IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5009

Summary Calendar

NATHAN JOSEPH CORMIER, JR. and
FELICIA MARIE LEJEUNE CORMIER,

Plaintiffs-Appellants,

v.

CLEMCO SERVICES CORP, ET AL.,

and

PENNZOIL EXPLORATION & PRODUCTION CO.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
91 CV 0354

April 23, 1993

Before KING, DAVIS, and WEINER, Circuit Judges.

PER CURIAM:*

Plaintiffs appeal the district court's granting of summary judgment in favor of defendant Pennzoil Exploration and Production Company ("Pennzoil"). We affirm.

I.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The uncontested facts of the case are as follows. Prior to April 16, 1990, Pennzoil retained the services of two independent contractors to sandblast and paint a Pennzoil platform located at Eugene Island 330-D. Meaux Services, Inc. ("MSI") was retained as an independent contractor to perform the sandblasting and painting work. Visual Inspection and Examination of Welding, Inc. ("VIEW") was retained as an independent contractor to examine the sandblasting and painting specifications for the job.

Plaintiff Nathan Cormier, Jr. was employed by MSI as a sandblaster/painter. At the time of his accident and during the course of all his work, plaintiff took all of his directions and orders solely from the MSI foreman, Jay Berza. Pennzoil had one employee aboard the platform, Bobby Gott, an advanced operator. Gott's job was monitoring the ongoing platform gas production operations. All of his duties took place in the operator's office or on the production level of the platform; the sandblasting and painting work was not taking place at either of these locations at the time of the accident. Mr. Gott had no responsibilities for supervising or inspecting the sandblasting and painting work in progress or inspecting the end product.

According to plaintiff's testimony, on the morning of his accident, he started work as usual at approximately 7:00 a.m. He was directed by Berza, the MSI foreman, to perform sandblasting work on the water line level of the platform. After working for several hours, Berza turned off the sandblasting pot and told

plaintiff and another MSI employee, Glenn Mott, to exchange sandblasting hoses and nozzles because Mott was almost out of slack in the area in which he was working. The two men switched hoses and nozzles, and once again began blasting.

Plaintiff testified that he stopped blasting to change positions, and as he slid back on a piece of pipe, the sandblasting nozzle engaged. This caused sand to leave the hose and strike him in the leg. Plaintiff contends that the dead man switch on the nozzle was defective, and that this defective condition lead to the accident. All sandblasting equipment involved in the accident was owned and maintained by plaintiff's employer, MSI.

Based on these uncontested facts and the applicable law involved, Pennzoil filed a motion for summary judgment contending that it could not be held liable for the injuries of an independent contractor's employee. After hearing oral argument, the district court granted the motion. Plaintiffs then filed a motion for reconsideration and/or to alter or amend judgment. Based on this motion, the court again granted oral argument and subsequently denied plaintiffs' motion.

Plaintiffs now appeal to this court, alleging that the district court erred by granting summary judgment in favor of Pennzoil.

II.

A district court shall grant summary judgment in a case "if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). All evidence and inferences to be drawn therefrom are construed in the light most favorable to the nonmoving party. Duplantis v. Shell Offshore, Inc., 948 F.2d 187, 189 (5th Cir. 1991). We review the district court's action de novo, applying the same standards as the district court. Abshire v. Gnots-Reserve, Inc. (In re Cooper/T. Smith), 929 F.2d 1073, 1076 (5th Cir.), cert. denied, ___ U.S. ___, 112 S. Ct. 190 (1991).

Under Louisiana law, a principal generally is not liable for the actions of an independent contractor. LeJeune v. Shell Oil Co., 950 F.2d 267, 270 (5th Cir. 1992), quoting Triplette v. Exxon Corp., 554 So.2d 1361, 1362 (La. Ct. App. 1989). There are two exceptions to this general rule. Under the first exception, if the work which the contractor is to perform is "ultrahazardous," the principal cannot escape liability for injuries incurred by the independent contractor's employee. Id. The second exception imposes liability on the principal if the principal "exercises operational control over or expressly or impliedly authorizes the independent contractor's actions." Id. (citations omitted).

Plaintiffs first argue that the district court erred by finding that sandblasting is not an ultrahazardous activity. We cannot agree. Whether an activity is classified as

"ultrahazardous" is a question of law. Perkins v. F.I.E. Corp., 762 F.2d 1250, 1266 (5th Cir. 1985); Touchstone v. G.B.Q. Corp., 596 F. Supp. 805, 814 (E.D. La. 1984). The identifying feature of an ultrahazardous activity is that there is a risk of harm involved which cannot be eliminated through the exercise of due care. Ainsworth v. Shell Offshore, Inc., 829 F.2d 548, 550 (5th Cir. 1987), cert. denied, 485 U.S. 1034 (1988); Touchstone, 596 F. Supp. at 814; Kent v. Gulf States Utils. Co., 418 So.2d 493, 498 (La. 1982). In other words, the activity must not require substandard conduct to cause injury. Ainsworth, 829 F.2d at 550; Perkins, 762 F.2d at 1267-68. Based on these criteria, sandblasting is not an ultrahazardous activity under Louisiana law. See Touchstone, 596 F. Supp. at 814-15 ("[t]he fact that safety can be so easily achieved in sandblasting . . . makes sandblasting a non-ultrahazardous activity").

Plaintiffs also attempt to argue that Pennzoil should be held liable for plaintiff's injuries because it impliedly authorized unsafe sandblasting practices by MSI.[1] Pennzoil hired

[1] In their brief on appeal, plaintiffs also cite certain testimony alluding to the issue of Pennzoil's exercise of operational control. Plaintiffs somehow seem to be attempting to imply that because Pennzoil had one employee (Bobby Gott) present on the oil rig whose job was to operate and maintain the platform in a safe manner, Pennzoil retained operational control over the sandblasting operations, thereby allowing imposition of vicarious liability. This is not the law. A principal's interest in maintaining general safety does not constitute operational control for liability purposes. See Duplantis, 948 F.2d at 193; See also Ham v. Pennzoil, 869 F.2d 840, 842 (5th Cir. 1989) (mere fact that principal maintained a "company man" on its drilling rig does not demonstrate a retention of control over independent contractor's operations).

MSI as an independent contractor to conduct sandblasting work. As an independent contractor, MSI had the responsibility to determine the best means by which to accomplish this work. Pennzoil retained no right to control the work of MSI. Under Louisiana law, Pennzoil has no duty to intercede in an independent contractor's decision of how to perform the work. Ainsworth, 829 F.2d at 551; Hawkins v. Evans Cooperage Co., Inc., 766 F.2d 904, 908 (5th Cir. 1985) (when an activity is not ultrahazardous, a "principal has no duty to ensure . . . that the independent contractor performs its obligations in a reasonably safe manner"). As long as Pennzoil retained no control over MSI's activities, Pennzoil cannot be found to have impliedly authorized any of MSI's practices, and liability may not be imposed. See Landry v. Huthnance Drilling Co., 889 F.2d 1469, 1471-72; Ainsworth, 829 F.2d at 550-51; Hawkins, 766 F.2d at 907-08.

III.

We find that plaintiffs failed to introduce evidence demonstrating the existence of any genuine issue of material fact regarding Pennzoil's liability. Accordingly, the judgment of the district court is AFFIRMED.