

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-2664

PATRICIA WALKER,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA, ET AL.,

Defendants,

CENTRAL GULF LINES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas
(CA H 89 0529)

September 27, 1993

Before GOLDBERG, HIGGINBOTHAM, DAVIS, Circuit Judges.

PER CURIAM:¹

Patricia Walker appeals the judgment of the district court granting Central Gulf Lines, Inc.'s (CGL) motion for summary judgment and dismissing her suit. We affirm.

I.

Ms. Walker was a cook aboard the Green Valley, a ship operated by CGL under a time charter with the United States. On the day of

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

her alleged injury, the vessel was anchored off the island of Diego Garcia, the location of a U.S. Naval base in the Indian Ocean. The United States had contracted for a launch, the FEBROE ONE, owned by Burns & Roe Enterprises and Frank E. Basil, Inc., to be used by the Green Valley's crew to go back and forth from shore to vessel at this location. The United States Navy operated the launch and also owned and operated the floating dock on shore.

In January 1987, Walker was allegedly injured while attempting to board the launch from the dock on her way back to the Green Valley from shore leave. She alleged that she fell as she jumped from the dock on to the deck of the launch in rough seas. She complained that the launch was not secured to the dock and that lighting on the dock was inadequate.

Walker first filed a personal injury suit in Texas state court, but she later voluntarily dismissed the action and then filed suit in the federal district court. Her complaint named the United States and CGL as defendants, and was later amended to add Burns & Roe Enterprises and Frank E. Basil, Inc, with whom Walker settled.

The United States and CGL both filed motions for summary judgment in August 1990. Walker did not file a response to these motions. On October 16, the district court granted both motions for summary judgment. The district court expressly held that each of Walker's claims against the United States was barred by controlling Fifth Circuit precedent. With respect to CGL, however, the Court stated:

By its motion, [CGL] argues that Walker cannot show that her alleged injuries were caused by its negligence or the

unseaworthiness of the vessel it operated. Walker's failure to respond to the motion for summary judgment represents a failure to raise a genuine issue of material fact as to negligence or unseaworthiness, which are elements of Walker's claims on which she would bear the burden of proof at trial.

Walker filed four motions for reconsideration between October 1990 and June 1992. The district court entered final judgment in favor of CGL in July 1992. In this appeal, Walker contests the district court's judgment dismissing her suit against CGL under the Jones Act and the general maritime law.

II.

We review the district court's grant of summary judgment **de novo**, applying the same standards that court used. **Degan v. Ford Motor Co.**, 869 F.2d 889, 892 (5th Cir. 1989). Thus, we review the record independently, weighing the evidence in the light most favorable to the non-movant, and then we determine whether the movant is entitled to judgment as a matter of law. **Id.**

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." **Celotex Corp. v. Catrett**, 477 U.S. 317, 323 (1986) (citations omitted). This burden, however, is slight where the non-movant bears the burden of proof at trial on the point at issue in the summary judgment motion. **Id.**, see also **Duplantis v. Shell Offshore, Inc.**, 948 F.2d 187, 190 (5th Cir. 1991).

Summary judgment is appropriate under Rule 56, if, after

adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. **Celotex Corp. v. Catrett**, 477 U.S. 317 (1986) If the non-movant is faced with a motion for summary judgment "made and supported" as provided by Rule 56, the non-movant cannot survive the motion by resting on the mere allegations of its pleadings. **See Id.; Slaughter v. Allstate Ins. Co.**, 803 F.2d 857, 860 (5th Cir. 1986). Summary judgment is appropriate if the non-movant, faced with an adequate summary judgment motion, chooses not to respond. **Isquith v. Middle South Utilities, Inc.**, 847 F.2d 186 (5th Cir. 1988), **cert. denied**, 408 U.S. 926; **Eversley v. MBank Dallas**, 843 F.2d 172 (5th Cir. 1988).

CGL's summary judgment motion satisfied the minimal requirements of Rule 56(c). CGL asserted that it did not own or operate the FEBROE ONE and that Walker's injuries were not caused by its negligence or the unseaworthiness of any vessel it owned or operated. Under **Celotex**, Walker was obliged to come forward and point to evidence that created an issue of fact tending to show that CGL was negligent or its vessel was unseaworthy. Unfortunately for Walker, she did not respond to CGL's motion. Therefore the district court correctly granted summary judgment in favor of CGL and against Walker.

Walker relies on this court's decision in **Hibernia Nat. Bk. v. Admin. Cent. Soc. Anonima**, 776 F.2d 1277 (5th Cir. 1985) for the proposition that a motion for summary judgment cannot be granted simply because there is no opposition, even if the failure to

oppose violates a local rule. But **Hibernia** is readily distinguished. It addressed the situation in which the movant has the burden of proof at trial and in its motion for summary judgment does not demonstrate that no issue of material fact exists. The district court in **Hibernia** erroneously granted the motion simply because the non-movant did not respond.

Here, the movant did not have the burden of proof at trial on the negligence and unseaworthiness issues and met its initial burden by pointing out the absence of material fact. When Walker failed to come forward with any evidence demonstrating a material fact issue, the district court correctly granted summary judgment.

Nor did the district court abuse its discretion by denying Walker's motions to reconsider. Walker's motions for reconsideration did not point to evidence indicating the existence of an issue of material fact. Motions under Rule 60(b) are directed to the sound discretion of the district court, and a district court's denial of relief upon such motion will be set aside on appeal only for abuse of that discretion. **Seven Elves, Inc. v. Eskenazi**, 635 F.2d 396, 402 (5th Cir. 1981).

For the reasons stated above, the judgment of the district court is affirmed.

AFFIRMED.