IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3544
(Summary Calendar)

DAVID L. BENTON,

Plaintiff-Appellant,

versus

DIAMOND SERVICES, INC.,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-91-0631-L)

(February 11, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant David Benton appeals the district court's refusal to grant his motion for a new trial notwithstanding an adverse jury verdict in his maritime personal injury suit.

---

[*]Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Benton's claims implicate alleged plain errors in the district court's jury instructions on negligence and contributory negligence. Finding no plain error, we affirm.

I

FACTS AND PROCEEDINGS

The facts of this case are essentially undisputed. Benton was retained by co-defendant Mobil Oil Company to assist in the dislodging of one of its platforms. He was transported to the platform on a vessel owned by co-defendant Diamond. While disembarking Benton's foot became entangled in cables, causing him to trip and fall. Benton brought suit against Diamond for his injuries.

At the close of the evidence, the district court held a charge conference in chambers during which the proposed jury instructions on negligence and contributory negligence were discussed. Benton concedes that, although given an opportunity to do so, he did not object to the instructions at the charge conference, at the charging of the jury, or at any other time before the jury began its deliberations. The jury found the defendant non-negligent and Benton 100% contributorily negligent for the accident. From the denial of his motion for a new trial or for judgment notwithstanding the verdict, Benton timely appealed.

II

ANALYSIS

Benton contends that the district court plainly erred because its jury instructions (a) on the law of negligence failed to state

specifically that Diamond had a duty to provide a passenger and a workman with a "safe means of ingress and egress from Diamond's vessel," and (b) on the law of contributory negligence failed to recite certain factors for the jury's consideration in its determination.

The general rule is that a party may not appeal the giving or the failure to give a jury instruction unless a specific objection is raised before the jury retires to consider its verdict. Fed. R. Civ. P. 51. In the absence of a valid objection, we will review an allegedly erroneous instruction if the error is so fundamental that it constitutes plain error. Colomb v. Texaco, Inc., 736 F.2d 218, 222 (5th Cir. 1984). "Plain error is found if the deficient charge is likely responsible for an incorrect verdict which in itself creates a substantial injustice," id. (internal quotation and citation omitted), or ". . . where the error has seriously affected the fairness, integrity, or public reputation of judicial proceedings." Johnson v. Helmerich & Payne, Inc., 892 F.2d 422, 424 (5th Cir. 1990). It is not necessary that the jury receive flawless instructions, but the instructions must not have misled or confused the jury or affected its understanding of the issues and its duty to determine those issues. Pierce v. Ramsey Winch Co., 753 F.2d 416, 425 (5th Cir. 1985).

As Benton failed to object at trial to the instructions he now challenges, he must show not only that the instructions were deficient but also that the instructions were responsible for an incorrect verdict which created a substantial injustice. With

respect to the negligence instruction, under maritime law a vessel owner is held to a negligence standard; he owes non-crew members the duty of reasonable care under the circumstances. Forrester v. Ocean Marine Indem. Co., ____ F.3d ____ (5th Cir. Dec. 17, 1993, No. 92-3924), 1993 WL 547665 at *2 ("In this circuit, the standard of care owed to passengers on a ship, including their embarkation and disembarkation, has variously been stated as a high degree of care, as a duty of ordinary care, as a reasonably safe means of boarding and leaving the vessel, as a duty of reasonable care, and as a duty of reasonable care under the circumstances") (internal quotations omitted). The district court instructed the jury that

> [u]nder the law, an individual may recover for injuries that were proximately caused by the negligence of another. In order to prevail upon his claim, Mr. Benton must prove by a preponderance of the evidence: [t]hat Diamond Services was negligent on October the 10th; and, [t]hat such negligence was a proximate cause of his injuries. Negligence is defined as the doing of some act that a reasonably prudent person would not do or the failure to do some act that a reasonably prudent person would do under the same or similar circumstances. In other words, negligence is the failure to use ordinary care under the circumstances . . . . A shipowner owes those aboard its vessel the duty of exercising reasonable care under the circumstances of each case for their own safety. Although a shipowner is not an insurer, a shipowner is bound not only by what it actually knows, but by what it should have known as well . . . .

The district court's failure to state specifically that Diamond was required to provide a "safe means of ingress and egress from [its] vessel," does not fatally flaw the instruction, which adequately describes a vessel owner's duty of care. See Treadaway v. Societe Anonyme Louis-Dreyfus, 894 F.2d 161, 168 (5th Cir. 1990) (even if a more specific instruction may have been helpful, instruction that

properly guides jury in its determinations will suffice).

The district court's instruction on contributory negligence was also sufficient to guide the jury respecting the assignment of fault under maritime law. See Gough v. Natural Gas Pipeline Co. of America, 996 F.2d 763, 768 (5th Cir. 1993) (principles of comparative negligence apply in cases of maritime tort). The district court charged the jury as follows:

> Defendant also contends that if you find that the accident did result from its negligence, that Plaintiff's own negligence in failing to look out for his own safety and in failing to wear safety gear, contributed to causing his accident. Contributory negligence is a defensive claim. The burden of proving that claim is on the Defendant, who must establish: [t]hat Mr. Benton was negligent; and, [s]econdly, that Mr. Benton's own negligence was a proximate cause of his own accident. In determining whether Mr. Benton was also at fault, you may consider whether Mr. Benton used due care for his own safety. If you find that plaintiff's acts or omissions may have contributed to causing his injuries, it does not prevent recovery, it only reduces the amount of his recovery . . . such a finding would not prevent Mr. Benton from recovering; the Court will merely reduce the Plaintiff's total damages by the percentage that you insert.

Benton argues that the district court should have included in the instruction certain factors that may have been relevant to the jury's apportionment of fault between the parties, but the general principles of maritime law do not mandate such a list. See Treadaway, 894 F.2d at 168. Benton failed to show that the instructions were inadequate, and that the verdict was incorrect, creating a substantial injustice. Therefore, the district court's instructions to the jury on negligence and contributory negligence were not plainly erroneous.

AFFIRMED.