IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4338
Summary Calendar

KEVIN P. BERTRAND,

Plaintiff-Appellee,

VERSUS

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.,

Defendant,

GRACE OFFSHORE COMPANY, INC.,

Defendant,

and

JOHN E. GRAHAM & SONS,

Defendant-Appellant,

VERSUS

INSURANCE COMPANY OF NORTH AMERICA,

Intervenor-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(90 CV 2452)

January 14, 1994

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Kevin Bertrand, a filtration technician employed by Pro-T Company, was dispatched to a Mobil Oil Exploration & Producing Southeast, Inc. ("Mobil"), fixed production platform located in the Gulf of Mexico and was injured during a transfer from the M/V MISS SYBIL to the platform. John E. Graham & Sons ("Graham"), the owner and operator of a vessel used to transfer Bertrand, appeals the district court's denial of judgment as a matter of law after a jury verdict in Bertrand's favor. Finding sufficient evidence to support the verdict, we affirm the judgment of the district court, including the imposition of full damages against Graham.

I.

On December 10, 1989, Bertrand was dispatched to a job on a Mobil fixed production platform located in South Marsh Island Block 205, in the Gulf of Mexico. Grace Offshore Company ("Grace") had previously contracted with Mobil to provide the rig in connection with workover operations. Graham had contracted with Mobil to provide transportation support services in connection with personnel and supplies transported from the Mobil base in Louisiana to various offshore platforms.

Bertrand was assigned to be transported to Block 205 on board the M/V MISS SYBIL, a 140-foot crew-supply vessel owned and

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

operated by Graham. After arriving at the platform, Bertrand was off-loaded from the vessel onto a platform by way of a Billy Pugh personnel basket attached to a crane operated by Grace. The wind conditions and wave heights were disputed at trial, but Bertrand testified that he heard a "crunch" when the basket was lifted off the deck of the vessel. Bertrand later complained of neck stiffness and ultimately was diagnosed as having ruptured two cervical disks.

On October 15, 1990, Bertrand brought suit in state court against Mobil. Mobil removed the case to federal court, and in March 1992, Bertrand named Graham and Grace as additional defendants. On April 21, 1992, the Insurance Company of North America ("INA") filed an intervention in the matter, seeking to recover longshore and harbor workers' compensation benefits.

At the close of the plaintiff's case at trial, Mobil and Grace were dismissed on their motions, Mobil as a result of lack of "operational control" and Grace as a result of not being a solidary obligor with a defendant that had been sued within a year. The jury returned a verdict for Bertrand in the amount of $346,000 plus legal interest on $98,500, assigning fifty percent fault to each of Graham and Grace. The district court also granted judgment in favor of INA against Bertrand. Graham filed a motion for judgment as a matter of law, which was denied.

II.

Graham argues that the district court erred in denying its motion for judgment as a matter of law, an issue we review de novo. Charles E. Beard, Inc. v. McDonnell Douglas Corp., 939 F.2d 280, 282 (5th Cir. 1991). Judgment as a matter of law will be granted only if, under the governing law, there can be but one reasonable conclusion as to the verdict. As in the case of a motion for summary judgment, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); McKethan v. Texas Farm Bureau, 996 F.2d 734, 740 (5th Cir. 1993). Furthermore, the inferences are to be viewed in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Barnett v. I.R.S., 988 F.2d 1449, 1453 (5th Cir. 1993).

Graham claims that there was no evidence to support the jury's finding that Bertrand was injured during the transfer to the platform and that there was no evidence to support the jury's finding that Graham was liable for the alleged injury. We disagree.

As to the existence of an injury, several doctors testified that Bertrand hurt his neck somewhere between the dock and the rig and that it was possible that he was injured while being abruptly lifted by the crane. Furthermore, Bertrand testified that he heard a "crunch" while being lifted. Although the evidence did not conclusively show that the injury occurred during the crane

transfer, the jury decided that Bertrand hurt his neck at that time. This determination was based upon sufficient evidence.

As to the liability issue, Bertrand alleged that Graham negligently allowed the transfer to take place in rough weather and high seas. Bertrand's expert testified that it would not be safe to off-load men in a personnel basket in a "significant eight-foot sea" with winds of 25 to 30 miles per hour. Various testimony pegged the wave height at between six and eight feet. Although this is admittedly a close issue, we conclude that based upon the testimony at trial, the jury had a sufficient evidentiary basis to conclude that Graham negligently allowed the transfer.

III.

Graham also contends that it should be forced to pay only the portion of damages proportionate to its share of fault. But it is a well-settled principle of maritime law that every one of several tortfeasors is liable for the full amount of an injured plaintiff's damages. Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256 (1979); Hardy v. Gulf Oil Corp., 949 F.2d 826 (5th Cir. 1992); Simeon v. T. Smith & Sons, Inc., 852 F.2d 1421 (5th Cir. 1988), cert. denied, 490 U.S. 1106 (1989).[1]

AFFIRMED.

[1] Because of the jury's unchallenged finding that Bertrand was not contributorily negligent, the issue raised in the partial dissent in Simeon is not present in this case.