IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30482
Summary Calendar

Raymond Nolan,

Plaintiff-Appellant,

versus

Bama Construction, Inc., et al.,
Defendants,
Chevron USA, Inc.,

Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA-92-2606-C)

(February 27, 1995)

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

JOHNSON, Circuit Judge:

Employee of independent contractor brought suit to recover for personal injuries sustained while working on a fixed, offshore platform owned by Chevron USA, Inc. The district court granted summary judgment in favor of Chevron and employee appeals. We AFFIRM.

I. FACTS AND PROCEDURAL HISTORY

Raymond H. Nolan, a welder employed by Bama Construction,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Inc. ("Bama"), sustained personal injuries while working on a fixed platform owned by Chevron USA, Inc. ("Chevron"). The platform was located in the Gulf of Mexico beyond the three-mile limit to state territorial waters.

In redress of his injuries, Nolan filed suit against several defendants on various theories. After numerous pretrial motions, all claims and all parties were dismissed save Nolan's non-Jones Act claims against Chevron.

Thereafter, Chevron filed a motion for summary judgment contending that, under controlling law, it could not, as the platform owner, be held liable for the negligent acts of its independent contractor over which it retained no operational control. In response, Nolan argued that Chevron was liable under the Outer Continental Shelf Lands Act ("OCSLA"),[1] specifically 43 U.S.C. § 1348(b) and § 1349(b)(2).

The district court granted summary judgment in favor of Chevron. In so doing, it noted that Nolan had not contested that Bama was an independent contractor over which Chevron retained no operational control and thus that Chevron, as a platform owner, could not be held liable for the negligent acts of that contractor. Further, the district court found that Nolan did not enjoy a private tort cause of action against Chevron based on 43 U.S.C. §§ 1348 and 1349.

Nolan now appeals.

II. DISCUSSION

[1] 43 U.S.C. § 1331 *et seq.*

A. Standard of Review

This Court reviews the district court's grant of summary judgment *de novo*. *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, 113 S.Ct. 82 (1992). A summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

B. No Tort Cause of Action under 43 U.S.C. § 1349(b)(2)

As this accident occurred on a fixed platform on the outer continental shelf ("OCS"), this dispute is governed by the OCSLA. 43 U.S.C. § 1333. Under the OCSLA, the law to be applied to the OCS is exclusively federal, albeit the law of the adjacent state is adopted as surrogate federal law to the extent that such law is applicable and not inconsistent with federal law. *Rodrigue v. Aetna Casualty and Surety Company*, 395 U.S. 352, 357, 89 S.Ct. 1835, 1838 (1969); 43 U.S.C. § 1333(a)(2)(A). In this case, the adjacent state is Louisiana. However, Nolan has not contested Chevron's assertion that Chevron cannot be held liable under Louisiana tort law. Instead, Nolan contends that Chevron can be held liable under a federal tort, created in 43 U.S.C. § 1349(b)(2), for breach of safety regulations set out at 43 U.S.C. § 1348(b).[2]

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[2] Specifically, 43 U.S.C. § 1348(b) provides as follows:

(b) Duties of Holders of lease or permit

It shall be the duty of any holder of a lease

In *Olsen v. Shell Oil Co.*, 561 F.2d 1178 (5th Cir. 1977), *cert. denied*, 100 S.Ct. 480 (1979), this Court thoroughly considered whether the OCSLA created a private right of action in tort in favor of an injured workman against a platform owner for breach of federal regulations. After a long discussion and an extended review of the legislative history, this Court concluded that it did not. *Id.* at 1190.

Olsen would seem to defeat Nolan's argument. However, Nolan argues that *Olsen* is not controlling because it was decided before the 1978 amendments to the OCSLA. While *Olsen* rejected an implied right of action under the OCSLA, Nolan contends that the

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> or permit under this subchapter to--
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> 1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the [OCS];
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> 2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the [OCS] . . . .

Further, 43 U.S.C. § 1349(b)(2) provides:

> (2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this subchapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

1978 amendments, and in particular the addition of the language in sections 1348 and 1349, specifically created a new tort to supplement the injured worker's remedies.

Nolan's claims have no merit. First, the *Olsen* holding clearly survived the 1978 amendments. This Court has cited *Olsen* often for the proposition that the OCSLA implies no federal action in tort for damages for breach of federal regulations. *Romero v. Mobil Exploration and Producing, Inc.*, 939 F.2d 307, 310-11 (5th Cir. 1991); *Creppel v. Shell Oil Co*, 738 F.2d 699, 702 (5th Cir. 1984); *Bourg v. Texaco Oil Co.*, 578 F.2d 1117, 1120 (5th Cir. 1978).

Second, this Court has specifically decided that section 1349(b) did not create a new private right of action in tort for the breach of federal regulations. *Wentz v. Kerr-McGee Corp.*, 784 F.2d 699, 701 (5th Cir. 1986). In *Wentz*, this Court noted that there is,

> to be sure, language in § 1349(b) which taken alone might be read broadly enough to support appellants' position that a new cause of action in tort was created for injured employees against their employers. Section § 1349(b), however, applies by its own terms only to the jurisdiction and venue of OCSLA actions in federal courts. . . . The only new private right of action created by § 1349 is contained in § 1349(a). This provision permits a private citizen to bring suit to enforce the OCSLA and any regulations promulgated pursuant to it, and to seek civil penalties. A citizen thus may become a "private attorney general" with regard to OCSLA enforcement. The scope of this provision may be far-reaching. But it is an enforcement action, not a strict liability tort claim for personal injury as appellants assert in these cases.

Id. (footnotes omitted). Hence, while section 1349 does empower

citizens to initiate civil actions to compel compliance with applicable regulations, "no cause of action *ex delicto* is founded on that provision." *Romero*, 939 F.2d at 309 n.5.

As Nolan has not disputed that Chevron cannot be liable under Louisiana tort law, and as we have decided that he has no tort cause of action under section 1349(b), the district court properly granted summary judgment in favor of Chevron.

III. CONCLUSION

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