

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4186
Summary Calendar

MARTIAL D'AUGEREAU, ET UX.,

Plaintiffs-Appellants,

VERSUS

OCEAN DRILLING & EXPLORATION CO., ET AL.,

Defendants,

TIDEWATER, INC., a/k/a/ Tidewater Barges, Inc., and
M/V DOC TIDE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(91 CV 1619)

August 31, 1993

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

d'Augereau challenges the take-nothing judgment rendered against him by the district court following a bench trial. Because the district court's finding that the defendant, Tidewater, Inc.,

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

was not negligent is not clearly erroneous, we affirm the district court's judgment.

Martial d'Augereau was injured while transferring from a stationary drilling platform in the Gulf of Mexico to an offshore supply vessel, the M/V DOC TIDE.

During the day on which the accident occurred, weather forecasters warned that a tropical depression was moving into the Gulf of Mexico. In anticipation of possible worsening weather that would endanger all workmen in the Gulf of Mexico, oil companies ordered an evacuation of personnel. The DOC TIDE, a 220-foot supply vessel, was dispatched to the OCEAN ROVER platform to evacuate the workmen there.

d'Augereau was employed as a crane operator on the OCEAN ROVER. He operated the crane to evacuate the crew on the rig, except for himself and the rig mechanic. d'Augereau and the mechanic completed securing the rig before evacuating. They obviously could not use the crane to be lowered to a waiting boat so they rigged a swing rope to swing to the DOC TIDE.

The captain of the DOC TIDE backed the stern of the vessel as close as he could to the position from which the plaintiff was swinging from the rig. The seas were approximately eighteen feet high and the vessel was rising and falling in those seas. d'Augereau swung from the platform and instead of swinging over the deck of the vessel he struck the outside stern railing of the DOC TIDE with his left hip. Members of the DOC TIDE crew grabbed d'Augereau and pulled him to safety.

d'Augereau argued in the district court that the captain of the DOC TIDE was negligent primarily in two respects: 1) d'Augereau's transfer from the rig to the vessel on a swing rope was so dangerous that it should not have been attempted; the DOC TIDE should have "stood by" the platform; 2) the captain should have directed that d'Augereau transfer from the platform to the vessel in a life boat. The district court in a careful opinion concluded that the actions of the DOC TIDE captain and crew were within the range of reasonable conduct required under the existing circumstances. The DOC TIDE had been instructed to evacuate personnel from the drilling rig OCEAN ROVER. The court concluded that the captain was reasonable in his concern about the worsening weather conditions in view of the fact that a tropical depression was moving into the Gulf of Mexico. We agree with the district court that the captain was reasonable in carrying out his instructions to evacuate the personnel in the Gulf of Mexico. d'Augereau testified that he wanted to be evacuated from the OCEAN ROVER, and the court found that there were no good alternative means of transferring to the vessel other than the swing rope. The district court did not clearly err in determining that the swing rope was a reasonable method available to transfer d'Augereau. The court found it doubtful that d'Augereau or his mechanic would have agreed to use life boats in the existing hazardous sea conditions.

The district court's findings that the captain and crew of the DOC TIDE acted reasonably under the circumstances and thus were guilty of no negligence is amply supported by the record evidence.

Because the district court's findings are not clearly erroneous,
the court's judgment is

AFFIRMED.