UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 92-5281

Summary Calendar

JODY WAYNE ARDOIN,

Plaintiff-Appellant,

VERSUS

SEACOR MARINE, INC.,

Defendant-Appellee.

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

(91 CV 0290 "L")

(October 1, 1993)

Before WISDOM, JOLLY, and JONES, Circuit Judges.

PER CURIAM:*

This case concerns an injured seaman. We hold that the

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* Local Rule 47.5.1 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court was not clearly erroneous in finding that "the negligence lies solely at the door of Plaintiff himself". We AFFIRM the district court.

I.

The plaintiff, Jody Ardoin, was a mate aboard the M/V Sea Island, a vessel owned, maintained, and operated by the defendant, Seacor Marine, Inc. At the time of the accident, Ardoin had worked for Seacor for more than three years and had been on the M/V Sea Island for one week.

At approximately 5:30 a.m. on the morning of October 11, 1990, Ardoin fell while descending an interior staircase. As a result of his accident, Ardoin suffered debilitating injuries to his back and shoulder and has not worked since that time.

Ardoin filed suit in federal court under the Jones Act, 46 U.S.C. § 688, and general maritime law. Ardoin waived his right to a jury and the case was tried to Judge Putnam in November 1992. The district court granted judgment for Seacor on both the Jones Act negligence claim and the unseaworthiness claim. This appeal followed.

II.

As this Court has stated on several occasions, "`questions of negligence and proximate cause in admiralty cases are treated as fact questions' in respect to which a trial court's `findings will not be reversed unless found to be clearly erroneous'"[1].

[1] Gavagan v. U.S., 955 F.2d 1016, 1019 (5th Cir. 1992) quoting Noritake Co., Inc. v. M/V Hellenic Champion, 627 F.2d 724, 727-28 (5th Cir. 1980).

III.

Ardoin contends that the non-skid tape on the steps was worn, that the steps were too narrow and steep, and that there was inadequate lighting. The district court found that none of these conditions contributed to Ardoin's fall.

At trial, Ardoin described the non-skid tape as "worn, torn, peeling, smooth, and slick, frayed"[2]. The district court contrasted the articulateness of this description with Ardoin's narration of his fall in the accident report for Seacor. Ardoin wrote that he fell while coming down the stairs carrying his bag of clothes. He did not mention that he slipped or tripped on non-skid tape. Indeed, Ardoin's original complaint did not mention inadequate non-skid tape. Further, Ardoin's witness as to the condition of the tape contradicted himself. On direct examination, this deckhand (Michael Sampson) said that the tape was worn, yet on cross-examination, he indicated that the tape was still "pretty good"[3]. This witness also contradicted Ardoin's testimony that the vessel had run out of non-skid tape so that the crew could not complete the task of periodically replacing the tape, a task which Ardoin had been undertaking in the days before his fall.

Several witnesses including Sampson testified that the lighting was adequate. Several different lights illuminated the

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[2] Rec. Vol.4, p. 15.

[3] Rec. Vol.4, p. 112.

stairwell, and a marine design engineer testified that the lights not only met Coast guard standards, but also met good naval architecture and marine engineering standards.

The issue whether the steps were too steep or too narrow, which was raised for the first time at trial, suffers similarly from contrary and convincing testimony that the steps were properly designed. Further, the steps had a raised diamond pattern tread, so that even without non-skid tape, it is a slip-resistant surface.

It is unknown whether Ardoin used the handrail in descending the stairs. He testified that he could not remember and displayed a poor recollection of the number of handrails despite the fact that he had frequently used this stairwell during his short stint on board the M/V Sea Island.

IV.

Jones Act negligence and unseaworthiness require different standards of causation.[4] Under the Jones Act, the defendant is liable "if his negligence played any part, even the slightest, in producing the injury"[5]. "The standard for causation for unseaworthiness is a more demanding one" yet in either case the plaintiff bears a light burden of establishing causation.[6] Even under the Jones Act, however, the plaintiff must establish more

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[4] Chisholm v. Sabine Towing & Transp. Co., Inc., 679 F.2d 60, 62 (5th Cir. 1982).

[5] Id.

[6] Id.

than mere "but for" causation.[7]

Ardoin has failed to meet his very light burden of establishing legal causation for even his Jones Act claims much less the higher burden for his unseaworthiness claims. The condition of the tape is Ardoin's best evidence, and it, although worn, was not in a condition to create the "substantial factor" leading to Ardoin's fall which is necessary to qualify as legal causation. While one has empathy for Ardoin, his own conduct in descending the stairs is the sole legal cause of his fall. We therefore AFFIRM the judgment of the district court.

[7] Gavagan at 1019-20. See Spinks v. Chevron Oil Co., 507 F.2d 216, 222 (5th Cir. 1975).