IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60291

Summary Calendar

CHARLES A. EVANS,

Plaintiff-Appellant,

versus

DOW CHEMICAL CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(93-CV-162)

(October 3, 1994)

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Dow Chemical Co. employed Xcel Erectors, Inc. as an independent contractor. Charles Evans worked for Xcel at Dow's plant. Evans claims that on March 14, 1991, at 10:30 a.m., he slipped in an oil spill on a cooling tower walkway and fell, injuring himself. The district court granted Dow's motion for summary judgment, finding that 1) Xcel controlled the immediate area where Evans fell, 2) uncontradicted testimony showed that only

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Xcel employees were on the cooling tower that morning, and 3) Dow could not have discovered the oil spill.

On appeal, Evans argues that Dow controlled the cooling tower and that Xcel employees could not have caused the spill. Marshall Williams, the Xcel supervisor, stated in his declaration and deposition that he had been on the cooling tower at 7:45 a.m. on March 14 and that the oil puddle was not yet present at that time. Williams also stated that no Dow employees were on the cooling tower from 7:45 a.m. until his midday inspection of the tower. Xcel employees were working on the tower all morning. The oil spill seeped from an oil hose that had been knocked to the deck from its usual hanger by the walkway. Evans admits that the oil hose could not just have fallen by itself; someone must have dropped it or knocked it over, and the only people who were present were Xcel employees. Thus Dow did not control the tower, Dow employees did not cause the spill, and so Dow could not have known about the spill.

Evans' only reply is that Williams is wrong. In his affidavit, Evans does attack Williams' credibility by stating that Williams never went up the cooling tower that morning. But he has adduced no affirmative evidence that Dow was in control of the tower that morning or that any Dow employees were anywhere near the tower. A nonmoving party must introduce more than a scintilla of evidence in opposition to a motion for summary judgment. Evans' pure speculation is inadequate. AFFIRMED.