

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-4882
Summary Calendar

SHERMAN MOUTON, SR.,

Plaintiff-Appellant,

VERSUS

CAMERON OFFSHORE BOATS, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas

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UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-4933
Summary Calendar

SHERMAN MOUTON, SR.,

Plaintiff-Appellee,

VERSUS

CAMERON OFFSHORE BOATS, INC., ET AL.,

Defendants,

CAMERON OFFSHORE BOATS, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

(1:91-CV-746)

(February 18, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

OPINION

We address in this joint opinion both of the above-referenced appeals which arose out of the same lawsuit at the trial level. On June 15, 1990, Sherman Mouton, Sr. ("Mouton") was serving as a deck hand on board the 42' vessel, *M/V Monique McCall*, which was being operated by his employer, Cameron Offshore Boats, Inc. ("Cameron") as a supply vessel furnishing assistance to the oil spill clean-up operations resulting from the explosion and fire aboard the super tanker "Megaborg" which had occurred on June 10, 1990. These clean-up operations were located approximately 60 miles offshore from Galveston, Texas, and on the day in question, the *M/V Monique McCall* attempted to make a trip from the Port of Galveston to the clean-up site, but was forced to return to port because of heavy seas. Two or three weeks later, Mouton began to experience numbness in his right leg, which got progressively worse with time until the numbness affected his entire right side. In September, 1990, Mouton went to a hospital emergency room and was subsequently diagnosed as having herniated disks in his spine at several levels. In August 1991, Mouton sued Cameron and other defendants under the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jones Act and unseaworthiness theories, as well as for maintenance and cure, for the damages which he claimed resulted from the substantial pounding which he experienced during the aborted trip on June 15, 1993. The other defendants settled, and Mouton's claims against Cameron were tried to the district judge without a jury. After hearing plaintiff's evidence, the district judge dismissed Mouton's Jones Act and unseaworthiness claims on Cameron's motion under Fed. R. Civ. P. 52(c). Later on, the district judge considered further argument and evidence pertaining to Mouton's claim for continued maintenance and cure and ultimately ruled that Mouton was entitled to continued maintenance and cure benefits.

Mouton timely appealed from the district judge's dismissal of his Jones Act and unseaworthiness claims; and Cameron timely appealed from the rulings of the Court regarding continuance of maintenance and cure.

We have carefully reviewed the briefs, the reply briefs, the record excerpts and pertinent portions of the record itself. We are satisfied that the trial judge's findings that (i) there was no unseaworthiness on the part of the M/V *Monique McCall* and (ii) no negligence on the part of the captain operating the vessel as he did on June 15, 1990 are well within the range of credible evidence and are not clearly erroneous. Consequently, we affirm the dismissal of the plaintiff's Jones Act and unseaworthiness claims under Rule 52(c). Similarly, we are satisfied that the trial judge's finding that the difficulties experienced by Mouton with

his back prior to his employment by Cameron were not causally related to the ruptured disks which Mouton suffered as a result of his employment on the vessel is clearly within the range of credible medical expert testimony and is not clearly erroneous. Consequently, we affirm the judgment of the trial court ordering continuance of maintenance and cure benefits.

AFFIRMED.