

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3364
Summary Calendar

CYNTHIA PHELPS,

Plaintiff-Appellant,

versus

HUNT PETROLEUM CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-2468-H-2)

(September 24, 1993)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:*

Cynthia Phelps appeals an adverse summary judgment in her suit for personal injuries sustained in an accident at an oil well site. We affirm.

Phelps, age 20, was seriously injured when she attempted to "ride" the moving parts of one of Hunt's oil-pumping units. On the evening in question, Phelps had joined friends and consumed two

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

beers before going to the well site to socialize. It was late into the night. Phelps stepped over a three-foot metal railing and attempted to climb onto one of the pumps. While doing so she became entangled in the unit.

Phelps maintains that Hunt owed her a duty of care which was breached because the pumping unit was accessible to the public and youths frequented the area. The district court disagreed, holding that "defendant's duty does not encompass the risk of injury involved in plaintiff's activity" and that "Hunt did not act unreasonably in failing to protect against plaintiff intentionally climbing the guard rail and mounting the pump arm."

Phelps correctly argues that Louisiana has abolished assumption of risk as a defense in tort actions. Further, as the plaintiff notes, this defense should not be resurrected by using plaintiff's awareness or assumption of a risk to reduce the standard of care to which a defendant may be held. Phelps contends that a plaintiff's negligence should be factored in only in computing damages, not in determining the defendant's duty.¹

Accepting the foregoing as a given, a defendant's duty of care does not include making its facilities completely safe under every conceivable circumstance, or for every possible type of conduct or misconduct. A defendant's duty is one of reasonable care under the prevailing circumstances. The reasonable duty of care standard

¹ See **Murray v. Ramada Inns**, 521 So.2d 1123, 1136 (La. 1988) ("The determination of what the plaintiff knew regarding the risk of injury is made after fault on the part of the defendant has been established").

does not include a requirement to protect against ludicrous or outrageous uses of property. Phelps has not established any unreasonable act on the part of Hunt in the setting of this unfortunate accident. Injury alone does not equate to negligence warranting recovery. Phelps was injured because of her actions and not because Hunt failed to exercise reasonable care in making its property safe.

The judgment of the district court is AFFIRMED.