

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-3591

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James E. Leahy,

Appellant,

v.

United States of America,

Appellee.

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\* Appeal from the United States  
\* District Court for the  
\* District of North Dakota.

\* [UNPUBLISHED]

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Submitted: June 13, 2001  
Filed: June 25, 2001

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Before WOLLMAN, Chief Judge, BOWMAN and HAMILTON,<sup>1</sup> Circuit Judges.

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PER CURIAM.

The District Court<sup>2</sup> granted the government's motion for summary judgment in this Federal Tort Claims Act (FTCA) suit brought by James E. Leahy, who appeals. He argues there are material issues of disputed fact that make summary judgment inappropriate. Having reviewed the record, we disagree.

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<sup>1</sup>The Honorable Clyde H. Hamilton, United States Circuit Judge for the United States Court of Appeals for the Fourth Circuit, sitting by designation.

<sup>2</sup>The Honorable Patrick A. Conmy, United States District Judge for the District of North Dakota.

The circumstances of Mr. Leahy's slip-and-fall in the federal courthouse in Fargo are not in dispute. Because the record lacks evidence that would support a finding as to either the source of the small spot of water on which Mr. Leahy slipped or how long it had been there, a fact-finder could only speculate as to whether its presence was the result of negligence on the part of a government employee or agent. There being no evidence to make a submissible case on the question whether the government breached its duty to take reasonable care to maintain the premises in a safe condition, we discern no error in the District Court's grant of summary judgment for the United States.

Mr. Leahy also argues that the District Court erred in dismissing at an earlier stage of the proceedings his claim that negligence on the part of Vocational Training Center (VTC), a contractor hired by GSA to perform cleaning and maintenance services for the portion of the building where Mr. Leahy slipped, is attributable to the United States. The court determined on the undisputed facts of the relationship between the government and VTC that VTC is an independent contractor and that because the United States has not waived its immunity from suit for the negligence of independent contractors, the court lacked subject matter jurisdiction over Mr. Leahy's complaint insofar as his FTCA claim rested upon alleged negligence on the part of VTC. Having considered Mr. Leahy's arguments for reversal on this point, we are satisfied that the District Court's ruling is correct.

For the reasons stated, the judgment of the District Court is affirmed. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.