

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5482

Summary Calendar

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ROBERT L. THEAUX,

Plaintiff-Appellant,

versus

M/V SHAWNEE,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(92 CV 1489)

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(September 30, 1994)

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Robert L. Theaux appeals the district court's award of damages. Because we find that the district court did not err in its calculation of damages, we affirm.

I.

Robert L. Theaux filed an *in rem* maritime action for damages against the M/V Shawnee, which is owned by Conoco, Inc. Theaux

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

alleged that on February 6, 1992, while on the navigable waters of the United States, the M/V Shawnee collided with a tree and wharf owned by Theaux, causing damages in the amount of \$19,330.

Following a bench trial, the district court found that the M/V Shawnee was at fault in the collision. The defendant has not appealed the district court's finding of liability. On the issue of damages, Theaux presented testimony from Bryan Richard, chief estimator for Crain Brothers, Inc., as to the cost of replacing Theaux's wharf and building a rope swing device to replace the rope swing that hung from the tree. Richard presented two estimates, one contemplating the use of a steel pipe for the rope swing and the other contemplating a wood piling for the rope swing. The total cost of repairs for each option was \$19,330 and \$16,340, respectively. Conoco presented testimony of Daniel Carter, a marine surveyor and consultant for Sabine Surveyors, Inc., who estimated the total cost of repairs to be \$609.03.

The district court found that the estimate presented by Carter was sound, but that the pilings used in reaching that estimate were not long enough. The court thus relied upon Carter's estimate, added \$640.98 for longer pilings, and entered judgment in favor of Theaux in the amount of \$1,250. Theaux appeals this award of damages.

## II.

Theaux's first point of error alleges that the district court erred in relying on Carter's testimony. He contends that Carter lacked the requisite knowledge, skill, and training to qualify as

an expert in marine construction and to render an opinion on the cost to repair the wharf. The district court's reliance on Carter's testimony was not "manifestly erroneous." See Christophersen v. Allied-Signal Corp., 939 F.2d 1106, 1109 (5th Cir. 1991), cert. denied, 112 S. Ct. 1280 (1992). Carter, a marine surveyor for over three and a half years, testified that he investigated physical damage to docks and wharves and made repair cost estimates in approximately four cases prior to estimating the cost to replace Theaux's wharf.

The district court's reliance on Carter's testimony as to the amount of damages was also not clearly erroneous. Carter testified that in preparing his damage survey, he went to Theaux's property to observe the damage to Theaux's wharf. Richard, the expert witness presented by Theaux, did not go to Theaux's property to view the damage in connection with the preparation of his estimate. He had never seen Theaux's wharf prior to the collision nor did he have any knowledge of the materials used in construction. The district court also found that the structure designed by Richard was much more elaborate than what existed before the accident.

Finally, Theaux argues that the district court erred by failing to award damages for the aesthetic value of the tree. Because Theaux demonstrated no proprietary interest in the tree, he was not entitled to recover damages for the aesthetic value of the tree. To maintain a claim for damages in a maritime collision a plaintiff must have a proprietary interest in the damaged property. IMTT-Gretna v. Robert E. Lee SS, 993 F.2d 1193, 1194 (5th Cir.),

opinion supplemented, 999 F.2d 105 (5th Cir. 1993), cert. denied, 114 S. Ct 880 (1994). Although Theaux alleges in his brief that he was the owner of the tree, he presented no evidence at trial with regard to his ownership of the tree or the tree's value. Moreover, the tree was growing from the bed of a navigable waterway, and in Louisiana, beds of navigable waters are owned by the state in its sovereign capacity. Gulf Oil Corp. v. State Mineral Bd., 317 So. 2d 576, 583 (La. 1974).

AFFIRMED.