IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-3557
Summary Calendar

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STANFORD J. BOLDEN,

Plaintiff-Appellant,

versus

OFFSHORE EXPRESS, INC.,

Defendant,

TEXACO, INC., OFFSHORE SPECIALTY FABRICATORS, INC., and B&C MARINE,

Defendants-Appellees.

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Appeal from the United States District Court for the Eastern District of Louisiana
(CA 91 2160 F)

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(December 11, 1992)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[1]

Stanford Bolden ("Bolden"), a painter/sandblaster employed by Offshore Specialty Fabricators, Inc. ("OSF"), sued OSF, Texaco, Inc. ("Texaco"), and B&C Marine ("B&C") for injuries he

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[1] 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

sustained while working on Texaco's Platform No. 154.[2] The district court entered summary judgment in favor of all defendants. Bolden appeals only the summary judgment in favor of OSF on the grounds that the district court erred in holding as a matter of law that he was not covered by the Jones Act. We affirm for the following reasons:

(1) To qualify as a Jones Act seaman, Bolden must show: (1) that he was permanently assigned to a vessel or fleet of vessels or that he performed a substantial part of his work on a vessel or fleet of vessels; and (2) that his work contributed to the function or mission of the vessel or fleet. *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1072-74 (5th Cir. 1986) (en banc); *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959).

(2) There is no evidentiary basis for finding that Bolden was permanently attached to either the M/V JOHN B or any "fleet" of vessels of which the M/V JOHN B was a part.

(3) A fixed drilling platform is not a vessel. *Kerr-McGee Corp. v. Ma-Ju Marine Serv.*, 830 F.2d 1332, 1336 (5th Cir. 1987).

(4) Even if we were to take into consideration evidence provided by OSF which was made available to the district court after its Order and Reasons, dated May 8, 1992, but before its

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[2] This platform is also referred to at places in the record as "Texaco's 365-A fixed platform at Eugene Island." There is, however, no genuine factual dispute about either the fact of Bolden's presence on the platform in question or the location of the platform on which the incident occurred which is the focus of this suit.

Judgment, dated June 8, 1992, which indicated that Bolden had worked offshore 658 of the 1,038 hours (63.3%) he worked for OSF, it would not improve his position because the relevant question is whether "a substantial part of his work" was performed on a vessel, *Robison*, 266 F.2d at 779, not whether he lived on a vessel while working elsewhere.

(5) *Wilander v. McDermott Int'l, Inc.*, 887 F.2d 88 (5th Cir. 1989), *aff'd*, 111 S. Ct. 807 (1991), on which Bolden's "seaman" argument rests, is distinguishable from this case. Bolden's argument that the M/V JOHN B was a "paint boat," just like the M/V GATES TIDE in *Wilander*, 887 F.2d at 90, is well taken. However, the *Wilander* plaintiff was a "paint foreman" who "performed a substantial part of his work, directing the sandblasting and painting of fixed platforms, from the [tender vessel]." *Id.* By contrast, Bolden admittedly performed the bulk of his tasks on the platform.

Thus, while Bolden may well meet the second prong of the *Robison/Barrett* test -- that his duties contributed to the function of the M/V JOHN B -- he fails to satisfy the first prong. Therefore, the district court did not err in holding that Bolden was not a Jones Act "seaman."

AFFIRMED.