

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5545
Summary Calendar

MELVLIN J. RICHARD,

Plaintiff-Appellee,

versus

TIDEWATER, INC.,

Defendant-Appellant.

Appeal from the United States District Court for
the Western District of Louisiana
(6:91 CV 2092)

(June 9, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

While surveying the deck of the M/V Hilton Tide, Melvin Richard, Sr. (a longshoreman) inadvertently slipped on some drilling mud and fell, injuring his back. Richard sued Tidewater, Inc., the owner of the ship. After a bench trial, the court entered judgment in favor of Richard for \$156,744.32,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

having apportioned 50% of the responsibility to Richard and 50% to Tidewater. Tidewater appeals. We reverse.

The trial court found that the drilling mud was easy to see and that Richard "did not complain about the work area, nor did he request that it be hosed down before commencing to load pipe, nor did he request permission to have his loading crew hose down the deck themselves." From these facts, the court held that Tidewater negligently allowed the dangerous condition to exist and failed to warn Richard about it. We review the trial court's application of the law to the facts *de novo*. *Michel v. Total Transp., Inc.*, 957 F.2d 186, 189 (5th Cir. 1992).

A shipowner must turn over the ship to the stevedore "in such a condition that an expert stevedore acting with reasonable care can conduct cargo operations reasonably safely." *Kirsch v. Plovodba*, 971 F.2d 1026, 1029 (3d Cir. 1992). A shipowner does not breach this duty when "the defect is open and obvious and one that the [plaintiff] should have seen," unless the plaintiff's only alternative for avoiding the hazard is "unduly impracticable or time-consuming." *Pimental v. Ltd Canadian Pacific Bul*, 965 F.2d 13, 16 (5th Cir. 1992).

Given that Richard must have seen or, at least, should have seen the mud on the deck, Tidewater would be negligent only if avoiding or removing the mud was "unduly impracticable or time-consuming." Here, it was neither. Richard was "stepping off" the deck to make sure the pipes would fit, and it is unfortunate Richard chose the path that he did, because the section of the

deck covered with mud was not in the area where the pipes were to be loaded. After Richard slipped, the loading began because the mud was easily avoided. There is no factual basis for finding Tidewater negligent. See e.g., *id.* (finding no shipowner negligence where longshoreman slipped on oil and grease that could have been cleaned quickly and easily); *Kirsch*, 971 F.2d at 1033-34 (concluding that shipowner could reasonably rely on stevedore to clean up the oil spill).

Richard relies on testimony from a Tidewater employee that washing the mud from the deck was pointless because mud would ooze back up through the plank boards. If the deck had been visibly clean and Richard slipped because of mud seeping through the boards, the evidence might have supported a negligence claim of failing to warn about known, nonobvious hazards. Here, however, Richard slipped on drilling mud carpeting the boards in plain view.

As an alternative basis for the court's holding, Richard claims the evidence supports Tidewater's negligence because it "never relinquished control over the deck of its responsibility to keep the deck clean." See *Scindia Steam Navigation Co., v. De Los Santos*, 101 S. Ct. 1614, 1622 (1981) (holding that a shipowner can be held liable if the injury was caused by hazards "under the active control of the vessel during the stevedoring operation"). The record does not establish that the deck was under the active control of Tidewater for purposes of the stevedore's entry there.

REVERSED. CASE DISMISSED.