

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-41180
Summary Calendar

DONALD L. WILLIS,

Plaintiff-Appellant,

VERSUS

OCEAN MARINE INDEMNITY CO., ET AL.,

Defendants,

OCEAN MARINE INDEMNITY CO.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(93-CV-923 c/w 93-CV-929)

(May 24, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

The sole question presented in this appeal is whether the district court erred in granting the defendant, Ocean Marine Indemnity Co., summary judgment on Willis' claim that his employer, Starling Enterprises, failed to timely pay him maintenance and cure.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Willis was injured while working aboard one of Starling's vessels. Willis filed a Jones Act suit against Starling and Ocean Marine, Starling's P & I insurer, alleging that Starling was negligent and that the vessel involved was unseaworthy.² Willis separately alleged that Starling negligently failed to timely pay him maintenance and cure. The district court granted Ocean Marine's summary judgment motion with respect to all the claims except Willis' maintenance and cure claim.

Ocean Marine subsequently moved for summary judgment on Willis' maintenance and cure claim. In its motion, Ocean Marine presented two alternative grounds for granting summary judgment: (1) that it was not untimely in its payment of maintenance and cure and (2) that the insurance policy did not cover Starling's liability for maintenance and cure because of the "contractual liability" exclusion in the policy. This provision excluded from the policy's coverage any liability for breach of contract. Willis' response to Ocean Marine's summary judgment motion challenged the insurer's argument that it timely paid maintenance and cure. However, Willis offered no arguments on the coverage issue. The district court granted the motion on the coverage issue, holding that the policy did not cover the plaintiff's claim for maintenance and cure because this claim was essentially a claim for breach of contract. Willis timely appealed.

² Starling subsequently filed for bankruptcy and was dismissed from the suit. Willis proceeded against Ocean Marine under Louisiana's Direct Action Statute, La. Rev. Stat. § 22:655.

II.

Willis argues for the first time on appeal that an employer's negligent failure to timely pay maintenance and cure can give rise to a tort claim under the Jones Act as well as a claim for breach of contract. See Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932). We decline to address these arguments for the first time on appeal. If a party fails to assert a legal reason why summary judgment should not be granted, that ground is generally waived and cannot be raised or considered on appeal. Vaughner v. Pulito, 804 F.2d 873, 877 n.2 (5th Cir. 1986). The only exception is where failure to address an issue would result in "manifest injustice." Employers Ins. of Wausau v. Occidental Petroleum Corp., 978 F.2d 1422, 1430 n.8 (5th Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 61 (1993).

Willis' failure to adequately respond to the defendant's motion hampered the development of the issues below and deprived the district court of the benefit of arguments on both sides of the issue. We therefore conclude that no manifest injustice would result from declining to address Willis' arguments for the first time on appeal. For these reasons, we AFFIRM the district court's judgment in favor of Ocean Marine.

AFFIRMED.