United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 8, 2025
Lyle W. Cayce
Clerk

No. 24-20476

ALBERTO ALVARADO,

Plaintiff—Appellant,

versus

BRIESE SCHIFFAHRTS GMBH & COMPANY KG MS SAPPHIRE; BRIESE SCHIFFAHRTS GMBH & COMPANY KG; JACINTOPORT INTERNATIONAL, L.L.C.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1849

Before SOUTHWICK, HIGGINSON, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

While working as a temporary longshoreman tasked with loading cargo onto the *BBC Sapphire*, Alberto Alvarado slipped and fell as he descended a ladder into the ship's cargo hold, falling about fifteen feet and breaking both of his legs. He sued the owner and operator of the *BBC Sapphire* and Jacintoport International (JPI), which operates terminals at the Port of Houston, asserting negligence and gross-negligence claims under the Longshore and Harbor Workers' Compensation Act (LHWCA). The

defendants filed two separate motions for summary judgment, and the district court granted both. We affirm.

I.

Labor Finders is a temporary staffing agency that has provided temporary laborers to stevedoring company JPI since 2013 to facilitate JPI's business of loading and unloading cargo ships in the Port of Houston. That relationship was solidified through a written agreement between Labor Finders and JPI, which provided that "JPI is the borrowing employer of those and all other [Labor Finders] workers furnished to JPI under the 'borrowed servant doctrine.'" Though Labor Finders is the primary employer of those temporary laborers, both JPI and Labor Finders separately secured workers' compensation benefits for the short-term laborers working for JPI through Labor Finders.

On December 9, 2020, pursuant to JPI's request, Labor Finders first assigned one of its short-term laborers, Alberto Alvarado, to work as a longshoreman at the JPI terminal. Alvarado did not board a ship that day. On December 12, Alvarado was again assigned to work at the JPI terminal. The only instruction that Labor Finders gave Alvarado was to report that morning to JPI foreman Juan De la Cruz for his assignments. When he did, De la Cruz directed Alvarado to the pier where the *BBC Sapphire* was docked. That ship was to be his worksite for the day. As he boarded the *BBC Sapphire*, Alvarado met a man named Jesse, ostensibly a member of the ship's crew,[1] who told Alvarado that they would be working "down in the [cargo] hold."

[1] The parties dispute whether Jesse was a member of the *BBC Sapphire* crew or a JPI foreman like De la Cruz. But for purposes of this appeal, we assume that Jesse was a crew member of the ship, viewing that disputed fact in the light most favorable to Alvarado.

To access the cargo hold of the *BBC Sapphire*, Alvarado (along with everyone else) needed to descend a ladder chute from the main deck. Jesse instructed Alvarado: "Just go down the ladder." According to Alvarado, neither Jesse nor anyone else gave him any other instructions, or warnings, for how to descend the ladder safely or of the conditions he would encounter in the ladder chute. Before he began his descent, Alvarado noticed that the chute was poorly lit and that fog in the air made it difficult to see. Those conditions also contributed to condensation on the ladder, creating slippery conditions within the chute.

That particular ladder was a disjointed one: To navigate his way to the cargo hold, Alvarado needed to descend a first ladder, step off onto a transition platform, turn his body ninety degrees, and continue down a second ladder to the bottom of the chute. Alvarado maintains that due to the poor lighting and foggy conditions, he could not see the transition platform when he began his descent and that no one warned him the ladder was disjointed. As Alvarado stepped off the first ladder and onto the transition platform, his foot slipped and he fell down the remainder of the chute (approximately fifteen feet), breaking both of his legs in multiple places.

After his fall, Alvarado sued the owner and operator of the *BBC Sapphire*[2] and JPI in state court, asserting negligence and gross-negligence claims under the LHWCA. The *BBC Sapphire* removed the case to the United States District Court for the Southern District of Texas and moved for summary judgment, arguing that Alvarado could present no evidence that

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[2] The *BBC Sapphire* is operated by defendants Briese Schiffahrts GmbH & Co. KG MS "SAPPHIRE" and Briese Schiffahrts GmbH & Co. KG. Briese Schiffahrts GmbH & Co. KG MS "SAPPHIRE" was the owner of the vessel at the time of the incident, and Briese Schiffahrts GmbH & Co. KG was the technical manager. We refer to them collectively as "the *BBC Sapphire*."

the *BBC Sapphire* breached any duty owed to Alvarado under the LHWCA. JPI also moved for summary judgment, contending that because JPI was Alvarado's borrowing employer and had secured workers' compensation benefits for Alvarado, the LHWCA's exclusive-remedy provision barred Alvarado's negligence suit. Considering the motions together, the district court granted both. Alvarado now appeals.

II.

"We review grants of summary judgment *de novo*, applying the same standard as the district court." *N. Am. Sav. Bank, F.S.B. v. Nelson*, 103 F.4th 1088, 1094 (5th Cir. 2024) (quoting *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017)). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). Weighing that standard, we draw all reasonable inferences and resolve any doubts in favor of the nonmoving party. *Nelson*, 103 F.4th at 1094.

"[T]he movant does not need to negate the elements of claims on which the nonmoving parties would bear the burden of proof at trial." *Stults v. Conoco, Inc.*, 76 F.3d 651, 656 (5th Cir. 1996) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc)). Rather, "[t]he movant's burden is only [to] point out the absence of evidence supporting the nonmoving party's case." *Id.* (quotation marks and citation omitted). If the movant meets that burden, "the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial," by "identify[ing] specific evidence in the record, and articulat[ing] the 'precise manner' in which that evidence support[s] [his] claim[s]." *Id.* (quotation marks and citations omitted).

III.

On appeal, Alvarado contends that the district court (A) failed to recognize genuine disputes of material fact as to whether the *BBC Sapphire* breached any of the duties it owed Alvarado under the LHWCA and (B) erred by determining that JPI was Alvarado's borrowing employer without first allowing a jury to resolve purported factual disputes.

A.

In the district court, Alvarado contended that summary judgment for the *BBC Sapphire* was not proper due to material fact disputes as to whether the *BBC Sapphire* breached any of its three duties under the LHWCA: (1) the turnover duty, (2) the active-control duty, and (3) the duty to intervene. *See Howlett v. Birkdale Shipping Co., S.A.*, 512 U.S. 92, 98 (1994). The district court rejected Alvarado's argument as to each.

Alvarado now bases his argument entirely upon what he maintains are material fact disputes as to whether the *BBC Sapphire* breached the first two duties. He abandons any argument based on the third—the duty to intervene—conceding that "cargo operations had not yet begun when [he] was injured," such that "the duty to intervene is not applicable." That duty "imposes liability if the vessel owner fails to intervene in the stevedore's operations when he has actual knowledge both of the hazard[ ] and that the stevedore, in the exercise of 'obviously improvident' judgment[,] means to work on in the face of it and therefore cannot be relied on to remedy it." *Manson Gulf, L.L.C v. Mod. Am. Recycling Serv., Inc.*, 878 F.3d 130, 134 (5th Cir. 2017) (quotation marks and citation omitted). Under *Howlett*, the duty to intervene arises only after "cargo operations have begun." 512 U.S. at 100. Thus, Alvarado correctly reasons that given that cargo operations had not yet begun at the time he fell, his negligence claim for breach of the duty to intervene against the *BBC Sapphire* is not viable.

But what Alvarado apparently fails to recognize is that his concession that "[t]here is no dispute that cargo operations had not yet begun when [he] was injured" dooms his claim under the active-control duty as well. That duty, "*applicable once stevedoring operations have begun*, provides that a shipowner must exercise reasonable care to prevent injuries to longshoremen in areas that remain under the 'active control of the vessel.'" *Id.* at 98 (emphasis added). Here, the cargo operations on the *BBC Sapphire* were the sum total of stevedoring operations JPI undertook, such that by Alvarado's own telling, neither the duty to intervene *nor* the active-control duty was yet triggered when his accident occurred. For this reason alone, his negligence claim based on the active-control duty, like that grounded on the duty to intervene, necessarily fails as a matter of law.

Yet even assuming cargo operations *had* commenced, Alvarado still has not shown a violation of the active-control duty. We discuss the turnover duty and the active-control duty in turn.

1.

"[T]he 'turnover duty,' relates to the condition of the ship upon the commencement of stevedoring operations[.]" *Id.* The turnover duty places two responsibilities on the vessel owner: "[T]he owner owes a duty to exercise ordinary care under the circumstances to turn over the ship and its equipment in such condition that an expert stevedore can carry on stevedoring operations with reasonable safety," and "a duty to warn the stevedore of latent or hidden dangers which are known to the vessel owner or should have been known to it." *Kirksey v. Tonghai Mar.*, 535 F.3d 388, 392 (5th Cir. 2008). But "the duty to warn of hidden dangers is narrow" and "does not include dangers which are either (1) open and obvious or (2) dangers a reasonably competent stevedore should anticipate encountering." *Id.*

Alvarado contends that the *BBC Sapphire* defendants did not fulfill their turnover duty. In particular, he asserts that the vessel's ladder, chute, and lighting conditions were not turned over in such a state that an experienced stevedore could perform his work with reasonable safety. Additionally, Alvarado asserts that the *BBC Sapphire* defendants failed to warn him of latent or hidden hazards which were known or should have been known to the vessel.

But Alvarado's assertions do not demonstrate that the *BBC Sapphire* defendants had a duty under the LHWCA to flag the condition or configuration of the ladder chute, or that any of these conditions constituted latent hazards that a trained, knowledgeable stevedore would have failed to recognize, observe, or expect.[3] Alvarado does not allege that the design itself of the ladder and platform was a latent hazard—just that the ladder, platform, and chute were wet and dimly lit. First, the obligation to ensure proper lighting in the area where stevedoring operations occur does not lie with the shipowner. *See, e.g.*, *Lipari v. Kawasaki Kisen Kaisha, Ltd.*, 923 F.2d 862 (9th Cir. 1991), 1991 WL 3060 at *2 (9th Cir. Jan. 11, 1991) (unpublished) ("[R]esponsibilities for lighting the work area fall upon the stevedore and not the shipowner."); *McCullough v. S/S Coppename*, No. 75-2440, 1982 WL 195730 at *6 (E.D. La. Apr. 23, 1982) ("[T]he stevedoring company that employs the longshoreman, not the shipowner, is required by statute and regulation . . . to protect the longshoreman from the danger of poor lighting."). Further, Alvarado could see that the chute was dimly lit before

[3] The turnover duty is designed so that an "*expert* stevedore" can carry on operations with reasonable safety. *Kirksey*, 535 F.3d at 392 (emphasis added). But Alvarado was no expert—the parties do not dispute that the day of his accident was his first day aboard any vessel and only his second day working at the JPI facility. But even assuming Alvarado was an expert stevedore, he still cannot demonstrate that the *BBC Sapphire* breached the turnover duty—or, as discussed *infra*, the active-control duty.

he ever started down it, so the lighting was not a hidden danger. And foggy conditions and resulting condensation are "common aboard vessels," as Alvarado's own expert concedes. Thus, Alvarado's negligence claim for breach of the *BBC Sapphire*'s turnover duty does not survive scrutiny.

2.

The active-control duty imputes liability on the vessel owner "for injury caused by hazards under the control of the ship." *Singleton v. Guangzhou Ocean Shipping Co.*, 79 F.3d 26, 28 (5th Cir. 1996). Specifically, "the vessel may be liable if it actively involves itself in the cargo operations and negligently injures a longshoreman, or if it fails to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas, or from equipment, under the active control of the vessel . . . ." *Scindia*, 451 U.S. at 167. To create a genuine issue of fact regarding the active-control duty, Alvarado must provide evidence that the *BBC Sapphire* defendants exercised "active control over the actual methods and operative details of the longshoreman's work." *Pledger v. Phil Guilbeau Offshore, Inc.*, 88 F. App'x 690, 692 (5th Cir. 2004).

Alvarado asserts that the *BBC Sapphire* actively controlled the cargo operations and, specifically, the ladder chute. But Alvarado's argument that the *BBC Sapphire* owed him a duty based on its "active control" of the vessel is without merit. He offers little evidence to support his position. First, Alvarado contends that the chief mate of the *BBC Sapphire* was responsible for overseeing cargo operations, including supervising the stevedores' work to ensure that cargo was properly loaded and unloaded, thereby exercising "active control." But this conflates oversight with active control—mere crew oversight is not evidence that a vessel exercised "active control over the actual methods and operative details" of the longshoremen's work. *Pledger*, 88 F. App'x at 692. Next, Alvarado maintains that the *BBC Sapphire* actively

controlled the chute because the vessel's gangway watch directed him to the hatch cover to access the ladder. Again, even assuming that to be true, it does not show that the *BBC Sapphire* controlled the details of Alvarado's work. There is no evidence in the record showing that the *BBC Sapphire* controlled the timing or manner in which Alvarado was to descend the ladder to the cargo hold. Therefore, Alvarado's negligence claim based on breach of the active-control duty is also without basis.

For the foregoing reasons, the district court did not err in granting summary judgment to the *BBC Sapphire*.

B.

Next, Alvarado contests the district court's grant of summary judgment to JPI. The district court concluded that the undisputed evidence demonstrated that Alvarado was the borrowed employee of JPI. And because JPI secured workers' compensation benefits for Alvarado, the LHWCA bars Alvarado's negligence suit pursuant to its exclusive-remedy provision. *See* 33 U.S.C. §§ 903–06. On appeal, Alvarado challenges only the district court's determination as to his borrowed-employee status, arguing that underlying fact disputes should have been resolved by a jury before the district court made that determination.

But "[t]he district court decides the borrowed employee issue as a matter of law, and, if sufficient basic factual ingredients are undisputed, the court may grant summary judgment." *Capps v. N.L. Baroid NL Indus., Inc.*, 784 F.2d 615, 617 (5th Cir. 1986) (citation omitted); *see also Billizon v. Conoco, Inc.*, 993 F.2d 104, 105 (5th Cir. 1993) (same). To determine whether an employee is a borrowed employee, nine factors are relevant:

> (1) Who had control over the employee and the work he was performing, beyond mere suggestion of details or cooperation? (2) Whose work was being performed? (3) Was there an

> agreement, understanding, or meeting of the minds between the original and the borrowing employer? (4) Did the employee acquiesce in the new work situation? (5) Did the original employer terminate his relationship with the employee? (6) Who furnished tools and place for performance? (7) Was the new employment over a considerable length of time? (8) Who had the right to discharge the employee? (9) Who had the obligation to pay the employee?

Billizon, 993 F.2d at 105.

To be sure, while "[t]he question of borrowed-employee status is a question of law for the district court to determine," there are some cases in which "factual disputes must be resolved before the district court can make its legal determination." *Id.* But "[a]ppellants cannot generate a factual dispute merely by contesting the conclusions reached by the court, rather they must show that genuine disputes exist over enough determinative factual ingredients to make a difference in this result." *Capps*, 784 F.2d at 617 (quotation marks and citation omitted). In other words, even if some factors depend upon unresolved fact issues, summary judgment may still be appropriate if other factors clearly weigh in favor of borrowed-employee status such that the resolution of those indeterminate fact issues would not affect that conclusion. *See Billizon*, 993 F.2d at 106; *see also Brown v. Union Oil Co. of Cal.*, 984 F.2d 674, 676 (5th Cir. 1993) (per curiam) ("No single factor, or combination of them, is determinative.").

Here, the district court correctly determined that Alvarado failed to point out any material dispute that Alvarado was JPI's borrowed employee. We agree with the district court that most of the *Billizon* factors are immaterial. Indeed, this case turns on the first, second, and third factors: Because undisputed evidence demonstrates that there was a formal agreement between Labor Finders and JPI for the provision of short-term laborers to fulfill JPI's labor obligations, Alvarado was assigned to JPI

pursuant to that agreement, a JPI foreman (De la Cruz) assigned Alvarado to work aboard the *BBC Sapphire*, and that work was to be conducted at the JPI dock in the Port of Houston, Alvarado was, as a matter of law, JPI's borrowed employee at the time he fell. And because JPI had secured workers' compensation benefits for Alvarado, his sole remedy for that injury lies in workers' compensation benefits, not a negligence cause of action. *See* 33 U.S.C. §§ 903–06.

IV.

Alvarado fails to establish that the *BBC Sapphire* violated its turnover duty or its active-control duty under the LHWCA, so the district court did not err in granting summary judgment for the *BBC Sapphire*. Moreover, the district court did not err by resolving the legal question of whether Alvarado was serving as JPI's borrowed employee at the time he fell without reserving immaterial underlying fact questions for a jury. For those reasons, the judgment of the district court is

AFFIRMED.