UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40768

DONALD JOSEPH GUIDRY and HAZEL GUIDRY,

Plaintiffs-Appellees,

VERSUS

GREAT LAKES DREDGE & DOCK CO.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(92-0424)

August 15, 1995

Before WISDOM, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Contending, among other things, that the injury Donald Guidry suffered was not a foreseeable result of its negligence, Great Lakes Dredge & Dock Co. challenges, *inter alia*, the denial of its motion for judgment as a matter of law concerning the Jones Act liability found by the jury. Concluding that Great Lakes was entitled to judgment, we **REVERSE** and **RENDER**.

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[1] 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

On June 10, 1989, while working at Great Lakes' shore-side yard in Mobile, Alabama, Guidry discovered that a crane belonging to Great Lakes was inoperative.[2] Guidry was responsible for repair work in the yard. Upon notifying the captain of a dredge of the situation, Guidry received assurance that some members of the dredge's crew would assist him. Without waiting for this assistance, however, Guidry began attempting to repair the crane. While in the process, Guidry slipped off the crane and injured his knee.

As a result, Guidry filed this Jones Act and general maritime action against Great Lakes.[3] His theory was that Great Lakes failed to prevent an inexperienced crane operator from using and breaking the crane, which necessitated Guidry's attempting to repair it. (The crane had been broken by an employee of Crewboats, Inc., who was under the control and supervision of Great Lakes. The crane's boom had been extended without properly releasing the winch, causing the cable to snap.)

The jury rendered a verdict for Guidry, finding, *inter alia*, Guidry to be a seaman under the Jones Act; Great Lakes negligent under the standard applicable to a Jones Act claim; and, Guidry 15% contributorily negligent. It awarded very substantial damages. At

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[2] The crane involved is known commonly as a "cherry-picker".

[3] Guidry and his wife filed this action prior to ***Michel v. Total Transp., Inc.***, 957 F.2d 186 (5th Cir. 1992), which disallowed a spouse's claim for consortium in a Jones Act or general maritime action. Pursuant to the parties' pre-trial stipulation, the wife's claim was dismissed.

the close of all the evidence, Great Lakes had moved for judgment as a matter of law on the negligence claim; the district court denied the motion. After the jury returned the adverse verdict, Great Lakes, *inter alia*, renewed that motion; but, again, it was denied.

II.

In reviewing the denial of a motion for judgment as a matter of law, we review all of the evidence in a light most favorable to the nonmovant. *E.g.*, ***Bommarito v. Penrod Drilling Corp.***, 929 F.2d 186, 188 (5th Cir. 1991). For a Jones Act case, such a motion can be granted "only when there is a complete absence of probative facts supporting the verdict". ***Bazile v. Bisso Marine Co.***, 606 F.2d 101, 104 (5th Cir. 1979), *cert. denied*, 449 U.S. 829 (1980); *compare* ***Cobb v. Rowan Cos.***, 919 F.2d 1089, 1090 (5th Cir. 1991) (setting forth the Jones Act standard), *and* ***Springborn v. American Commercial Barge Lines, Inc.***, 767 F.2d 89, 98 (5th Cir. 1985) (same), *with* ***Boeing Co. v. Shipman***, 411 F.2d 365, 374 & n.15 (5th Cir. 1969) (en banc) (judgment as a matter of law proper if "the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict").

In contesting the basis of Guidry's negligence claim, Great Lakes contends that, with respect to the injury Guidry sustained, it did not owe him a duty to prevent an inexperienced employee from operating the crane. Although questions of negligence and causation in admiralty cases are factual inquiries, *e.g.*, ***Johnson***

v. Offshore Express, Inc., 845 F.2d 1347, 1352 (5th Cir.), *cert. denied*, 488 U.S. 968 (1988), a plaintiff must show also that his injury was a foreseeable result of the negligent act. *E.g.*, ***Gavagan v. United States***, 955 F.2d 1016, 1020-22 (5th Cir. 1992). Needless to say, under the well-established principles of negligence law, a tortfeasor in a maritime case is accountable only to those to whom a duty is owed. ***Id.*** at 1021 (quoting ***Consolidated Aluminum Corp. v. C.F. Bean Corp.***, 833 F.2d 65, 67 (5th Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988)).

> Duty ... is measured by the scope of the risk that negligent conduct foreseeably entails. The duty may be owed only with respect to the interest that is foreseeably jeopardized by the negligent conduct, and not to other interests even of the same plaintiff which may in fact happen to be injured.

Id. (quoting ***Consolidated Aluminum***, 833 F.2d at 67)(internal quotations and citations omitted).

In ***Rice v. United States***, No. 94-30418 (5th Cir. Dec. 8, 1994) (unpublished), the master of a vessel suffered a stroke when he had to stand longer watches because an incompetent mate had been hired. Claiming that the stress created by the mate's incompetence and the necessity of working additional hours precipitated his stroke, the master sued under the Jones Act. Although the district court concluded that the hiring of the mate was negligent behavior under the Jones Act, it denied the master recovery, because he failed to show that his injury was a foreseeable result of that negligent act. Applying the standard announced in ***Gavagan***, our court affirmed, recognizing that

> 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.

Id., slip op. at 3.

Assuming, *arguendo*, that Guidry was a seaman under the Jones Act, he has failed to demonstrate that his injury was a foreseeable result of Great Lakes' negligent act of permitting an inexperienced employee to operate the crane. Injury to others during the operation of the crane is a foreseeable result; but, an injury to a repairman who arrived after the crane was broken and disabled, knowing that it was in that condition, cannot be characterized as being within the class of persons to whom Great Lakes owed a duty. Although the broken piece of equipment may be traceable to an underlying negligent act, the circumstances of that act do not extend Great Lakes' duty to Guidry, the repairman who was to correct that known, defective condition. Accordingly, Great Lakes was entitled to judgment as a matter of law.[4]

III.

For the foregoing reasons, we **REVERSE** the judgment of the district court and **RENDER** judgment in favor of Great Lakes.

REVERSED and **RENDERED**

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[4] Having concluded that Great Lakes was entitled to judgment as a matter of law, we need not address the other issues raised, including whether Guidry was a Jones Act seaman.