

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-3416

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TIMOTHY SILMON,

Plaintiff-Appellant,

VERSUS

CAN DO II, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 91-584 "N" (1))

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(July 22, 1994)

Before KING, JOLLY and DAVIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Timothy Silmon appeals the take-nothing judgment rendered against him in his action for damages under the Jones Act and the general maritime law and for maintenance and cure. Silmon's Jones Act/general maritime law damage action was tried to a jury and by stipulation his maintenance and cure action was tried to the court. The jury rejected Silmon's damage claims when it found that Silmon failed to establish that he had an accident. The district court, without assigning reasons on Silmon's maintenance and cure claim,

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

entered judgment on the verdict dismissing the entire action which, of course, includes plaintiff's demand for maintenance and cure.

With respect to the judgment rejecting Silmon's Jones Act/general maritime law damage action, we have carefully reviewed the record and considered the briefs and argument of counsel and find no reversible error or abuse of discretion in the entry of that portion of the judgment. We therefore affirm the dismissal of those claims.

As far as we can determine from the record, after the verdict was rendered on May 5, 1993, the parties did not call the remaining maintenance and cure claim to the court's attention and on May 10, 1993, the court signed the judgment. This may explain why the record reflects no findings on the plaintiff's maintenance and cure claim. We cannot be certain that the court turned its attention to this claim before rendering judgment. In any event, the absence of any findings by the district court on Silmon's maintenance and cure claim prevents us from effectively reviewing the court's dismissal of that claim. Accordingly, we vacate the judgment insofar as it dismisses Silmon's maintenance and cure claim and remand this feature of the case to the district court for findings of fact and conclusions of law which would permit us to review the district court's disposition of this claim. If the district court wishes to hold a supplemental hearing on the maintenance and cure claim it has the discretion to do so.

We therefore affirm the district court's dismissal of Silmon's Jones Act/general maritime law damage claim. However, we vacate

the court's dismissal of Silmon's maintenance and cure claim and remand that feature of the case to the district court for further proceedings consistent with this opinion.

AFFIRMED IN PART, VACATED IN PART and REMANDED.