IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60710
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 18, 2019
Lyle W. Cayce
Clerk

JOHNNY KIRKLAND,

Plaintiff - Appellant

v.

HUNTINGTON INGALLS, INCORPORATED,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:17-CV-135

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Appellant Johnny Kirkland, proceeding pro se, filed suit seeking recovery for various injuries related to his employment by appellee Huntington Ingalls, Inc. ("Ingalls"), in the 1970s. The district court determined that Kirkland's claims were preempted by the Longshore and Harbor Workers' Compensation Act ("LHWCA"), *see* 33 U.S.C. §§ 901-950, or otherwise barred by the applicable statutes of limitations. The LHWCA "provides nonseaman

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

maritime workers . . . with no-fault workers' compensation claims (against their employer, § 904(b)) and negligence claims (against the vessel, § 905(b)) for injury and death." *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 818 (2001). Relevant here, the LHWCA "expressly pre-empts all other claims" the employee may have against his employer. *Id.* (citing § 905(a)).

Kirkland first alleges that Ingalls exposed him to asbestos as well as other hazardous workplace conditions. These allegations conditions relate exclusively to Kirkland's work for Ingalls in the field of ship construction and repair. Therefore, they are governed by the LHWCA, and Kirkland may not sue Ingalls for injuries sustained on the job. Kirkland does not dispute that Ingalls is covered by the LHWCA; instead, he argues that his specific claims fall outside the scope of that statute under the dual capacity doctrine. Under that doctrine, a plaintiff may sue an employer otherwise covered by the LHWCA for negligence in its capacity as a vessel owner as if it were a third party. *Levene v. Pintail Enters., Inc.*, 943 F.2d 528, 531 (5th Cir. 1991). But Kirkland does not allege that he was injured by the negligence of one of Ingalls' vessels. Accordingly, the dual capacity doctrine does not apply and these claims are preempted.

Kirkland next claims that Ingalls violated Mississippi's child labor statute by hiring him at the age of 13. *See* Miss. Code Ann. § 71-1-17 ("No boy or girl under the age of fourteen years shall be employed or permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment within this state."). We need not consider how this relates to LHWCA's preemptive scope, because the claim is barred by Mississippi's statute of limitations. Kirkland alleges that he began working for Ingalls in 1971 and left in 1978. Mississippi has a three-year statute of limitations for any action which, like this one, lacks a prescribed statutory period. Miss. Code Ann. § 15-1-49(1). Whatever the precise date of accrual, the statutory period for

Kirkland's claim expired long before 2017, when Kirkland filed this lawsuit. Kirkland's child-labor claim is therefore barred.

The judgment of the district court is therefore AFFIRMED.