

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-5091
Summary Calendar
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ELI AUBEY, JR.,

Plaintiff-Appellant,

versus

NOBLE DRILLING (U.S.), INC.

Defendant-Appellee.

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Appeal from the United States District Court for the
Western District of Louisiana
(92-CV-672)

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(May 25, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant Eli Aubey, Jr. (Aubey), rig maintenance supervisor aboard the JIM BOWCOM drilling rig, was injured while attempting to lift part of a screw compressor over the coaming of a door between the "parts" room, where the part was located, and the "Halliburton" room, which was located between the parts room and the compressor room. He injured his leg and back, and has not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

been able to return to work since. He filed the instant action against his employer, defendant-appellee Noble Drilling (U.S.), Inc. (Noble), alleging that he was a seaman and a member of the crew of the vessel JIM BOWCOM.¹ He alleged that the injury to his back and leg was caused by the negligence of Noble, in that Noble failed to provide a safe place to work, failed to provide a full crew aboard the vessel, failed to adequately train him on proper and safe work methods, and failed to provide proper equipment. He also alleged that the JIM BOWCOM was unseaworthy.

A bench trial was held and, at the close of the plaintiff's case, Noble moved for a judgment as a matter of law pursuant to Fed. R. Civ. P. 50. The district court granted the motion and dismissed the case.

Aubey argues that the district court was without the authority to grant defendant Noble's motion for a judgment as a matter of law under Fed. R. Civ. P. 50 because that motion relates only to jury trials and the instant case was tried before a judge. Although Aubey is correct in pointing out that Rule 50 relates to jury trials only, the federal rules clearly authorize a judge in a non-jury trial to enter a judgment as a matter of law based on partial evidence. Fed. R. Civ. P. 52(c).

The intent of Noble and the trial court was clear: Noble intended to move for judgment following the presentation of plaintiff Aubey's evidence; the trial court intended to grant that

¹ Aubey refers to the vessel as the "JIM BOWCOM," while Noble refers to it as the "JIM BAWCOM." It will be referred to throughout as the "JIM BOWCOM."

motion and dismiss the case based upon Aubey's failure to establish Noble's negligence. As the Rules expressly authorize a judge in a non-jury trial to make this finding and enter this judgment, the failure of Noble and the district court to properly denominate it should not undermine the judgment itself.

As the advisory committee's note to Rule 52(c) reflects, it replaces that portion of Fed. R. Civ. P. 41(b) applicable in bench trial cases to involuntary dismissals at the close of the plaintiff's case. In such a dismissal, the district court "is to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies." 9 Wright & Miller, *Federal Practice and Procedure: Civil* § 2371 at 225 (footnote omitted). Hence, we review the district court's judgment under the same standard as in other bench trial cases.

Aubey challenges the district court's conclusion that Noble was entitled to judgment because he had failed to establish that Noble was negligent or that the JIM BOWCOM was unseaworthy. Aubey's complaint alleged that Noble was negligent under the Jones Act, and that the JIM BOWCOM was unseaworthy. Negligence, seaworthiness, and causation are questions of fact in admiralty actions. *Gavagan v. United States*, 955 F.2d 1016, 1019 (5th Cir. 1992); *Verdin v. C & B Boat Co., Inc.*, 860 F.2d 150, 154 (5th Cir. 1988). When, as here, the action is tried without a jury, the district court's findings are reviewed on appeal under the clearly erroneous standard, giving due regard to the district court's opportunity to judge the credibility of the witnesses. Fed. R.

Civ. P. 52(a); *Johnson v. Offshore Express, Inc.*, 845 F.2d 1347, 1352-53 (5th Cir.); *cert. denied*, 488 U.S. 968 (1988). A finding is clearly erroneous if, when reviewing the record as a whole, the appellate court is "left with the definite and firm conviction that a mistake has been committed." *Gavagan* at 1019 (internal quotations and citation omitted).

The plaintiff's burden in showing causation in a Jones Act negligence action is "featherweight," and evidence of the slightest negligence will sustain a finding of liability. *Johnson*, 845 F.2d at 1352. The district court concluded, after hearing Aubey's evidence, that, "I think based on the evidence that's been produced in the trial, the plaintiff did not bear its burden in proving to this Court even by a minimalSOa minuscule amount of evidence that the defendants in this matter were negligent in any way, shape or form."

The district court based its conclusion on the following findings, *inter alia*: Aubey, as supervisor, had the authority to cease any action he felt was unsafe; the testimony established that the piece of equipment weighed between 150 and 200 pounds and that, under the circumstances, moving such a piece of equipment was neither unreasonable nor unsafe; and that Aubey, with twenty-five years of experience in moving equipment aboard drilling rigs, would know and understand how to move such equipment.

Aubey's own testimony established that he was in charge of the operation, and that it was completely within his authority to stop moving the compressor or to move it in a different manner. The

testimony from Aubey's safety expert established that manually moving this particular piece of equipment over a ten-inch coaming, using a pry bar, was not unreasonable. Therefore, as the district court's conclusions find support in the trial record, they are not clearly erroneous and should be affirmed.

The district court also granted Noble's motion for judgment on Aubey's claims that the JIM BOWCOM was unseaworthy. To be seaworthy, "a vessel and its appurtenances must be reasonably suited for the purpose or use for which they were intended." *Johnson*, 845 F.2d at 1354. It is the shipowner's absolute duty to furnish a seaworthy vessel. *Id.* In order to prevail on a claim of unseaworthiness, however, a plaintiff must satisfy a higher burden of causation than in a Jones Act claim. The plaintiff must prove that the unseaworthy condition played a substantial part in causing the injury, and that the injury was either a direct result or "a reasonably probable consequence" of the unseaworthiness. *Id.*

Although unseaworthiness may be manifested by an unsafe method of work, *id.* at 1355, the evidence from the trial does not establish that the work methods for moving the compressor aboard the JIM BOWCOM were unsafe. Again, Aubey's expert testified that manually moving the compressor was not an unsafe method, although using a come-a-long would have been better. Thus, the district court's conclusion that the JIM BOWCOM was not unseaworthy was not clearly erroneous.

Accordingly, the district court's judgment is

AFFIRMED.