

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 98-31002
Summary Calendar

COASTAL TOWING, INC.,

Plaintiff-Appellee,

versus

ERNEST L. MARTIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(97-CV-2703-L)

June 30, 1999

Before POLITZ, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Ernest L. Martin appeals the district court's denial of his motion to dismiss the declaratory judgment action brought by his former employer, Coastal Towing, Inc. Martin also appeals the district court's ruling, after a bench trial, that Martin is not entitled to maintenance and cure for his maritime injury.

The trial court rejected Martin's contention that this declaratory judgment action should be dismissed because Martin filed a Jones Act claim and a

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

maintenance and cure claim in Louisiana state court. The district court also found that Martin concealed a prior injury from Coastal when he was hired, and that this injury would have been material to Coastal's decision to hire him. This concealment deprives Martin of maintenance and cure benefits.

We review the district court's refusal to dismiss a declaratory judgment action because of parallel state proceedings for an abuse of discretion¹ and review its findings of fact for clear error.² Having reviewed the record and briefs and on the basis of the district court's oral findings of fact and conclusions of law dictated into the record on August 24, 1998, and filed therein on January 11, 1999, the judgment appealed is AFFIRMED.

¹ **Wilton v. Seven Falls Co.**, 515 U.S. 277 (1995); **Rowan Companies, Inc. v. Griffin**, 876 F.2d 26 (5th Cir. 1989).

² Fed. R. Civ. P. 52(a); **Astraea Aviation Servs., Inc. v. Nations Air Inc.**, 172 F.3d 390 (5th Cir. 1999).