IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3333
Conference Calendar

TROY PAUL THERIOT,

Plaintiff-Appellant,

versus

NUTRIA RENTAL & SUPPLY CO., INC.,

Defendant-Appellee,

ATLANTIC PACIFIC MARINE CORPORATION,

Defendant.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-0398-F
- - - - - - - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Troy Paul Theriot (Theriot) argues that the district court erred by granting Nutria Rental & Supply Company's (Nutria) motion for summary judgment denying him seaman status under the Jones Act. He contends that the district court should not have considered his future job assignments with Nutria, but rather

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

should have focused only upon the two weeks he spent working as a roustabout at the APMC site. **

This Court reviews a district court's grant of summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 113 S.Ct. 82 (1992). Summary judgment is appropriate if the moving party demonstrates "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). If the moving party meets its initial burden of establishing that there is no genuine issue, the burden shifts to the non-movant to produce evidence or set forth specific facts showing the existence of a genuine issue for trial. Rosado v. Deters, 5 F.3d 119, 123 (5th Cir. 1993).

The question whether a particular person is a seaman under the Jones Act is ordinarily a question of fact for the jury. Ellender v. Kiva Constr. & Eng'g, Inc., 909 F.2d 803, 805 (5th Cir. 1990). Summary judgment is appropriate, however, if the facts establish the lack of seaman status as a matter of law and no reasonable evidentiary basis exists to support a jury finding that the injured person is a seaman. Id. Seaman status is a jury question only if there is evidence that the plaintiff (1) was assigned permanently to a vessel or performed a substantial part of his work on the vessel and (2) contributed to the mission of the vessel. Coats v. Penrod Drilling Corp., 5 F.3d 877, 890

**Theriot's rights against APMC were settled.

(5th Cir. 1993) petition for cert. filed, (U.S. Jan. 18, 1994) (No. 93-1209).

Theriot presented no evidence to suggest that he was permanently assigned to a vessel. He failed to show that he performed a significant part of his work aboard the vessel with "some degree of regularity and continuity" or that he had "more than a transitory connection" with a vessel. Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067, 1073-74 (5th Cir. 1986) (en banc). Because the evidence was uncontroverted, the district court did not err in determining that Theriot "was never permanently assigned to work on a vessel or fleet of vessels."

Theriot may also satisfy the first prong of the test to determine seaman status by showing that he performed a substantial part of his work on a vessel. If an employee's regularly assigned duties require him to divide his time between vessel and land, however, his status must be determined in the context of his "entire employment." Id. at 1075. The law does not "envision a `snapshot' test for seaman status, inspecting only the situation as it exists at the instant of injury; a much more enduring relationship is contemplated in the jurisprudence." Easley v. Southern Shipbuilding Corp., 965 F.2d 1, 5 (5th Cir. 1992), cert. denied, 113 S.Ct. 969 (1993). When viewing Theriot's employment in this manner, it is clear that he could not show that a substantial part of his work was performed aboard a vessel. Although his work at the APMC site was his first and only assignment with Nutria, the uncontradicted evidence showed that such work constituted less than ten percent of his entire

employment. Because Theriot failed to satisfy the first prong of the test for seaman status, this Court need not reach the question whether he contributed to the mission of the vessel.[***]

Theriot next argues that the district court erred in denying his motion for a "new trial." He contends that the court erred in relying solely upon an unsigned affidavit that was not based upon personal knowledge and was purely speculative. Theriot did not present this argument to the district court, however, in his motion for a "new trial." Because Theriot failed to object to the introduction or use of the affidavit below, his objection is considered waived. McCloud River R.R. Co. v. Sabine River Forest Prods., Inc., 735 F.2d 879, 882 (5th Cir. 1984); Auto Drive-Away Co. of Hialeah, Inc. v. I.C.C., 360 F.2d 446, 448-49 (5th Cir. 1966).

AFFIRMED.

[***]Theriot also argues that the district court erred by failing entirely to consider whether he performed a substantial portion of his work aboard a vessel. Although the court based its decision on the requirement that a claimant be assigned permanently to a vessel, it noted that the substantiality of Theriot's vessel-related work should be based upon his overall employment.