

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-30511
Summary Calendar

IN RE: F/V GULF KING 55 AND HERNDON MARINE PRODUCTS, INC.,
as her owner, praying for exoneration from and/or
limitation of liability:

F/V GULF KING 55 AND HERNDON MARINE PRODUCTS, INC.,
as her owner,

Plaintiffs-Appellees,

VERSUS

AMOCO PRODUCTION COMPANY, ZILKHA ENERGY COMPANY,
and NORTH CENTRAL OIL CORPORATION,

Claimants-Appellants.

Appeal from the United States District Court
For the Eastern District of Louisiana
(92-CV-4167 and 93-CV-4064)
(June 13, 1995)

Before THORNBERRY, HIGGINBOTHAM, AND BARKSDALE, Circuit Judges.

PER CURIAM:*

Amoco Production Company, et al. (henceforth Amoco), appeal the district court's grant of summary judgment in favor of Herndon Marine Products, Inc., in these consolidated limitation 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

liability and negligence actions. Because we find a material factual dispute may exist regarding the question of causation, we will reverse.

I. FACTS AND PROCEDURAL HISTORY

The following facts, as set forth in the district court's order granting summary judgment, are undisputed. On November 1, 1992, while trawling for shrimp in the Gulf of Mexico off the coast of Louisiana, the F/V GULF KING 55, a vessel owned by Herndon Marine Products and piloted by Captain Edward Walsh, snagged and seriously damaged a control line, or umbilical, owned by Amoco Production Company. The umbilical was attached by industrial grade plastic tie wrap and polyken tape to a four and one-half inch production pipeline transporting gas condensate from the Eugene Island Platform 322 to Subsea Well No. 5. Both pipeline and umbilical were buried to a distance of two to three hundred feet from the platform, but thereafter were exposed and ran along the seabed to Well No. 5. The umbilical was positively buoyant and would float toward the surface if it became disconnected.

On the date of the accident there were no markers, buoys or navigational aids in the area to identify the pipeline or umbilical. Charts on board the GULF KING bore general warnings concerning the possible existence of underwater cables or pipelines near oil platforms, but did not show the pipeline.

Herndon filed a petition for exoneration from and/or limitation of liability pursuant to 46 U.S.C. § 181, *et seq.* Amoco

filed suit against Herndon under 28 U.S.C. § 1333, seeking compensation for damage to the pipeline. After these two causes were consolidated, summary judgment was granted in Herndon's favor, exonerating it from liability.

II. DISCUSSION

A. Background and Allegations

Amoco argues, *inter alia*, that the district court erred in granting summary judgment because it failed to apply the correct standard in its analysis of causation. In granting the motion for summary judgment in favor of Herndon, the district court, noting the right to navigation is paramount, held the vessel owner had no duty to foresee the GULF KING's striking a pipeline which was not identified as a hazard to navigation, especially where the vessel had safely navigated the area previously. Zapata Haynie Corp. v. Arthur, 980 F.2d 287 (5th Cir. 1992). The district court discounted as irrelevant Amoco's claim that the damage resulted from Captain Walsh's response to the snagging, which conflicted with recommendations set forth in the Gulf Coast Fishing Safety Manual. Instead, the district court found that simply because Walsh's response to the accident may have differed from the action recommended by the safety manual, or that he had a lackadaisical attitude regarding safety procedures, did not impact the critical facts of outset causation. Thus, there was no evidence the umbilical was snagged by the fault of the vessel or its owner.

The district court made no findings regarding Amoco's argument that Walsh's response to the snag was the cause of the real damage to the pipeline. Walsh's deposition testimony reflects that when he realized the GULF KING had made contact with an object, his response was to continue in the same direction the vessel had been traveling and then to raise the nets. Walsh stated that he first raised his small tri-nets and then began picking up his "big rigs." After the nets broke the water, he saw a hose, which he assumed was "oil rig stuff," wrapped up in the nets and other equipment. According to Walsh, the hose then began "spitting out this kind of fuel -- or I didn't know what it was at the time." Thus, Walsh's deposition testimony supports a reasonable inference that his act of continuing forward pulled the umbilical free of all straps attaching it to the pipeline, stretched the umbilical and ultimately severed it.

Amoco contends that Walsh's response after snagging the umbilical was contrary to action recommended by the safety manual, namely taking the vessel out of gear and steering a course in the opposite direction. According to Amoco, had Walsh followed proper procedures, much, if not all, of the damage could have been avoided. The district court's reasoning that Walsh's actions did not impact "outset causation" foreclosed any inquiry into whether said actions were a proximate cause of Amoco's damages and preempted the question of comparative fault.

B. Analysis

We know of no precedent, and the district court cites none, for an analysis based on "outset causation." Rather, in maritime cases, this court has held the proper inquiry is whether a party's actions were a legal or proximate cause of the damage. Donaghey v. Ocean Drilling & Exploration Co. 974 F.2d 646, 649 (5th Cir. 1992). When two or more parties contribute by their fault to cause property damage in a maritime collision or stranding, liability for the damage is to be allocated among the parties proportionately according to comparative fault. Id. at 651, citing United States v. Reliable Transfer Co., 421 U.S. 397, 411 (1975).

Amoco argues that, assuming it did cause the initial negligence, it could be held liable for an apportioned share. However, a party's causal initial negligence which contributes to a later accident does not necessarily exonerate other tortfeasors from liability. See Nunley v. M/V DAUNTLESS COLOCOTRONIS, 727 F.2d 455, 462 (5th Cir.) (en banc), cert. denied, 469 U.S. 832 (1984).

Whether Walsh's actions following the "hang" were negligent, and whether they contributed at all to Amoco's damages are issues not addressed by the district court. Because the court did not consider these matters to be relevant to the issue of liability, it is not clear whether there are genuine issues of material fact that could not have been resolved by summary judgment. Although Herndon argues that the GULF KING was *in extremis* and therefore her captain's actions were justifiable under the circumstances, the district court made no such finding.

Summary judgment is proper only if the court finds there is no genuine issue as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). FED. R. CIV. PRO. 56(c). In the instant case, the deposition testimony, as set forth above, indicates there may indeed be a fact question that Walsh's actions may have contributed to the damage inflicted upon the pipeline and its attached umbilical. We hold further findings regarding this issue are therefore necessary.

IV. CONCLUSION

For the above reasons, further proceedings are necessary to enable the district court to employ the appropriate proximate cause analysis. Consequently, the judgment of the district court is Reversed and the cause is Remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.