

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30202
Summary Calendar

Timothy J. Holifield,

Plaintiff/Appellant,

versus

Great Lakes Dredge & Dock Company, et al.,

Defendants/Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 92 1935 A)

(April 18, 1995)

Before JOHNSON, HIGGINBOTHAM, and SMITH, Circuit Judges.*

JOHNSON, Circuit Judge:

The district court granted summary judgment to the defendants on the ground that plaintiff was not a seaman as the spud barge on which he worked was not a vessel and because admiralty jurisdiction did not exist. Plaintiff appeals and we AFFIRM.

I. FACTS AND PROCEDURAL HISTORY

In July of 1991, Great Lakes Dredge & Dock Company (Great Lakes) entered into a contract with the Port of New Orleans to construct a wharf along the approximately 1800-foot area on the east bank area of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the Mississippi River at Nashville Avenue. To accomplish this task, Great Lakes chartered three deck barges from Marmac Corporation, d/b/a McDonough Marine Service, Inc. (McDonough). These barges served as platforms for three cranes, to be used to drive piles into the riverbed, leased from Essex Crane Rental Corporation (Essex).

Timothy Holifield began working as a pile driver for Great Lakes in January of 1992. In that capacity, his duties included hooking up leads and connecting cables to the crane and pilings so that the crane could drive the piles into the mud along the riverbank. Holifield claims that, while working on the barges in issue, he was injured on two separate occasions. In the first incident, on January 26, 1992, Holifield alleges that he injured his back when he slipped off the template due to some oil and debris on the barge's surface. On February 6, 1992, Holifield contends that he re-injured his back while riding in a personnel basket that, in a sudden free-fall, fell about ten to twenty feet.

In redress of his injuries, Holifield sued Great Lakes and McDonough asserting claims for negligence under the Jones Act¹ and unseaworthiness under the general maritime law and alternatively for negligence under section 905(b) of the Longshore and Harbor Workers Compensation Act (LHWCA).² In an amended complaint, Holifield added Essex as a defendant asserting admiralty jurisdiction.

The district court, upon a motion for reconsideration, concluded that the barges on which Holifield worked were not vessels in

¹ 46 U.S.C. § 688.

² 33 U.S.C. § 901, *et. seq.*

navigation and thus granted summary judgment dismissing Holifield's claims against Great Lakes and McDonough. Moreover, treating Essex's motion for judgment on the pleadings as a motion for summary judgment, the district court dismissed Holifield's claims against Essex finding that his claims were not within its admiralty jurisdiction and had prescribed under Louisiana law. Judgment was entered in favor of all defendants on March 22, 1994 and Holifield timely appealed.

II. DISCUSSION

A. Was There a Vessel?

The key inquiry in this case is whether the barges in issue herein were "vessels." This is because to "qualify as a seaman under the Jones act or General Maritime Law the plaintiff must show that he was permanently assigned to or performed a substantial part of his work aboard a vessel." *Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F.2d 393, 395 (5th Cir. 1989) (emphasis added). Similarly, section 905(b) claims under the LHWCA require proof that the injury occurred as a result of the negligence of a vessel. *Id.*

Although seaman status is ordinarily a question for the jury, summary judgment may be appropriate "where the facts establish [the lack of seaman status] beyond question as a matter of law and no reasonable evidentiary basis exists to support a jury finding that the injured person is a seaman." *Ellender v. Kiva Constr. & Engineering, Inc.*, 909 F.2d 803, 805 (5th Cir. 1990) (citations omitted). If, as in this case, the facts underlying summary judgment are undisputed, our task is "to review the facts to determine whether reasonable persons might draw conflicting inferences." *Bernard v. Binnings*

Construction Co., Inc., 741 F.2d 824, 828 (5th Cir. 1984). Where only one reasonable inference exists, we must affirm the summary judgment. *Ellender*, 909 F.2d at 806.

This Court has consistently held, as a matter of law, that floating work platforms, not used in navigation, do not constitute vessels. See, e.g., *Ellender*, 909 F.2d at 808; *Gremillion v. Gulf Coast Catering Co.*, 904 F.2d 290, 294 (5th Cir. 1990); *Ducrepont*, 877 F.2d at 395; *Waguespack v. Aetna Life & Casualty Co.*, 795 F.2d 523, 526 (5th Cir. 1986), cert. denied, 107 S.Ct. 1309 (1987); *Bernard*, 741 F.2d at 832; *Watkins v. Pentzien, Inc.*, 660 F.2d 604, 607 (5th Cir. 1981), cert. denied, 102 S.Ct. 2010 (1982); *Leonard v. Exxon Corp.*, 581 F.2d 522, 524 (5th Cir. 1978), cert. denied, 99 S.Ct. 2302 (1979); *Cook v. Belden Concrete Products, Inc.*, 472 F.2d 999, 1002 (5th Cir.), cert. denied, 94 S.Ct. 175 (1973). A review of these decisions reveals the following factors as common to the structures held not to constitute vessels as a matter of law: 1) the structures involved were constructed primarily as work platforms; 2) they were moored or otherwise secured at the time of the accident; and 3) although they were capable of movement and were sometimes moved across navigable waters in the course of normal operations, any transportation function they performed was merely incidental to their primary purpose of serving as work platforms. *Bernard*, 741 F.2d at 831.

The undisputed evidence in this case reveals that the three barges used herein were essentially identical. Each was constructed with raked bows. However, the barges had no means of self-propulsion,

no crew quarters,³ no navigational lights or equipment, and no life boats or other lifesaving equipment. The crane that each barge supported was simply a leased, land-based crane temporarily situated on timber mats on the decks of the barges. Additionally, each barge supported a tool shed, winches, and other equipment.

For the purpose of this nine-month construction project, these crane barges were used, not to transport personnel or equipment, but solely as platforms for pile driving. The barges would be spudded down to the bed of the river while a line of piles would be driven.⁴ Every three days or so, the spuds would be pulled up, the barges would be laterally moved fifty to eighty feet,⁵ the spuds would be driven down again, and the cranes would drive the next row of piles. Never during the entire project did the barges leave the 1800-foot construction site⁶ nor were they ever more than 100 yards off the bank at any time.

The district court found that these facts were sufficient, as a matter of law, to bring the crane-barges in issue herein within the family of floating work platforms that have been found to be

³ The workmen commuted to work and were taken by crew boat from the dock to the barges. Moreover, the workmen provided their own meals.

⁴ The barges were spudded down at the time of Holifield's accident.

⁵ As the barges had no means of self-propulsion, this movement would be accomplished by means of a tug boat or temporary winches on the barges. This movement took approximately 30 minutes.

⁶ In fact, the barge on which Holifield worked remained within the upper third of the worksite. Thus, the movement of that particular crane barge was limited to a 600-foot area.

nonvessels.⁷ We agree.

Holifield's main argument against this conclusion attacks the third of the *Bernard* factors. He contends that the transportation function of these crane-barges was not merely incidental to their purpose as work platforms. However, we find that the cases he cites for support are distinguishable.

Specifically, Holifield cites *Ducote v. Keeler & Co., Inc.*, 953 F.2d 1000 (5th Cir. 1992), *Sharp v. Johnson Bros. Corp.*, 917 F.2d 885, 889 (5th Cir. 1990), *cert. denied*, 113 S.Ct. 2333 (1993), and *Brunet v. Boh Bros. Constr. Co., Inc.*, 715 F.2d 196, 198 (5th Cir. 1983). In all three of these cases, this Court held that there were sufficient facts to raise a jury issue as whether the transportation function of the barges were more than incidental. However, in those cases, there was far more evidence of the importance of the transportation function of the barges. In *Ducote*, 953 F.2d at 1001-02, the scope of the project called for the barge supporting the crane to be moved five miles along the banks of the Red River. In *Sharp*, 917 F.2d at 885-86, the barges were taken on a five-mile round trip across Lake Pontchartrain once or twice a week to obtain supplies and were used to haul gravel and transport equipment. *Id.* at 887. Moreover, whenever a hurricane threatened, which happened four times, the entire flotilla was moved out of the lake to safe harbor. Finally, in *Brunet*, 715

⁷ This was also the conclusion of two other district courts in similar cases involving the same barges and co-workers of Holifield. *Billiot v. Great Lakes Dredge & Dock Corp.*, *Marmac Corp.*, d/b/a/ *McDonough Marine Service, Inc.* and *Essex Crane Rental*, C.A. No. 92-2813; *Gianelloni v. Great Lakes Dredge & Dock Company*, C.A. 92-2162.

F.2d at 198, the barge was moved to different jobsites four times within the six months preceding the accident.

In all three of the above cases, the barges were used to transport cranes either between jobsites or over a significant distance. In the instant case, by contrast, there was no transportation either between worksites or for any significant distance. Instead, there was merely repositioning of the crane-barges within the relatively small worksite. We do not find this minor amount of movement of the crane-barges sufficient for a jury to find that the transportation function of these cranes was more than incidental.

Rather, we find this case analogous to our decision in *Ellender*, 909 F.2d at 803. In that case, Kiva Construction & Engineering, Inc. leased a spud barge from another construction company to support a 110-ton crane to be used to drive piles. It then tied three other general purpose barges to the spud barge and maneuvered the structure onto the site with a tugboat. None of the barges had any means of self-propulsion. Once on site, the structure was spudded down to lay a row of piles. When a row was complete, the spuds would be pulled up, the structure would be repositioned by a tugboat, the spuds would be put back down, and the next row of piles would be driven. *Id.* at 804-05. On those facts, we found that, as a matter of law, the structure's transportation function was merely incidental to its primary purpose as a movable work platform.

Similarly, we find that the transportation function of the instant crane-barges was merely incidental to their primary purpose as

work platforms. Moreover, this conclusion is not swayed by the fact that these barges were constructed with raked bows consistent with a cargo-carrying function. This fact alone is insufficient to warrant a finding that a structure is a vessel. *See Ducote* 953 F.2d at 1003 (that barge had a raked bow not determinative that structure is a vessel); *Ellender*, 909 F.2d at 807-8 (crew quarters not indicative of a vessel); *Ducrepont*, 877 F.2d at 395 (barge designed as a cargo barge held a nonvessel). At the times of the accidents, the instant barges were spudded down to the bottom of the river, they were not functioning as vessels in navigation and were being used primarily as work platforms. Accordingly, the district court was correct in concluding that the crane-barges herein were not vessels. As there was no vessel involved herein, Holifield could not be found to be a seaman and thus could not recover under either the Jones Act or general maritime law. Further, he could not recover under section 905(b) of the LHWCA.⁸ Hence, summary judgment was appropriate.

B. Admiralty Jurisdiction

In his third amended complaint, Holifield sued Essex asserting claims in diversity and admiralty jurisdiction. Finding that Holifield's claims had prescribed under Louisiana law and concluding that admiralty jurisdiction was lacking, the district court granted

⁸ *See Richendollar v. Diamond M Drilling Co., Inc.*, 819 F.2d 124, 127-28 (5th Cir.) (en banc) (A structure that is not a vessel for purposes of maritime jurisdiction is not a vessel for purposes of a § 905(b) claim), *cert. denied*, 108 S.Ct. 331 (1987).

summary judgment⁹ in favor of Essex dismissing Holifield's claims. On appeal, Holifield does not contest the prescription holding, but he does argue that admiralty jurisdiction did exist.

The seminal Supreme Court case on the reach of federal maritime tort jurisdiction is *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493 (1972). That case enunciated the "locality-plus-nexus" test for maritime tort jurisdiction. *Id.* at 504. Under that test, admiralty jurisdiction exists when the tort occurs on or over navigable water and bears a significant relationship to traditional maritime activity. *Id.* Absent either the requisite location or nexus, there is no maritime jurisdiction. *Gaspard v. Amerada Hess Corp.*, 13 F.3d 165, 167 (5th Cir. 1994). In this case, we find the requisite nexus or connection with traditional maritime activity lacking.

The nexus or connection prong raises two issues. First, a court must assess the general features of the type of incident involved to determine whether the incident has a potentially disruptive impact on maritime commerce. *Jerome B. Grubart v. Great Lakes Dredge & Dock Company*, ___ U.S. ___, ___, 115 S.Ct. 1043, 1048 (1995). Next, a court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. *Id.*; *Sisson v. Ruby*,

⁹ Essex filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). The district court treated this motion as a summary judgment, though, because Rule 12(c) provides that if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment. . ."

497 U.S. 358, 363, n.2, 110 S.Ct. 2892, 2986, n.2 (1990).

In this case, Holifield alleges a slip and fall injury and an injury caused when a personnel basket suspended from a crane slipped and fell ten to twenty feet. Neither accident occurred as a result of negligent pile-driving and both occurred on a structure that was a nonvessel. Moreover, there is no indication that because of these accidents work was halted or that maritime traffic or activity was hindered in any way.

The general features of these incidents may be described as personal injury caused by negligent maintenance of a crane not occurring on a vessel in navigable waters. So characterized, we see no potential disruptive impact on maritime commerce. Further, there is nothing uniquely maritime about the general character of these incidents. Accidents caused by poor maintenance of a crane can happen just as easily on land as on navigable waters.

Accordingly, we conclude that the facts of this case do not bear a sufficient relationship to traditional maritime activity to support admiralty jurisdiction.¹⁰ Thus, the district court properly granted

¹⁰ The instant case is distinguishable from the facts of *Grubart*, 115 S.Ct. at 1043. In *Grubart*, the defendant, while driving piles from a crane-barge into the bed of the navigable Chicago River to repair a bridge, damaged an underwater tunnel which caused flooding in the basements of many buildings on shore. *Id.* at 1046-47. In that case, the Supreme Court found that the activity bore a sufficient relationship to traditional maritime activity to support admiralty jurisdiction. The Supreme Court reached this conclusion by reasoning that the "general features" of the incident at issue therein were "damage by a vessel in navigable water to an underwater structure," and by characterizing the "general character" of the work as "repair or maintenance work on a navigable waterway performed from a vessel." *Id.* at 1051 (emphasis added). Even though the instant case and *Grubart* are similar in that they both involved crane-

summary judgment.

III. CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.

barges and pile-driving in navigable waters, they are critically different in that the crane-barge in *Grubart* was found to have a sufficient navigational function to be considered a vessel. In the instant case, the crane-barge was not a vessel, but merely a work platform.