IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7751
Summary Calendar

ARTHUR RAY BREAZEALE and MONITA BREAZEALE,

Plaintiffs-Appellants,

and

GRAY INSURANCE CO.,

Intervenor-Plaintiff-Appellant

CHEVRON, USA, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Mississippi
(90-CV-175)

(May 19, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

This appeal is from a district court judgment dismissing Arthur and Monita Breazeale's claims[1] for damages arising from an injury Mr. Breazeale suffered in the course of his work in the Main Pass Block 69 field in the territorial waters of Louisiana. We affirm.

I

On February 2, 1990, Arthur Breazeale was employed by Danos & Curole Marine Contractors, which contracted for him to work for Chevron U.S.A. Inc. as a roustabout in the Main Pass Block 69 field where he had worked for approximately twenty (20) years. At that time, Breazeale, along with Chevron operator T. S. Schena, was assigned to work at Chevron's Main Pass Block 69 Shallow Water Production Platform #2 ("Platform #2") which is located in the territorial waters of Louisiana. His job on that day was to help reopen the Platform #2, which had been previously shut down. When Ms. Schena began to throttle the well's manumatic valve to activate it, Breazeale and Schena heard loud popping noises, which indicated too much pressure was entering the system. Breazeale immediately instructed Schena to move out of the way so he could attempt to shut the valve off. Before he could close the valve, the cover of the valve blew off and hit him. Pursuant to Louisiana law,

[1]After this case was fully briefed, Mr. Breazeale filed a motion for substitution of parties, stating that his wife, Monita Breazeale, had died intestate, and requesting that he, as administrator of her estate, be substituted for her as an appellant. We grant the motion for substitution of parties.

Breazeale received workers' compensation for his injuries, but he also filed this action against Chevron, alleging Chevron intentionally caused his injuries and that Chevron was liable under the Longshore Harbor Workers Compensation Act (LHWCA).[2]

Chevron moved for summary judgment on the intentional tort claim, asserting that workers' compensation was the plaintiff's sole remedy under state law. The district court granted the motion, rejecting the plaintiff's argument that Chevron had committed an intentional tort, thus, prohibiting the plaintiff from pursuing additional state law remedies. Chevron later moved for summary judgment on the plaintiff's claims under the Longshore Harbor Workers Compensation Act, which the district court also granted. The Breazeales appeal the district court's entry of summary judgment on both claims.

II

We review a district court's grant of summary judgment de novo, applying the same standard as the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989). Summary judgment is appropriate if the pleadings, depositions, admissions and answers to interrogatories, together with affidavits, demonstrate that no genuine issue of material fact remains. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). If the

[2]The plaintiffs initially also sought relief under the Outer Continental Shelf Act, 43 U.S.C. § 1331, but have abandoned that claim on appeal.

record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III

The plaintiffs argue first that the district court improperly held that the intentional tort exception to the Louisiana Workers' Compensation Act was not applicable to the plaintiffs' claims. Under Louisiana law, an employee who sustains a work-related injury is generally limited to the exclusive remedy of workers' compensation. La. Rev. Stat. 23:1032. If, however, the injury was the result of an intentional tort, the employee may sue the employer directly. La. Rev. State. 23:1032. For purposes of an intentional tort, the "meaning of intent in this context is that the defendant either desired to bring about the physical results of his act or believed they were substantially certain to follow from what he did." Bazley v. Tortorich, 397 So.2d 475 (La. 1981).

The plaintiffs argued that summary judgment was not appropriate because of proof that Chevron knew of the defect in the valve, and that another Chevron employee had advised his supervisor that someone would be killed if the valve were not repaired. In its very able and well-reasoned opinion, the district court properly held that there are no genuine questions of material fact and that, as a matter of law, this proof does not rise to the level of an "intentional tort" under Louisiana law. We affirm the

district court and adopt its reasoning as set forth in its opinion.

IV

The plaintiffs next argue that the district court erred in granting summary judgment on its claim under the LHWCA. A worker must satisfy both a "status" and a "situs" test to qualify for coverage under the LWHCA. "[I]n the words of the statute, he must show that, at the approximate time he incurred disability or death, he was `engaged in maritime employment,' 33 U.S.C. § 902(3), and that his injury `occurred upon the navigable waters of the United States.'" Munguia v. Chevron U.S.A., 999 F.2d 808, 811 (5th Cir. 1993). The district court held that Breazeale failed to satisfy the "status" test, that is, to demonstrate that he was "engaged in maritime employment" and we agree.

In interpreting the "status" test, the Supreme Court has stated that "Congress did not seek to cover all those who breathe salt air. Its purpose was to cover those workers on the situs who are involved in the essential elements of loading and unloading." Herb's Welding, Inc. v. Gray, 470 U.S. 414, 423 (1985). Not all "loading and unloading," however, will satisfy the test. The plaintiff in Munguia travelled between field platforms and other structures where he loaded and unloaded the tools and equipment that he needed for his work. 999 F.2d at 812. We held, however, that neither "the mere fact that Munguia may have loaded and unloaded [small amounts of supplies] onto his skiff" nor his incidental boat repairs satisfies the "status" test because they

were intended to further the maintenance of wells and not loading and unloading of cargo. 999 F.2d at 813.

> In short, Munguia's daily activities as a pumper-gauger were intrinsically related to the servicing and maintenance of fixed platform wells--wells, moreover, almost indistinguishable from those built and maintained by Gray. Like Gray's welding activities, Munguia's tasks involve 'nothing inherently maritime.'

999 F.2d at 813.

With these principles in mind, we turn to the proof before the district court. Chevron moved for summary judgment as to Breazeale's coverage under the LHWCA, based on Breazeale's deposition testimony as to his work activities. In his deposition, Breazeale testified that he was injured on an offshore platform, and that he assisted the gauger who is responsible for taking tests, sampling oil, checking tubing pressure and flow line pressure, and generally making sure that the structure and flow run properly. He stated that this work filled 85 - 90% of his time and that in the remaining time, he did carpentry and plumbing work and generally everything. This testimony satisfied Chevron's summary judgment burden because there was nothing in Breazeale's deposition to indicate that he performed any amount of work that was "inherently maritime."

In opposition to the motion for summary judgment, Breazeale submitted his affidavit, describing additional work that he did.[3]

[3]In the light of our conclusion that the affidavit does not raise a genuine question of material fact, we need not address Chevron's contention that the affidavit conflicts materially with

In that affidavit, Breazeale stated that he was a "roustabout pusher"; that he met with other workers each day, and they were transported to the platforms and wells by boat; that all of his work was done on a crew boat or jack-up barge; that he "unloaded supplies" each Tuesday and Thursday, sometimes by hand and sometimes by jack-up barge for extremely heavy items, such as drums of chemicals, pipe, heavy equipment, and tools; that his unloading work sometimes took several hours; that he operated a crane on the jack-up barge to unload material from the supply boat, then traveled on the barge and worked on it for unloading; that he also worked at single wells and, on one occasion, lifted chemicals from a barge by crane and then unloaded them at the wells; and that he also worked from the jack-up barge to open and test wells. He opined that he spent roughly 2 1/2 to 4 1/2 hours on the water for routine inspections.

Even construing Breazeale's affidavit in the light most favorable to him, he has failed to demonstrate the existence of a genuine question of material fact, that is, such evidence "that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). We look to applicable substantive law to determine what facts are material. Calpetco 1981 v. Marshall Exploration, Inc., 989 F.2d 1408, 1413 (5th Cir. 1993). In this case, a "material fact" is one that would

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Breazeale's deposition testimony.

support the position that Breazeale's work furthered a maritime-related purpose or furthered the loading or unloading of cargo rather than the maintenance of wells. Breazeale's affidavit does state that he was involved in "loading and unloading" but does not describe with any specificity the items that he was loading and unloading or provide any explanation of how that work was maritime-related rather than well-related. The assertion that Breazeale has satisfied the "status" test is not supported by facts and is insufficient to oppose Chevron's motion for summary judgment. Williams v. Weber Management Services, Inc., 839 F.2d 1039, 1041 (5th Cir. 1987). Accordingly, the district court properly granted the motion for summary judgment.

V

For the reasons set forth above, the judgment is

A F F I R M E D.