United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 13, 2025
Lyle W. Cayce
Clerk

No. 24-30410
Summary Calendar

IN RE IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, L.L.C. AS OWNER AND OPERATOR OF THE CAROL MCMANUS AND BARGES IN99576, IN077504, IB1953, IN015441, IN126427, IN165497, ING4745, AND AS DEMISE CHARTERER/OWNER PRO HAC VICE OF BARGES IN065432 & IN995450

INGRAM BARGE COMPANY, L.L.C., *as owner and operator of The Carol McManus and Barges IN99576*, *IN077504*, *IB1953*, *IN015441*, *IN126427*, *IN165497*, *ING4745*, *and as demise charterer/owner pro hac vice of Barges IN065432 & IN995450*; FMT INDUSTRIES, L.L.C.; FLORIDA MARINE, L.L.C., *as the owner and owner pro hac vice of the M/V Big D*,

Petitioners—Appellees,

versus

DUSTIN HARRIS,

Claimant—Appellant,

PBC MANAGEMENT, L.L.C.,

Claimant—Appellee,

IN RE IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, L.L.C. AS OWNER AND OPERATOR OF THE CAROL MCMANUS AND BARGES IN99576, IN077504, IB1953, IN015441, IN126427, IN165497, ING4745, AND AS DEMISE

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Petitioner—Appellee,

versus

DUSTIN HARRIS

Claimant—Appellant,

FMT INDUSTRIES, L.L.C.; FLORIDA MARINE, L.L.C.; PBC MANAGEMENT, L.L.C.,

Claimants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:23-CV-2388, 2:23-CV-2426

Before DAVIS, STEWART, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:[*]

On January 9, 2023, two inland towing vessels collided while operating on the lower Mississippi River. Dustin Harris was working as a deckhand aboard one of those vessels. He alleged that the collision caused him to fall and suffer significant injuries. On appeal, he argues that the district court

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

erred in concluding there was no genuine dispute that Harris's injuries were not due to the collision. Finding no error, we AFFIRM.

I. BACKGROUND AND PROCEDURAL HISTORY

In the early morning hours of January 9, 2023, the M/V CAROL MCMANUS, a towboat owned and operated by Ingram Barge Company, L.L.C. (Ingram), was northbound on the Mississippi River. Travelling in the opposite direction was the M/V BIG D, a towboat owned by FMT Industries, L.L.C. The vessel was operated by Florida Marine, L.L.C. and Florida Marine Transporters, L.L.C. Harris was employed by Florida Marine's staffing affiliate, PBC Management, L.L.C. (PBC). [1]

The vessel pilots coordinated a passing arrangement when they were several miles apart. When things didn't go as planned, the pilot of the M/V BIG D put the vessel's throttles astern, attempting to slow it down. But about thirty seconds later, the tows of the vessels collided.

Just hours after the incident, Harris claimed he suffered an injury to his head while working as a deckhand aboard the M/V BIG D. In a recorded statement, he explained "a big collision" caused him to lose his balance and hit his head on a pipe "located in the deck locker." Harris did not mention a fall or any other injury.

Several months later, Ingram and Florida Marine[2] filed petitions for exoneration or limitation from liability in the district court. As a claimant to

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[1] FMT Industries, L.L.C.; Florida Marine, L.L.C.; Florida Marine Transporters, L.L.C.; and PBC Management, L.L.C. are hereinafter collectively referred to as "Florida Marine."

[2] Neither Florida Marine Transporters, L.L.C. nor PBC Management, L.L.C. were named petitioners in Florida Marine's limitation action, but they were later named third-party defendants in the consolidated action.

both actions, Harris sued under the Jones Act and general maritime law, seeking to recover for "multiple injuries, including his head, neck and low back." He asserted that Ingram's and Florida Marine's negligence caused his injuries.[3] He also claimed entitlement to maintenance and cure from Florida Marine. The actions were later consolidated for discovery and scheduled for a bench trial.

At his deposition, Harris testified that he recalled sitting in a chair in the deck locker when a "loud . . . creaking sound" prompted him to stand up. He said "the boat tipped" causing him to hit his head on a pipe. Harris stated he then, in his stupor, fell face-first down a stairwell and "tumbled all the way down to the bottom of the bilge." Harris testified that after the fall he used the assistance of an abutting wall to climb the stairs and, once back up, "stumbled around to the galley." He proceeded to perform his work duties after that.

Before the scheduled bench trial, Florida Marine moved for summary judgment against Harris's negligence claim. Ingram did the same. They both premised their motions on "irrefutable video evidence" arguing the collision did not cause Harris any injury. That evidence, obtained by Florida Marine in discovery, included recordings from cameras affixed to select areas of the M/V BIG D.[4] No camera was stationed in the deck locker, the central location of Harris's alleged injuries.

Florida Marine's and Ingram's motions pinpointed from the video evidence a less than twenty-second interval during which Harris's alleged

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[3] Harris sued Ingram under general maritime law, 29 U.S.C. §1331, and 29 U.S.C. §1333. And he sued Florida Marine under the Jones Act, 46 U.S.C. § 30104. He also claimed the M/V BIG D was unseaworthy at the time of the incident; his unseaworthiness claim was dismissed by the district court, a decision Harris doesn't challenge on appeal.

[4] The M/V BIG D had video cameras in the galley, forward deck, and wheelhouse.

injuries must have occurred. That span began with the M/V BIG D's pilot pulling the throttles full astern to slow the vessel at 1:51:55 a.m. and ended with Harris entering the galley at 1:52:14 a.m.

Shortly thereafter, between 1:52:25–26 a.m., the tows of the two vessels collided. Footage placed Harris in the galley at the time of the collision—not in the deck locker as he testified. As Florida Marine's and Ingram's motions asserted, that video in the galley shows Harris entering the galley before the collision (at 1:52:14 a.m.) and remaining there after it (until about 1:52:43 a.m.).

In response to the deposition testimony, Harris submitted an affidavit modifying his previous account of his injury. Harris's affidavit continued to assert that his injury occurred in the deck locker but conceded, in light of the video evidence, that he was mistaken about the timing of the occurrence. He claimed that "his accident occurred prior to the collision"—not at the moment of impact. The affidavit reiterated that Harris first "heard a creak" and then "the boat seemed to tip causing him to lose his balance, and fall" down the stairs to the bilge. It also submits that because "[h]is adrenaline was pumping after the accident, . . . he *quickly* ran up the stairs, out of the deck locker, and into the galley." (emphasis added). Whether he suffered an injury is genuinely disputed, he stressed, because no video surveilled the deck locker.

Harris did not dispute that the footage correctly established the timeframe in which his injuries allegedly occurred, but asserted that "more than enough time" elapsed for the intervening events to occur. He attributed his earlier version of the incident to faulty recollection due to his inexperience in the maritime industry and to the absence of windows in the deck locker.

Florida Marine's and Ingram's reply briefs urged the district court to reject Harris's invitation to consider his amended story.[5] And Ingram underscored Harris's repeated testimony that he heard a "loud creaking" sound immediately before he hit his head and fell down the stairwell to the bilge. Footage established that this noise was first audible at 1:52:06 a.m.—eight seconds before Harris is shown entering the galley (at 1:52:14 a.m.) and an additional eleven-to-twelve seconds before the collision (at 1:52:25–26). Ingram argued even if Harris's altered narrative is accepted, then all events within that newly alleged episode—"the boat seemed to tip," Harris lost his balance, struck his head on a pipe, fell down a flight of stairs, injured himself, and then made his way back up the stairs and into the galley—could not have transpired within eight seconds.

Harris further opposed summary judgment on the basis of a temporal connection between the collision and his subsequent medical treatment. He argued that footage captured him "disembarking for medical treatment" later that day, between 12:57:04–40 p.m., "walking with a noticeable limp." He also produced medical records to show his medical issues existed only after the incident. Those records show that Harris sought orthopedic surgical treatment for the first time four months after the collision, in April 2023, and underwent a low-back surgery in March 2024. He argues that the temporal connection between the collision and his medical treatment supports the claim that his injuries "could only have occurred" on January 9 while working aboard M/V BIG D.

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[5] They argued Fifth Circuit caselaw supports a court's declination to consider a later self-serving affidavit. *See Hyde v. Stanley Tools*, 107 F. Supp. 2d 992, 993 (E.D. La. 2000) (citing *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 495 (5th Cir. 1996)); *Free v. Wal-Mart La., LLC*, 815 F. App'x 765, 766–67 (5th Cir. 2020).

On May 31, 2024, the district court ruled for Florida Marine and Ingram and dismissed Harris's negligence claims. In light of that ruling, PBC moved for partial summary judgment on Harris's claim for maintenance and cure.[6] The district court granted that motion on June 18, 2024 and entered final judgment against Harris on June 20, 2024. Harris timely appealed.

Harris now argues the district court erred in determining that the video evidence conclusively established that he suffered no injury aboard the M/V BIG D around the time of the collision. And because that first judgment was the foundational basis for the second, Harris argues the district court also erred in granting summary judgment to PBC as to his maintenance-and-cure claim.

II. DISCUSSION

"The summary-judgment standard marks our course."[7] By the text of Rule 56, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[8] "At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party[.]"[9] A "genuine" dispute exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[10]

When a nonmovant's version of events is "so utterly discredited" by video evidence in the record, such "that no reasonable jury could have

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[6] PBC paid Harris $31,030.08 in maintenance and cure. Harris presented no evidence to the district court or us that further payment is owed to him.

[7] *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019).

[8] FED. R. CIV. P. 56(a).

[9] *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting FED. R. CIV. P. 56(c)).

[10] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

believed him," we are not to "rel[y] on such visible fiction" but must instead "view the facts in the light depicted by the videotape."[11] Additionally, "[i]n a non-jury case, such as this one, a district court has somewhat greater discretion to consider what weight it will accord the evidence."[12]

We have carefully reviewed the video evidence and other exhibits submitted by the parties. There is no argument about the collision's chronology established by the video evidence. We are satisfied that the footage discredits both of Harris's versions of his alleged accident. It showed Harris present in the galley—not in the deck locker. Thus, the video evidence completely undermines his first version. It also makes completely implausible his second version advanced in his affidavit. This leads us to conclude on de novo review that the district court correctly determined that Harris did not suffer any injury while in service of the M/V BIG D on January 9.[13]

For this reason, we agree with the district court that Harris cannot succeed on his negligence claim against either vessel and is not entitled to maintenance and cure.

AFFIRMED.

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[11] *Id.* at 380–81.

[12] *Jones*, 936 F.3d at 321.

[13] *See, e.g.*, *Crane v. City of Arlington*, 50 F.4th 453, 461 (5th Cir. 2022).