

By CHARLES WILSON

### INDIANAPOLIS

The Indiana Supreme Court issued a pair of split rulings Thursday bolstering the rights of casinos by ruling against a woman who said a riverboat preyed on her gambling addiction and a card counter who sued for the right to play blackjack.

Jenny

Kephart of Nashville, Tenn., filed a lawsuit against Caesars Indiana in 2007 after the Ohio River casino near Louisville, Ky., sued her to recover \$125,000 that she had lost in a single night of gambling in 2006. The casino is now Horseshoe Southern Indiana.

Kephart said the casino enticed her to gamble with free meals and rooms, and money on credit. It even sent a car to drive her from Tennessee to Indiana, she said.

But the court ruled 4-1 that problem gamblers have the responsibility to look after themselves and casinos can't be expected to protect them if they don't. The ruling said the state allowed compulsive gamblers to have themselves banned from casinos, and it was up to gamblers to take advantage of the program.

"The existence of the voluntary exclusion program suggests the legislature intended pathological gamblers to take personal responsibility to prevent and protect themselves against compulsive gambling. The legislature did not require casinos to identify and refuse service to pathological gamblers who did not self-identify," wrote Justice Robert Rucker.

Justice Brent Dickson dissented, saying that casinos still have a common-law obligation to protect their customers.

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"Nowhere in Indiana's statutory system of gambling regulation is there any provision that expressly or unmistakably abrogates Indiana's common law requiring business operators to exercise reasonable care for the safety of their customers and subjecting them to accountability in damages for failing to do so," Dickson wrote.

Kephart's attorney, Terry Noffsinger of Evansville, said he agreed with Dickson. Attorneys for the casino did not return a phone call seeking comment Thursday.

"This case might have been the last shot to put some meaningful practical limits on what casinos can do to people who have a serious medical problem," Noffsinger said.

In the second case, Dickson also dissented in the 3-1 decision that upheld a casino's right to ban a card counter from its blackjack table. Rucker abstained from that case.

Grand Victoria Casino and Resort at Rising Sun banned Thomas Donovan in 2006.

The retired computer programmer from Indianapolis, who said he'd won about \$65,000 playing blackjack since 1999, then sued. The case drew the attention of Gov. Mitch Daniels, who said he was rooting for Donovan because he used his intelligence and skill, not luck, to win.

But the court ruled Thursday that businesses have a common-law right to exclude a visitor or customer, subject only to applicable civil rights laws.

"This long-standing common law right of private property owners extends to the operator of a riverboat casino that wishes to exclude a patron for employing strategies designed to give the patron a statistical advantage over the casino," Justice Frank Sullivan Jr. wrote.

Dickson disagreed, saying that casinos exist in Indiana only by permission of the state Legislature, which expects them to serve the general public.

"Permitting a casino to restrict its patrons only to those customers who lack the skill and ability to play such games well intrudes upon principles of fair and equal competition and provides unfair financial advantages and rewards to casino operators," Dickson wrote.

Attorneys for both sides in the case didn't return phone calls seeking comment.

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