IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4940
Conference Calendar

DELLA M. LANTZ,

Plaintiff-Appellant,

versus

SHRM CATERING SERVICES, INC.
and GULF PERSONNEL SERVICES INC.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:91-CV-1033
- - - - - - - - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Della M. Lantz argues that the district court erred by concluding that she was not a seaman, by summarily determining that the M/V TORTUGA was not a "vessel" as a matter of law, and by determining that she was not permanently assigned to a vessel or fleet of vessels at the time of her accident.

"[S]eaman status under the Jones Act is a question of fact for the jury." McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 355, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991). However, "summary

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment may be appropriate when there is no evidence from which reasonable persons might draw conflicting inferences on any of the elements of the seaman test." Ducote v. V. Keeler & Co., 953 F.2d 1000, 1002-03 (5th Cir. 1992). This Court reviews the district court's ruling on a motion for summary judgment de novo. Ladue v. Chevron, U.S.A., Inc., 920 F.2d 272, 273 (5th Cir. 1991). The evidence and any inferences are viewed in the light most favorable to the party opposing the motion. Clay v. Union Carbide Corp., 828 F.2d 1103, 1104 (5th Cir. 1987).

To qualify as a Jones Act seaman, a worker must: (1) be permanently assigned to or perform a substantial part of her work on a vessel in navigation or an identifiable fleet of vessels and (2) perform duties which contribute to the function of the vessel, the accomplishment of its mission, or the operational welfare of the vessel. Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959), adopted in pertinent part, McDermott, 498 U.S. at 354-55. "The standard for determining seaman status for purposes of maintenance and cure is the same as that established for determining status under the Jones Act." Hall v. Diamond M Co., 732 F.2d 1246, 1248 (5th Cir. 1984).

"The inquiry into seaman status is of necessity fact-specific; it will depend on the nature of the vessel, and the employee's precise relation to it." McDermott, 498 U.S. at 356. "The key to seaman status is employment-related connection to a vessel in navigation." Id. at 355.

"The term `in navigation' means engaged in an instrument of commerce and transportation on navigable waters." Williams v.

Avondale Shipyards, Inc., 452 F.2d 955, 958 (5th Cir. 1971) (internal quotation and citation omitted). "[A] ship undergoing sea trials is not `in navigation' for purposes of the Jones Act." Reynolds v. Ingalls Shipbuilding Div., Litton Systems, Inc., 788 F.2d 264, 267 (5th Cir.) cert. denied, 479 U.S. 885 (1986). "For there to be a seaman, there must first be a ship. And an incompleted [sic] vessel not yet delivered by the builder is not such a ship." Williams, 452 F.2d at 958.

Lantz does not dispute that, at the time of her alleged injury, the M/V TORTUGA was not yet delivered to the U.S. Navy and was engaged in a sea trial. Therefore, the M/V TORTUGA was not a vessel in navigation, and Lantz does not qualify as a seaman under the Jones Act or under the general maritime law.

Lantz was not assigned to an identifiable fleet of vessels. A "fleet" is an identifiable group of vessels acting together or under one control. Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067, 1074 (5th Cir. 1986) (en banc). A "fleet" is not "any group of vessels an employee happens to work aboard." Id.

According to her affidavit, Lantz had been assigned by SHRM to work on Odeco's OCEAN AMERICA, the M/V TORTUGA, and Western Company of North America's NIKE I. Denise Aery-Clewis, claims administrator for SHRM, stated in her affidavit that "Lantz was part of a labor pool whose work assignments depended on which SHRM customer required catering and related services at a particular time."

The district court's conclusion that Lantz is not a seaman was correct. The defendants established that there is no genuine

issue of material fact for trial concerning Lantz' seaman status and that they are entitled to judgment as a matter of law.

AFFIRMED.