

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30489
Conference Calendar

DONALD BOURQUE,

Plaintiff-Appellant,

versus

PHILLIP BLANCHARD, Etc., Et Al.;

Defendants,

PHILLIP BLANCHARD, d/b/a B & C BOAT RENTAL, INC; and
M/V JOHN B,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 96-CV-1598
- - - - -

June 16, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Donald Bourque, a seaman on the M/V JOHN B, operated by Phillip Blanchard d/b/a B & C Boat Rental, Inc., was injured while descending the stairs.

Bourque argues that the jury's verdict is unsupported by the evidence. Bourque failed to move for a judgment as a matter of

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

law at the close of all the evidence. Nor did he move for a judgment as a matter of law or for a new trial following the return of the verdict. Thus, our review is limited to whether there was any evidence to support the jury's verdict, irrespective of its sufficiency, or whether plain error was committed. Coughlin v. Capitol Cement Co., 571 F.2d 290, 297 (5th Cir. 1978).

Bourque's testimony was inconsistent as to whether his fall occurred at the top of the stairs where there was no handrail or on the middle steps where a handrail was provided. The jury could have concluded that Bourque fell in the middle of the stairs and that any failure to provide a left side handrail at the top of the stairs, even if unseaworthy or negligent, did not cause his injury. See Guillory v. Domtar Indus. Inc., 95 F.3d 1320, 1333-34 (5th Cir. 1996)(this court accepts all credibility choices that tend to support the verdict).

This appeal is without arguable merit and thus frivolous. Howard V. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.