

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7773

EDDIE JACKSON, JR., ET AL.,

Plaintiffs-Appellants,

VERSUS

THE ARMSTRONG RUBBER COMPANY and CONDERE
CORPORATION d/b/a Fidelity Tire and Manufacturing Company,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-3:90-129(B))

(December 23, 1994)

Before WISDOM, KING, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Plaintiff/Appellant landowners sued Armstrong Rubber Company, Condere Corporation, and Fidelity Tire in connection with chemical leaks and runoff from a tire manufacturing plant nearby their property. The district court granted Defendants' motion for summary judgment, dismissing Plaintiffs' causes of action for negligence, nuisance, trespass, and claims under CERCLA. On

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appeal, Plaintiffs complain that summary judgment was improperly entered against them and that the district court abused its discretion in refusing to allow an amendment to their complaint. We affirm.

I.

Plaintiffs first argue that an issue of material fact precludes summary dismissal of Plaintiffs' claims.

The district court dismissed the trespass claims,² noting the Plaintiffs' failure to demonstrate that any chemical physically invaded their property. We find no error in that dismissal. See Blue v. Charles F. Hayes & Assoc., 215 So.2d 426, 429 (Miss. 1968) (trespass occurs if there is a "direct infringement," meaning "actual physical invasion," of another's right of property).

Plaintiffs now charge Defendants with strict or absolute liability for damage caused by ultrahazardous activity. Because Plaintiffs have introduced no evidence that demonstrates damage to their persons or their property, they fail to support an action under a theory of strict liability.

Plaintiffs also fail to support their cause of action for nuisance. Having failed to demonstrate that they suffered any damage,³ Plaintiffs cannot prove their claim for either public or

² There was a genuine issue of material fact with respect to plaintiff Laura Hardin's trespass claim, but she later voluntarily dismissed her trespass claim.

³ Though Hardin could show contamination of her property, the court dismissed her nuisance claim for failure to demonstrate interference with the use and enjoyment of her land. Because the

private nuisance. See Comet Delta, Inc. v. Pate Stevedore Co., 521 So. 2d 857, 860 (Miss. 1988) (defining private nuisance as an intentional or unreasonable invasion of another's interest in the private use and enjoyment of land and public nuisance as an unreasonable interference with a right common to the general public); Berry v. Armstrong Rubber Co., 989 F.2d 822, 829 (5th Cir. 1993) (requiring plaintiff to present evidence of an invasion by defendants in order to withstand summary judgment on nuisance claim), cert. denied, 114 S. Ct. 1067 (1994); see also Comet Delta, 521 So.2d at 861 (recognizing rule allowing recovery of damages for public nuisance only if plaintiffs demonstrate that they "sustained harm different in kind, rather than in degree, than that suffered by the public at large").

The district court properly dismissed the mental distress claim, because Plaintiffs produced no proof of any physical injury or of wanton or willful actions by Defendants. See Jackson v. Johns-Manville Sales Corp., 781 F.2d 394, 414 (5th Cir.) (recognizing recovery for mental distress under Mississippi law only if mental distress is accompanied by physical injury or if defendant acted willfully or wantonly), cert. denied, 478 U.S. 1022 (1986).

We find no error in the summary dismissal of Plaintiffs' remaining claims, including the claim for punitive damages. The district court held that because no Plaintiffs other than Hardin

record does not support Hardin's claim, we affirm the district court's dismissal of her private nuisance claim.

could state a cause of action entitling them to compensatory damages, by implication, the court could not award such other Plaintiffs punitive damages. The court also held that Hardin was not entitled to punitive damages because she could not show wantonness or willfulness on the part of Defendants. Plaintiffs present nothing that warrants disturbing the district court's decision. See United States Industries, Inc. v. McClure Furniture Co., 371 So. 2d 391, 393 (Miss. 1979) (allowing punitive damages only if defendant's wrongful conduct demonstrates wanton or willful disregard for safety of others).

II.

Plaintiffs also complain that the district court erred in denying their motion to amend their complaint to add twenty-three plaintiffs and a cause of action for air pollution. Rule 15(a) states that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Determining whether under Rule 15(a) "justice requires" leave to amend rests within the discretion of the district court. Daves v. Payless Cashways, Inc., 661 F.2d 1022, 1024 (5th Cir. Unit A Nov. 1981). Finding no abuse of discretion in the court's denial of leave to amend, we affirm. See Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 598 (Former 5th Cir. 1981) (recognizing undue prejudice to the opposing party as ample justification for denial of leave to amend).

Accordingly, we AFFIRM.