

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 26, 2009

No. 08-31164

Charles R. Fulbruge III
Clerk

ROBERT HARVEY

Plaintiff - Appellant,

v.

BATON ROUGE MARINE CONTRACTORS and LOUISIANA INSURANCE
GUARANTY ASSOCIATION

Defendant - Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
C.A. No. 3:08-CV-459

Before DAVIS, GARZA and PRADO, Circuit Judges..

PER CURIAM:*

Appellant, Louisiana Insurance Guarantee Association("LIGA") seeks a stay of the district court's judgment enforcing a supplemental order, issued by the U.S. Department of Labor, awarding compensation and attorney's fees to Harvey.

The district court recognized that Rule 62(f) ordinarily directs that a federal court follow state stay of execution procedures. However, the district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court concluded based on our decision in *Castillo*, 999 F.2d 931 (5th Cir. 1999), that Rule 62(f) applied only in diversity cases. We disagree. Although *Castillo* was a diversity case and the Court indicated that particular deference is owed to state law in a diversity case we did not hold that Rule 62(f) applies only in diversity cases. The district court also concluded that because this is a workers' compensation case the court should be particularly reluctant to grant a stay and thereby delay a claimant's receipt of compensation, relying on *Abbott*, 889 F.2d 626 (5th Cir. 1989). We agree that *Abbott* makes the point that delay is undesirable in workers' compensation cases but it does not hold that the usual requirement that the Federal Rules of Civil Procedure govern federal litigation does not apply to enforcement actions under the Longshoremen Harbor Workers' Compensation Act. To the contrary, 33 U.S.C. § 918(a) provides in part that review of such a "judgment so entered may be had as in civil suits for damages at common law."

Louisiana law, specifically La. R.S. 13:4581, makes it clear that state agencies including specifically LIGA "shall not be required to furnish any appeal bond or any other bond whatsoever in any judicial proceedings instituted by or brought against them, that arise from activities within the scope and course of their duties and employment."

Rule 62(f) provides that "[i]f a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give." No one argues that the district court's judgment does not create a lien on LIGA's property. We, therefore, conclude that this Louisiana statute exempts LIGA from posting a bond to obtain a stay of execution and that Rule 62(f) of the Federal Rules of Civil Procedure gives LIGA the benefit of this statute.

For these reasons we grant LIGA's application for a stay of the district court's judgment pending appeal.