company in its capacity as the owner of the dock, and American Commercial Lines, LLC (ACL), the parent company of subsidiaries ACBL and LDC.

¶ 8 Ballard alleged the tugboat defendants were negligent for failure to properly secure the barges when the leaving lines were removed, for failing to sound the loudhailer on the towboat to warn persons repairing the barges that the towboat was about to perform a maneuver which might agitate the surface of the water, causing movement of the barges under repair; and for failure to properly secure a moored barge.

¶ 9 Ballard alleges defendant Mario Zepeda, captain of the

1-10-3832

towboat, was negligent for failing to properly supervise the work crew. Ballard alleges defendants Rojas and Guzman were negligent when they failed to make sure someone personally inspected and adjusted, as necessary, the leaving lines of barges moored to the shoreline.

¶ 10 Ballard alleges defendants ACL, ACBL and LDC were negligent for: (1) failing to publish and implement safety guidelines for its employees and for ship-repair workers, (2) failing to furnish leaving lines of adequate length and in sufficient numbers of separate lines, (3) failing to furnish and install permanent wooden or steel fenders on the south shoring wall of the LDC dock, (4) failing to furnish fenders (bumpers) to be attached to the bows of barges moored at the LDC dock, (5) failing to furnish "deadheads" at adequate intervals to prevent the bows and sterns of barges from coming in contact with one another, (6) failing to furnish "Jacob's ladders" and securement devices for such ladders at the LDC dock for use by ship-repair workers, (7) failing to furnish spacers to be hung between the barges, (8) failing to provide direct supervision of ship-repair workers, (9) failing to assess potential dangerous work conditions at the LDC dock, and (10) failure to correct potential dangerous work conditions at the LDC dock.

¶ 11 In a discovery deposition, Ballard testified that he

1-10-3832

had worked on barges at the LDC dock 30 or 40 times prior to his injury. Ballard testified that R & G owner, Bob Gryczewski, trained him to weld cracks on a barge but did not train him on barge safety other than warning him to be careful.

¶ 12 Gryczewski supervised Ballard's work on the barges. There was no supervision by the defendants of Ballard's work.

¶ 13 Ballard testified that the barges would move back and forth when there were towboats operating in the area. He had previously observed barges coming in contact with one another. Ballard testified that he knew he had to be mindful of barges coming together to avoid injury. However, on the day of his injury, the barge that struck him was initially resting 10 feet away from the barge he was working on and he had never before observed a barge move that far. When he had previously observed barges collide, they were usually located just six to 10 inches apart from each other, prior to colliding.

¶ 14 Ballard testified that the day of his injury was the first time he hung any part of his body over a barge while welding a crack. Prior to his injury, he took precautions when working on the barges at the LDC dock.

¶ 15 R & G employee Donny Life testified in a discovery deposition that he performs repair work on the ACBL barges without any direction from ACBL. On the day of the accident,

1-10-3832

Life did not observe any ACBL employees at the LDC dock. Life testified that the job of R & G employees is to inspect the barges and make certain repairs as necessary.

¶ 16 Life testified that every time he works at the LDC dock there are always towboats and pleasure boats out on the water. When the boats pass, they stir up the water, causing the barges to move.

¶ 17 Life testified that the towboat captain would typically yell that they were coming, for safety reasons. If someone was welding on the barge and could not hear a warning, they would feel the barge move and this movement would alert them that a boat was nearby.

¶ 18 Life testified that the owner of R & G recommended that all the employees wear steel-toe boots. Ballard was not wearing steel-toe boots when he was injured.

¶ 19 Life testified that when he first began working for R & G, his boss Bob Gryczewski warned him that movement of the barges could create a dangerous situation such as being thrown from a barge into the water or pinched between two adjacent barges.

¶ 20 Life testified that there is always movement on the barges - nothing is stationary. Prior to working on the barges, the R & G employees check the mooring lines. On the day of the injury, they did not observe anything out of the ordinary with

1-10-3832

the mooring lines.

¶ 21 Life testified that if an R & G employee inspects a barge and finds a crack in an area that is unsafe, they can contact a tugboat to reposition the barge in a manner that allows repairs to be completed safely.

¶ 22 The captain of the towboat M/V Jack Crowley, Mario Zepeda, testified in a discovery deposition that if he observes people working in the area, he will try to advise them before he moves a barge. Zepeda could not recall observing Ballard on the day of the injury.

¶ 23 LDC manager Richard Novak testified that the moorings of the ACBL barges are checked by the crew of the LDC towboats. No LDC personnel work on the dock other than Novak and his assistant Matt Bridges, who both work in an office located in a trailer on the LDC grounds.

¶ 24 Novak testified that outside contractors, like R & G, are responsible for the safety of their own personnel. Novak testified that he does not oversee the work of outside contractors such as R & G. Novak testified that he would not know when R & G employees were on the grounds. He testified that R & G employees have access to a security code that allows them to access to the LDC premises at their leisure.

¶ 25 Novak testified that the amount of slack left on a

1-10-3832

mooring line depends on the level of water. He also testified that there is always slack in the mooring lines because if the lines are too tight, they will snap and barges will break away, creating a dangerous situation. Novak testified that the barges will shift in the water and that barge movement cannot be eliminated.

¶ 26 Novak testified that hanging over the side of a barge while repairing it is an unsafe practice. He testified that there are safer ways to repair the side of a hull such as relocating the barge to a safer position.

¶ 27 In a discovery deposition, LDC assistant manager Matthew Bridges, also testified that the barges are moored with some slack so the lines do not break. Bridges testified that on the day of Ballard's injury, all the barges were moored to the dock. Bridges testified that if the barges are not moored, they will float freely down the canal.

¶ 28 Bridges testified that the barges are moored with a nylon rope called a "leaving line." He testified that a moored barge will move when a towboat passes, possibly up to six feet. Bridges testified that the barges are moored five to 10 feet apart. Bridges has observed moored barges coming in contact with one another. Bridges testified that someone with more than a month of experience working on a barge would know that barges



1-10-3832

come in contact with one another.

¶ 29 Plaintiff's expert witness Michael Russell, a former member of the U.S. Coast Guard and employed as a maritime consultant, testified that Ballard's act of hanging his foot over the side of the barge was negligent and this accident would not have happened but for the fact Ballard was hanging over the side of the barge. Russell testified that he was unaware of any regulations, rules or industry standards which impose a duty on dock owners to monitor and adjust mooring lines for the safety and protection of workers employed by an independent repair contractor like R & G.

¶ 30 The defendants filed a motion for summary judgment on February 11, 2010. The defendants argued that they owed no duty of care to Ballard under the Act or under the general maritime law. Trial court granted defendants' motion for summary judgment finding:

"The defendants didn't participate in these repair operations, nor did they control. The plaintiff has been unable to identify the defendants' duty under LHWCA [the Act], or general maritime [law], or supervise the plaintiff, or R & G, or the repair work being performed.

Plaintiff - all the facts points to the fact that plaintiff [was injured] because he did something that was unsafe. R & G was an independent contractor and was responsible for supervising the plaintiff. The plaintiff in this case has not pointed to any duty that the defendants breached in this case and fail to show that the defendants knew, or should have known, that plaintiff was engaged in an [unsafe] practice."

¶ 31 Ballard filed a motion for reconsideration which was denied.

¶ 32 Ballard was granted leave to file a second amended complaint. The second amended complaint differs from the first amended complaint only in that Ballard added the title "Count I-Claims Under General Maritime Law," thus, changing his allegation for negligence under Illinois common law from his previous complaints to an allegation under general maritime law. "Count II-Federal Longshore Act" remained in Ballard's second amended complaint.

¶ 33 The defendants filed a motion for summary judgement on the second amended complaint, alleging they did not owe Ballard a duty of care. The defendants claimed Ballard's injury was caused

1-10-3832

by his own negligence. Summary judgment was granted on the second amended complaint, the court finding the defendants did not owe Ballard a duty of care. Ballard filed this timely appeal.

¶ 34 ANALYSIS

¶ 35 In his notice of appeal, Ballard stated he was appealing from the trial court's order granting summary judgment for defendants in count I, the general maritime law. Ballard did not state he was appealing from the trial court's order granting summary judgment under count II - the allegations under the Longshoreman's Act. In his amended appellate brief, Ballard asked for leave to amend his notice of appeal to include claims under the Act in count II of his second amended complaint.

¶ 36 However, in his reply brief, Ballard withdrew his request for leave to amend the notice of appeal and acknowledged that he intentionally waived any claims against defendants under the Act. Accordingly, Ballard acknowledges in the reply brief his claims against the barge, its owners, ACBL and employee Randy Rogers are waived because the Act is a longshoreman's exclusive remedy for negligence claims against a vessel. 33 U.S.C. §905(b) (2004); *England v. Reinauer Transportation Companies, L.P.*, 194 F. 3d 265, 270 (1999). Therefore, the issues in this appeal are the liability of the remaining defendants under the general

1-10-3832

maritime law.

¶ 37 Article III, §2, of the United States Constitution vests federal courts with jurisdiction over all cases of admiralty and maritime jurisdiction. *Bowman v. American River Transportation Co.*, 217 Ill. 2d 75, 80-81 (2005). Section 9 of the Judiciary Act of 1789 codified this grant of exclusive original jurisdiction along with the right of a common law remedy. *Id.* at 81. Under the "saving to suitors" clause of the Judiciary Act, state courts have concurrent jurisdiction over some admiralty and maritime claims. *Id.* We may adjudicate maritime claims in proceedings *in personam* pursuant to federal admiralty law and apply state law so long as it does not "work material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *In re Chicago Flood Litigation*, 308 Ill. App. 3d 314, 321 (1999) (quoting *American Dredging Co. v. Miller*, 510 U.S. 443, 447 (1994)).

¶ 38 Liability of the Tugboat and Crew Under General Maritime Law

¶ 39 The defendants argue that we do not have jurisdiction to consider the claims against the towboat, its owners and crew, under the general maritime law because Congress made the Act the exclusive remedy by which a longshoreman may seek damages from a

1-10-3832

vessel and crew responsible for his injuries. Defendants argue that Ballard waived his appeal from the summary judgment under the Act and that the towboat, its owners and crew, are not liable under the general maritime law. 33 U.S.C. § 905(b).

¶ 40 The federal Longshore and Harbor Workers' Compensation Act (the Act) establishes workers' compensation benefits for longshoremen injured in work-related accidents. *Reinauer*, 194 F. 3d at 270 (citing 33 U.S.C. § 903(a)). Regardless of fault, the longshoreman's employer must compensate the injured worker and his or her family with medical, disability, and death benefits. *Id.* (citing 33 U.S.C. at §§ 904, 907-09). The Act also allows a longshoreman to seek damages against a third-party vessel owner for injuries resulting from the vessel's negligence. *Id.* (citing 33 U.S.C. § 905(b)).

¶ 41 However, the Act contains an exclusive remedy provision:

"(b) Negligence of vessel. In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of

section 33 of this title [33 U.S.C. § 933]

\*\*\*. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act." 33 U.S.C. § 905(b).<sup>1</sup>

¶ 42 Ballard acknowledges the exclusive remedy provisions of the Act preclude an action against the barge owner under the general maritime law. However, Ballard maintains that he may bring a general maritime action against the towboat and its owners because he was not working on the towboat when he was injured and the statute contemplates the exclusive remedy provisions apply only to vessels a longshoreman was working on.

¶ 43 However, Ballard does not cite any authority in support of his claim. On the contrary, the court in *Bongiovanni v. Howlett*, 458 F. Supp. 602 (S.D.N.Y. 1978), held that an injured longshoreman's negligence claims against the container ship he was working on and the off-shore boat carry a lift crane alleged

---

1

See also *Griffith v. Wheeling-Pittsburg Steel Corp.*, 521 F. 2d 31, 40 (3d Cir. 1975) ("The effect of the first clause of §905(b) is to create \*\*\* a new negligence third party cause of action against the vessel, and the effect of the last sentence is to make that cause of action the exclusive remedy of a longshoreman against a vessel."); *Hess v. Upper Mississippi Towing Corp.*, 559 F. 2d 1030, 1032 (5th Cir. 1977) ("The language of the statute defeats the plaintiff's claim that §905(b) is not his exclusive avenue of remedy").

1-10-3832

to have caused his injury were both governed by section 905(b) of the Act. *Bongiovanni*, 458 F. Supp. at 609-10. Therefore, like the container ship in *Bongiovanni*, the exclusive remedy provisions of the Act apply to the towboat here. *Id.*

¶ 44 Furthermore, Congress defined "vessel" in section 902(21) of the Act:

"[A]ny vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner *pro hac vice*, agent, operator, charter or bare boat charterer, master, officer, or crew member." 33 U.S.C. § 902(21)).

¶ 45 In order to determine whether a watercraft is a vessel under the Act, the U.S. Supreme Court instructs that one must refer to sections 1 and 3 of the Revised Statutes of 1873, which specifies:

"In determining the meaning of the revised statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, ... [t]he word 'vessel' includes every

description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." *Stewart v. Dutra Construction Company*, 543 U.S. 481 (2005).

¶ 46 The court in *Stewart* notes that this definition of "vessel" has remained virtually unchanged from 1873 to the present and continues to operate as the default definition of "vessel" throughout the U.S. Code. *Id.* at 489-90.

¶ 47 Here, the M/V Jack Crowley is a water craft. Therefore, the towboat is a vessel as defined by the Act. Since the towboat is a vessel connected to the injuries suffered by Ballard, we conclude the Act is the exclusive remedy provided by Congress for Ballard's claims against LDC, as owner of the towboat, and the towboat personnel. 33 U.S.C. § 902(21). As a result, we do not have jurisdiction for claims against LDC, as owner of the towboat, or jurisdiction over the towboat crew under the general maritime law and the trial court's judgment for defendants must be affirmed.

¶ 48 Ballard claims that such a finding implicates a constitutional violation of the separation of powers doctrine. Ballard has not raised this claim in the trial court, therefore, he has waived the issue. It is well established that an



appellant's failure to raise a constitutional issue in the circuit court results in a waiver of that issue. *Layton v. Layton*, 4 Ill. 2d 242, 243 (1954).

¶ 49 Even if Ballard had raised the issue in the trial court, we do not find this claim persuasive. Federal courts have consistently upheld the constitutionality of the Act. See *Coates v. Potomac Electric Power Co.*, 95 F. Supp. 779 (1951).

¶ 50 The U.S. Constitution, in distributing the powers of government, creates three distinct and separate departments - the legislative, the executive and the judicial. This separation is vital to preclude the commingling of these essentially different powers of government in the same hands. *O'Donoghue v. U.S.*, 289 U.S. 516, 530 (1933).

¶ 51 We cannot say the legislative branch has infringed on the domain of the judiciary by creating an exclusive remedy for those injured on a vessel. Ballard has not presented any authority showing that the Act deprives him of a vested right on which legislation may not impinge. *Coates*, 95 F. Supp. at 782. Ballard actually sought a remedy under the Act in the trial court. The trial court then granted the defendants summary judgment, finding that the defendants did not owe Ballard a duty of care under the three duties outlined by the U.S. Supreme Court in *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S.

1-10-3832

156 (1981). He did not appeal from the judgment.

¶ 52 Accordingly, Ballard has forfeited any claims against ACL and ACBL as owners of the barge, ACBL employee Rogers, any claims against LDC as owner of the towboat, and any claims against the towboat crew of Zepeda, Rojas and Guzman.

¶ 53 Liability of the Dock Owner Under the General Maritime Law

¶ 54 The remaining issue on appeal is whether the trial court erred in granting summary judgment on Ballard's claims against LDC as owner of the dock, and its employee Ronald Novak, under general maritime law.

¶ 55 Summary judgment is proper if, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file demonstrate 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. 735 ILCS 5/2-1005(c) (West 2008). Our review of the trial court's grant of summary judgment is *de novo*. *Illinois State Chamber of Commerce v. Filan*, 216 Ill. 2d 653, 661 (2005).

¶ 56 The elements of negligence under general maritime law are essentially the same as land-based negligence under the common law. *In re: Great Lakes Dredge & Dock Company*, 624 F. 3d 201, 211 (5th Cir. 2010). To state a claim for relief under general maritime law, the plaintiff must demonstrate that there

was a duty owed by the defendant to the plaintiff, breach of that duty, injury sustained by the plaintiff, and a causal connection between the defendant's conduct and the plaintiff's injury. *Id.*

¶ 57 In its motion for summary judgment, defendants LDC and Novak claimed they owed no duty to Ballard or any crew repairing ships because LDC had no personnel present when Ballard was injured, the defendants had no responsibility to tend the mooring lines, and the defendants did not supervise or participate in the repair operation in any manner.

¶ 58 In granting the defendants' motion for summary judgment on Ballard's general maritime law claim for negligence, the trial court found that the defendants did not owe Ballard a duty of care.

¶ 59 Under maritime law, a plaintiff is owed a duty of ordinary care under the circumstances. *Id.*

¶ 60 Ballard claims LDC and Novak owe him a duty of care because they are responsible for tending mooring lines and cites *Rodi Yachts, Inc. v. National Marine, Inc.*, 984 F. 2d 880 (7th Cir. 1993), in support of its claim.

¶ 61 In *Rodi*, a barge owned by National Marine was cast adrift when it slipped its moorings at a dock operated by Transport Distributors, Inc. (TDI), in the Chicago Sanitary and Ship Canal. *Id.* at 881. The barge collided into a dock and two

1-10-3832

boats causing approximately \$100,000 in damages. The owners of the damaged property filed suit in admiralty against National Marine, which impleaded TDI, the dock operator. *Id.*

¶ 62 The federal district court, without making a finding as to the cause of the failed moorings, found National Marine was negligent for failing to moor the barge safely and TDI was negligent because its employees failed to inspect the barge moored at its dock. *Id.* at 883. On appeal, each party alleged the other was totally at fault. The 7th Circuit reversed and remanded the case back to the district court to find out what actually caused the barge to break free, whether improper mooring, chafing of the rope, or TDI's delay in unloading the barge. *Id.*

¶ 63 Ballard claims *Rodi* set a precedent that a dock owner is responsible for the mooring lines of vessels, therefore, LDC is responsible for improperly mooring the barge that caused his injury. However, the *Rodi* court remanded the case to the district court with instructions to conduct a hearing to determine whether the dock had a duty to inspect the moorings and whether TDI violated that duty.

¶ 64 The court in *Rodi* stated:

"Here the custom was for the barge owner (or operator) to moor the barge to the dock with a sufficient number of sound ropes, carefully fastened, and for the dock owner (or operator) to inspect the barge from time to time while it is at the dock, to make sure that the mooring lines remain securely fastened." *Id.* at 889.

¶ 65 The court also stated:

"The district judge said that if TDI had inspected the moorings 'on a regular basis' it might have detected National Marine's negligence. But this would depend on how regular is regular. If it means every five days, inspection would have missed the problem entirely if the inspectors had made their rounds in the middle of the day on April 22, before the barge arrived, and had not returned till the same time of day on the twenty-seventh, by which time the barge had broken its moorings and drifted away. The judge made no finding on the industry's

custom regarding the frequency of inspections." Id. at 888.

¶ 66 In making its observation on industry custom, the court in *Rodi* did not establish a custom that the dock has a duty to tend mooring lines, as Ballard claims, but rather the *Rodi* court remanded the case with instructions to determine what duty the dock owner had to inspect. Here, unlike *Rodi*, the question is whether a dock owner owes a duty of care to a third-party repair worker to monitor mooring lines during repair operations to prevent barges from bumping. Significantly, Ballard did not submit any evidence to support his allegations that LDC had a duty to monitor mooring lines during the repair operations conducted by Ballard and his employer. Specifically, the trial court found:

"The defendants didn't participate in these repair operations, nor did they control. The plaintiff has been unable to identify the defendants' duty under LHWCA [the Act], or general maritime, or supervise the plaintiff, or R & G or the repair work being performed."

¶ 67 In Illinois, the mere happening of an accident does not entitle a plaintiff to recover. *Kociscak v. Kelly*, 2011 IL App

1-10-3832

(1<sup>st</sup>) 102811, ¶24. A plaintiff must establish a duty and a breach of that duty. *Calhoun v. Belt Railway Company of Chicago*, 314 Ill. App. 3d 513, 517 (2000). Liability must be premised on evidence and not on conjecture or speculation. *Kociscak*, 2011 IL App (1st) 102811, ¶24.

¶ 68 Ballard has not presented any evidence that LDC or Novak had a duty to moor the barges or monitor mooring lines in a manner to avoid them from bumping during repair operations. We also cannot say *Rodi* or any of the other breakaway cases that Ballard has cited establish that LDC or Novak owed Ballard a duty to inspect the moorings to prevent barges from bumping into one another during repair operations.

¶ 69 Instead, the record shows that barges at the LDC dock regularly come in contact with one another. Ballard, testified that he had previously observed the barges coming in contact with one another. R & G employee Donny Life testified that the barges move when boats pass. Novak testified that LDC does not maintain any dock personnel to inspect the moorings. Novak testified that the barges will shift in the water and that movement cannot be eliminated. Both Novak and his assistant Matt Bridges testified that barges must be moored with slack to prevent the rope from breaking.

¶ 70 Based on the record before us, we cannot say Ballard

1-10-3832

has established LDC or its employee Novak had a duty to monitor mooring lines during repair operations to prevent barges from bumping into each other.

¶ 71 Next, Ballard claims the defendants were negligent when they failed to promulgate safety rules for the barge shifting process. In support of this claim, Ballard cites *American River Transportation Company, Inc. v. Paragon Marine Services, Inc.*, 329 F. 3d 946 (8th Cir. 2003).

¶ 72 In *Paragon*, a barge broke free from its moorings and caused extensive damage to other barges. *Id.* at 947. The court acknowledged that when a collision is caused by a vessel drifting from her moorings, the presumption is that the moving vehicle is at fault unless affirmative proof shows an "inevitable accident, or a *vis major*, which human skill and precaution \*\*\* could not have prevented. \*\*\* . The fleet operator, or mooring vessel, is legally responsible for insuring proper mooring. [citation]. Therefore, the fleet operator, Paragon and CGB, had the burden of proving exoneration from liability." *Id.* Contrary to Ballard's claims, the *Paragon* court did not find that failure to have written procedures is negligence. The *Paragon* court found that sound management could have prevented the barge from breaking away and the absence of a safety program or written procedures for mooring was evidence of lax management. Therefore, defendant



1-10-3832

in *Paragon* failed to rebut the presumption it was at fault.

¶ 73           Here, unlike *Paragon*, no barge drifted from her moorings and LDC is not required to rebut a presumption of negligence. Ballard is required to demonstrate LDC owed him a duty of care to inspect mooring lines during the repair operations conducted by Ballard and his employer, R & G. Ballard has not presented any evidence that LDC had a duty to inspect mooring lines during the repair operations conducted by Ballard and his employer. Since there is no showing LDC was required to inspect mooring lines during repair operations, there is likewise no showing that adequate written procedures would require inspections during repair operations if written procedures were in place. Therefore, the absence of written procedures is not a proximate cause of Ballard's injury.

¶ 74           Next, Ballard claims that the trial court's order granting summary judgment to defendants was "a gross miscarriage of justice" because the trial court was required to read more than 500 pages of "courtesy copies." Ballard seems to allude that the trial court here did not make an informed decision because it failed to read all the documents submitted in the case by the parties.

¶ 75           However, the record shows that the trial court stated in the hearing on defendants' motion for summary judgment on

Ballard's first amended complaint, that it read all briefs and law submitted by the parties.

¶ 77 Therefore, we disagree with Ballard's claim that our process for summary judgment in Cook County or the State of Illinois, for that matter, amounts to "a gross miscarriage of justice."

¶ 79 CONCLUSION

¶ 81 Affirmed.