

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40043

(Summary Calendar)

JOSEPH FRANCOIS BOUDOIN and
KATHERINE BOUDOIN,

Plaintiffs-Appellants,

versus

GAUDET BOAT RENTALS, INC., ET AL.,
Defendants,

GAUDET BOAT RENTALS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana
(91-CV-2513)

(September 12, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:*

Joseph Boudoin appeals the district court's adverse judgment, following a non-jury trial, on his claim for damages under the Jones Act. See 46 U.S.C. § 688 (1988). Finding no error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Boudoin was employed by the defendant, Gaudet Boat Rentals ("Gaudet") as a tugboat captain on the M/V MR. JOHN. On the day of the accident, he and his deckhand, Roy Clements, were the only crew members aboard the vessel. Boudoin was ordered to load wireline equipment onto the spudbarge. To facilitate the loading, the spudbarge was untied from a deck barge which was tied to some pilings in the channel. After the equipment was loaded onto the spudbarge, Boudoin was ordered to tie the spudbarge to the pilings and then transport the deck barge to another location.

To accomplish this maneuver, the spudbarge was first retied to the deck barge. The deck barge was then untied from the pilings and the barges were turned 180 degrees to where the spudbarge was next to the pilings and deck barge was facing out toward the open channel. Because the wind and current were moving out away from the pilings, Boudoin and Clements experienced some difficulty in mooring the spudbarge, prompting a heated exchange of words. Clements, who was standing on the spudbarge, attempted to lasso a rope around the pilings about three times, to no avail. He then threw down the rope and sat down, apparently in disgust. Boudoin then ran out of the wheelhouse and slipped and injured his back while attempting to rush down (face forward) a stairway leading from the wheelhouse deck to the main deck. At trial, Boudoin could not recall whether he used the handrails or not.

Boudoin brought an action against Gaudet, as Clements's

employer, for imputed negligence.¹ Boudoin claimed that Clements was negligent in failing to moor the spudbarge, and that this conduct was a contributing cause of his injury because he never would have had to leave the wheelhouse had Clements performed his duty. Boudoin also claimed that the M/V MR. JOHN was unseaworthy. The court found that Boudoin had "failed to establish any claim to any degree of certainty, either under the liberal test of the Jones Act, supra, or the more stringent test for causation required under the General Maritime Law for negligence and/or for unseaworthiness." The court subsequently entered judgment in favor of Gaudet, from which Boudoin filed a timely notice of appeal.

Boudoin contends that the district court clearly erred in finding that Boudoin was entirely at fault for his accident²)i.e., Boudoin argues that the court should have found that Clements's negligent conduct was a contributing cause of the accident. "The question of proximate cause in an action under the Jones Act turns on whether the actions of the defendant contributed to the injury even in the slightest degree. Proximate cause is not destroyed merely because the plaintiff may also have contributed to his own injury." *Spinks v. Chevron Oil Co.*, 507 F.2d 216, 220 (5th Cir. 1975) (attribution omitted). The undisputed facts at trial

¹ "The Jones Act imposes liability on the owner of the vessel for injuries or death resulting from negligence whether of the owner directly, . . . or vicariously for the acts of the master and members of the crew." *Ivy v. Security Barge Lines, Inc.*, 606 F.2d 524, 525 n.3 (5th Cir. 1979), cert. denied, 100 S. Ct. 2927 (1980).

² We assume, for purposes of this opinion only, that the district court implicitly found Boudoin to be entirely at fault.

demonstrate as a matter of law that Boudoin's injuries resulted from his own negligent conduct in proceeding down the stairway face forward and possibly without grasping the handrails.³ As the district court specifically found, "[t]empers were short, and in a moment of frustration and anger Captain Boudoin left the wheelhouse unattended with the engines running and attempted to rush down the ladder facing forward. His own testimony is that he did not remember whether he used the handrails or not." Clements's conduct, at most, may have been a reason for Boudoin to attempt to moor the spudbarge himself. However, we conclude as a matter of law that Clements's conduct did not cause Boudoin to proceed down the stairway in a negligent manner. Boudoin does not argue, and there is no evidence in the record to suggest, that Boudoin's precipitous action was necessary to protect the vessel or crew. We therefore uphold the district court's refusal to find that Clements's conduct was a contributing cause of Boudoin's accident.⁴

Accordingly, we AFFIRM the judgment of the district court.

³ The district court did not base its judgment on lack of causation; instead, the court concluded that Clements's conduct could not be imputed to Gaudet since Boudoin admitted at trial that he was charged with insuring that Clements could perform the job to which he was assigned. "[W]hen the judgment of a district court is correct, it may be affirmed for reasons not given by the court and not advanced to it." *Laird v. Shell Oil Co.*, 770 F.2d 508, 511 (5th Cir. 1985).

⁴ Boudoin also argues that his injuries were caused in part by the failure of Wayne Hiles (a ship captain and fellow Gaudet employee) to come to his aid in mooring the spudbarge. Because we conclude that Boudoin's injuries resulted from his own negligent conduct, we reject Boudoin's argument that Hiles's failure to act was a contributing cause of the accident.