

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3112  
Summary Calendar

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CLINTON J. BILLEDEAUX,

Plaintiff-Appellant,

versus

TIDEX, INC., TRAVELERS INSURANCE COMPANY, and M/V LOUIS TIDE,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
CA 91 0134 N

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August 13, 1993

Before REAVLEY, DAVIS, and DEMOSS, Circuit Judges.

REAVLEY, Circuit Judge:\*

This admiralty case seeks damages for the personal injury of a seaman. Because the district court did not clearly err in finding no negligence and no unseaworthiness, we affirm judgment for the defendants.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Clinton J. Billedeaux, Sr. injured his back while working as an able-bodied seaman on the M/V LOUIS TIDE. Billedeaux, 39 years old, had worked in the maritime industry for fifteen years as an ordinary seaman, an able-bodied seaman, and as a second captain. On September 26, 1990, Billedeaux was employed by Tidex, Inc. (Tidex) and reported to Captain Stephen Lane Comeaux on the LOUIS TIDE at approximately noon. The LOUIS TIDE had been removed from dry-dock the day before, following a U.S. Coast Guard inspection. The ship was moored in waters at Morgan City, Louisiana, and was undergoing routine maintenance preparatory to its return to servicing offshore oil rigs.

After removing gaskets from tank covers for three hours, Billedeaux was instructed by Captain Comeaux to get another seaman and to move a 150 pound hose rack about thirty feet across the deck to its permanent location. Billedeaux and the first mate, Reginald P. Hebert, tested the weight of the hose rack and prepared to move it. Various pieces of vessel equipment, including chains, had been placed on deck temporarily while the crew was working. The chains stretched between the men and their destination. Rather than carry the heavy hose rack a longer distance along a cleared path through the equipment, the men chose the more direct route across the chains. Billedeaux stumbled as the men crossed the chains and immediately felt pain in his lower back. After placing the hose rack in its permanent location and loading the hoses, Billedeaux reported the incident to Captain Comeaux.

Visits to several physicians confirmed that Billedeaux's back injury was severe. After several months of conservative treatment, Billedeaux underwent a lumbar laminectomy, and a disc excision and fusion, which left him unable to lift heavy equipment. Meanwhile, Billedeaux filed suit in district court, alleging negligence under the Jones Act and unseaworthiness under general maritime law. Following a bench trial, the district court found that the shipowner, Tidex, was not negligent and that the LOUIS TIDE was seaworthy. Alternatively, the district court found that, even if Tidex had been negligent, Billedeaux was 100% contributorily negligent. The district court thus entered judgment in favor of Tidex, Inc., and Billedeaux timely appealed. Finding no clear error, we affirm.

## I. DISCUSSION

### A. Standard of Review

Negligence, seaworthiness, and causation are questions of fact in admiralty cases. We do not set aside findings of fact unless they are clearly erroneous, and we give due regard to the district court's opportunity to judge the credibility of the witnesses. FED. R. CIV. P. 52(a); Johnson v. Offshore Express, Inc., 845 F.2d 1347, 1352-53 (5th Cir.), cert. denied, 488 U.S. 968, 109 S.Ct. 497, 102 L.Ed.2d 533 (1988). A finding is clearly erroneous only when "'the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.'" Daniels Towing Serv., Inc. v. Nat Harrison

Assocs., Inc., 432 F.2d 103 (5th Cir. 1970) (quoting McAllister v. United States, 348 U.S. 19, 75 S.Ct. 6, 99 L.Ed. 20 (1954)).

B. Jones Act Negligence and Unseaworthiness

The Jones Act authorizes a seaman injured by a shipowner's negligence to file suit. 46 U.S.C. § 688. Negligence includes the knowing or careless breach of any obligation a shipowner owes to a seaman. Obligations to the seaman include duties to provide (1) a safe place to work, (2) a seaworthy vessel and tools, (3) an adequate crew, and (4) adequate instructions. In addition to proving the breach of a duty, a plaintiff must show that a shipowner had actual or constructive knowledge of the dangerous condition that injured the plaintiff. 1B DALE S. COOPER, BENEDICT ON ADMIRALTY § 21 (1993). Finally, the plaintiff must show causation. In a Jones Act case, however, that burden is "featherweight." Evidence of the "slightest" negligence will sustain a finding of liability. Johnson, 845 F.2d at 1352.

Unseaworthiness is a cause of action distinct from Jones Act negligence. A ship's owner has an absolute and undelegable duty to furnish a seaworthy vessel without regard to fault or negligence. The owner, however, is not "obligated to furnish an accident-free ship." To be seaworthy, a vessel and its appurtenances must be reasonably suited for their intended use. Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 549-50, 80 S.Ct. 926, 932-33, 4 L.Ed.2d 941 (1960).

On appeal, Billedeaux focuses on the presence of equipment littering the deck to prove both unseaworthiness and the breach of the duty to provide a safe place to work. The court found, however, that Tidex was not negligent because a clear path across the deck offered a safe way to carry the hose rack. Likewise, the court found that the vessel was seaworthy because the clear path across the deck rendered the deck both reasonably fit for use and reasonably safe. Our review of the record convinces us that the district court did not err in its findings.

Nevertheless, Billedeaux contends that the district court incorrectly analyzed the case. The district court acknowledged in its alternate findings that Billedeaux was 100% contributorily negligent when he chose the dangerous path over the safe one. Billedeaux points out that contributory negligence as a bar and assumption of the risk as a defense are not applicable in maritime cases. Rather, he maintains, a finding of contributory negligence may only reduce the damages by the percentage of fault attributable to the plaintiff. And the choice of an unsafe path over a safe one is relevant to the mitigation of damages. We agree. See, e.g., Spinks v. Chevron Oil Co., 507 F.2d 216, 223 (5th Cir. 1975) (holding that an employer was negligent and a seaman contributorily negligent for injuries to the seaman who slipped on a soapy deck). Billedeaux further asserts, however, that the district court improperly treated his contributory negligence as a bar or as assumption of the risk. With this we cannot agree.

The district court carefully considered the evidence to determine, first, whether Tidex had been negligent. The question was whether Tidex had breached its duty to provide a safe place to work. The record reveals that chains and some equipment were temporarily stowed on deck, and that a clear path ran through the equipment. How much equipment there was and how large a path existed were hotly disputed issues. Nonetheless, credibility choices rest with the district court. It was reasonable for the crew to stow equipment on deck during maintenance, and the path provided a reasonable, safe way to traverse the deck. The evidence thus supports the district court's findings, and we find no clear error.

Second, the district court found that the LOUIS TIDE was seaworthy. Part of the deck's intended use was as a passageway from one side of the ship to the other. The evidence showed that it was a normal by-product of routine maintenance to have equipment out of place. Nevertheless, because the crew left a clear path across the deck, the area was reasonably fit for passage and reasonably safe for the working crew. Again, it was within the district court's province to credit Captain Comeaux's testimony over Billedeaux's. The evidence supports the finding that the ship was seaworthy, and there was no clear error. Because our review of the district court's initial findings disposes of the case, we do not reach the alternative finding that Billedeaux was 100% contributorily negligent.

AFFIRMED.