

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30418
Summary Calendar

JOHN RICE and MARGARET POY RICE,

Plaintiffs-Appellants,

versus

TIDEWATER, INC.,

Defendant-Appellee.

* * * * *

JOHN RICE,

Plaintiff-Appellant,

versus

UNITED STATES,

Defendant-Appellee.

Appeal from the United States District Court for
the Eastern District of Louisiana
(CA-92-0757-LLM c/w 92-3115-LLM)

(December 8, 1994)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

John Rice appeals the district court judgment against him in his maritime suit against the United States for negligence in failing to provide a competent crew. We affirm.

BACKGROUND

Tidex, Inc. ("Tidex"), a subsidiary of Tidewater, Inc. ("Tidewater"), furnished the crews for a delivery of military torpedo test crafts to the United States Navy in Keyport, Washington. Tidex chose John Rice to serve as master aboard the YTT09, a torpedo test craft vessel, for a delivery trip between Amelia, Louisiana and Keyport. Tidex assigned Roland Estay, Sr. as a mate on the journey. Estay was not trained to use the type of navigation equipment aboard the YTT09 and had trouble adjusting to the steering mechanism on the vessel. Because of Estay's difficulty in handling the vessel, Rice ordered a change in the watch schedule so that Estay was never alone on watch. As a result, Rice and the second mate were on watch for longer periods of time. On August 26, 1990, Rice suffered a stroke. The stroke occurred when an arteriovenous malformation, existing in Rice's brain since birth, began bleeding. Rice claims that the stress created by Estay's incompetence and the necessity of working additional hours precipitated his stroke.

Rice filed suit against Tidewater and Tidex, seeking recovery under the Jones Act, 46 U.S.C.A. § 688, for damages resulting from his stroke. Rice later filed a similar suit against the government of the United States on the same claims, and the two suits were consolidated. The claims against

Tidewater Inc. and Tidex were dismissed before trial. A claim brought by Rice's wife was also dismissed. After a bench trial, the district court entered judgment in favor of the United States. Rice appeals.

DISCUSSION

We cannot fault the district court's finding that the hiring of Estay was negligent behavior. Rice was also required to show that his injury was a foreseeable result of that negligent act. Gavagan v. United States, 955 F.2d 1016, 1020-22 (5th Cir. 1992); Consolidated Aluminum Corp. v. C.F. Bean Corp., 833 F.2d 65, 67-68 (5th Cir. 1987), cert. denied, 486 U.S. 1055 (1988).

Because Rice did not show foreseeability, his negligence claim fails. The district court found that failure to provide a competent mate who could fully navigate the vessel created the foreseeable risks of collision, running aground, or sinking the vessel. However, the failure to provide a competent mate did not create a foreseeable risk that the vessel's master would suffer a stroke caused by a congenital malformation in the brain. Although it could be foreseen that the existence of an incompetent crew member could create more work and stress for the rest of the crew, it could not be foreseen that this work and stress would result in a stroke of this nature. Although the act of hiring Estay as mate was negligent, it was not negligent with respect to the harm of which Rice complains. See Gavagan, 955 F.2d at 1021.

AFFIRMED.