UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3787
Summary Calendar

REBECCA BEENE, ET AL.,

Plaintiffs,

LOUIS J. SANDRAS,

Plaintiff-Appellant,

versus

TERREBONNE WIRELINE SERVICES, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana

CA 90 409 G

(March 31, 1993)

Before POLITZ, Chief Judge, DAVIS and JONES, Circuit Judges.

POLITZ, Chief Judge:*

Obtaining only limited recovery in his maritime suit, Louis J. Sandras appeals a finding of contributory negligence and an adverse evidentiary ruling. Finding no error, we affirm.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Sandras and his companion, Rebecca Beene, were returning from an afternoon of fishing on Bayou Blue in south Louisiana when their 16-foot fiberglass craft ran out of fuel. Sandras stopped the boat in the channel to switch tanks. As they stopped, Beene spotted an overtaking vessel some 800 feet distant. She alerted Sandras, who remained sanguine, assuming the vessel would change course. He was mistaken. At the last instant the overtaking 18-foot welded aluminum boat owned by Terrebonne Wireline Service, Inc., swerved but could not avoid a collision. Both Sandras and Beene sustained injuries.

Beene and Sandras sued Terrebonne Wireline and the vessel operator, Roland Pitre, for negligence under the general maritime law. Beene settled her claim; Sandras tried his to the bench. Apportioning fault 70 percent to defendants and 30 percent to Sandras, the court awarded Sandras $56,000 in general damages and $11,882 in medical expenses. It denied an award for lost income, refusing to admit Sandras' only evidence -- four years of unsigned income tax returns. Sandras timely appealed.

Analysis

In a maritime case tried to the bench findings of negligence, determinations of causation, and allocation of fault are findings of fact reviewable for clear error only.[1] We discern none.

---

[1] **Gavagan v. United States**, 955 F.2d 1016 (5th Cir. 1992); **Gele v. Wilson**, 616 F.2d 146 (5th Cir. 1980).

The district court found that both parties violated the Inland Navigation Rules[2] and hence were negligent. It also found that their negligence jointly caused the collision. With respect to Sandras, the court found that he had violated Rule 9 by stopping in a navigable channel, Rule 2 by failing to check his fuel supply before getting underway, and Rule 34 by failing to give a warning signal to the Terrebonne Wireline vessel as it approached.[3] These findings are not clearly erroneous.

Sandras, however, invokes two maritime law presumptions: (1) the presumption of fault against a moving vessel that strikes a stationary object,[4] and (2) the rule of **THE PENNSYLVANIA**.[5] The presumption against a moving vessel that strikes a stationary object raises a prima facie case of negligence.[6] The moving vessel may rebut the presumption by proving that "it was without fault or

---

[2]33 U.S.C. § 2001 **et seq.**

[3]Rule 9(g) prohibits anchoring in a narrow channel. Rule 2 generally requires the practice of safe procedures. Rule 34(d) requires warning signals when a vessel "is in doubt whether sufficient action is being taken by the other [vessel] to avoid collision . . . ." Sandras argues that Rule 33 exempts small boats like his from the operation of Rule 34. He errs. Rule 33 exempts small boats from requirements for particular types of warning equipment but in place of such equipment requires "other means of making an efficient sound signal."

[4]**Bunge Corp. v. M/V FURNESS BRIDGE**, 558 F.2d 790 (5th Cir. 1977), cert. denied sub nom. **Furness Withy & Co., Ltd. v. Bunge Corp.**, 435 U.S. 924 (1978).

[5]86 U.S. (19 Wall.) 125, 22 L.Ed. 148 (1874), discussed in **Pennzoil Producing Co. v. Offshore Express, Inc.**, 943 F.2d 1465 (5th Cir. 1991).

[6]**Brown & Root Marine Operators, Inc. v. Zapata Off-Shore Co.**, 377 F.2d 724 (5th Cir. 1967).

that the collision was occasioned by the fault of the stationary object or was the result of inevitable accident."[7] **THE PENNSYLVANIA** rule provides that the negligence of a ship in actual violation of a statutory rule intended to prevent collisions is presumed to be a cause of the collision. The offending ship can avoid liability only by proving that its negligence **could not have been** a cause.[8] These presumptions do not avail in the case at bar.

Together the presumptions operate to Sandras' detriment. While the first presumption allows Sandras to make a prima facie case that the Terrebonne Wireline vessel was negligent for hitting him, the district court's finding that Sandras violated Inland Navigational Rules by stopping his boat in a navigational channel overcomes the first presumption and, in accordance with **THE PENNSYLVANIA** rule, places on Sandras the heavy burden of proving that his statutory negligence could not have been a cause of the accident.[9] He did not acquit himself of this burden.

Nor does the application of **THE PENNSYLVANIA** rule against Terrebonne Wireline shield Sandras from a finding of contributory negligence. The rule of **THE PENNSYLVANIA** allocates burden of proof, not liability. Therefore, even

> [i]f a party fails to carry the burden imposed on it by the rule, the rule does not require that party to bear 100% of the responsibility for the allision. Liability

---

[7]**Bunge Corp.**, 558 F.2d at 795.

[8]**Pennzoil**.

[9]Cf. **Illinois Constructors Corp. v. Logan Transportation, Inc.**, 715 F. Supp. 872 (N.D.Ill. 1989).

> still must be apportioned according to the comparative fault of the parties . . . .[10]

Terrebonne Wireline did not prove that its negligence could not have been a cause of the accident but this failure of proof does not preclude imposition of a proportionate share of liability on Sandras.

Sandras also contests the district court's refusal to admit his unsigned income tax returns into evidence. We find no abuse of discretion.[11] Even after the district court pointedly spelled out the inadequacies in his foundation, Sandras failed to show that the documents proffered were true and correct copies of those which he had indeed signed and filed with the Internal Revenue Service. Such a showing is more than a formality.[12] Signing and filing a tax return with the Internal Revenue Service triggers exposure to criminal penalties,[13] giving the document an indicia of trustworthiness warranting admission into evidence. The district court did not err in excluding the purported tax returns.

AFFIRMED.

---

[10]**Pennzoil**, 943 F.2d at 1472.

[11]See **Harrell v. DCS Equipment Leasing Corp.**, 951 F.2d 1453 (5th Cir. 1992) (district court's decision to exclude evidence is reviewed for abuse of discretion).

[12]**United States v. Thetford**, 676 F.2d 170 (5th Cir. 1982), cert. denied, 459 U.S. 1148 (1983).

[13]See, e.g., 26 U.S.C. §7206(1).