IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
May 23, 2019
Lyle W. Cayce
Clerk

No. 18-30819

DONALD WASHINGTON,

Plaintiff - Appellant Cross-Appellee

v.

WOOD GROUP PSN, INCORPORATED,

Defendant - Appellee Cross-Appellant

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:15-CV-6615

Before KING, SMITH, and, WILLETT, Circuit Judges.

PER CURIAM:*

Appellant Donald Washington seeks damages for an injury he sustained while working aboard an offshore oil platform. After Washington settled with the platform's owner, the district court granted summary judgment to appellee Wood Group PSN, Inc., a contractor working on the platform, and entered final judgment against Washington. Washington appeals. Wood Group cross-appeals, arguing the district court erred by ruling in an earlier order that Wood Group could be held vicariously liable for its nominal employee's alleged

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

negligence. We AFFIRM the district court's judgment and DISMISS Wood Group's cross-appeal as moot.

I.

Donald Washington worked as a cook aboard an offshore oil platform on the Outer Continental Shelf in the Gulf of Mexico. Washington's employer was under contract with the platform's owner, Fieldwood Energy, LLC ("Fieldwood"). Fieldwood separately contracted with Wood Group PSN, Inc., ("Wood Group") for certain operational services.

Washington sustained various injuries from falling while carrying a pan full of steaks into the platform's galley. Washington blames the fall on a loose step that "shifted" beneath him. Following the incident, Justin Roberts, a Wood Group production operator, inspected the step in question, discovered the step's bolts were loose, and fixed the problem. Washington argues that Roberts (and, by extension, Wood Group) was negligent in failing to discover and repair the defective step prior to his fall.

Washington sued Fieldwood and Wood Group in federal court pursuant to the Outer Continental Shelf Lands Act ("OCSLA"). The district court initially granted summary judgment to Wood Group because it concluded that Roberts was Fieldwood's borrowed employee, thus defeating Washington's attempt to hold Wood Group vicariously liable for Roberts's alleged negligence. But on Fieldwood's motion for reconsideration, the district court reversed course and held that Wood Group and Fieldwood could be jointly liable for Roberts's alleged negligence under Louisiana's dual-employer doctrine. Washington subsequently settled with Fieldwood, and the district court dismissed it from the case. The district court then granted summary judgment to Wood Group once again, this time ruling that Washington failed to establish that Roberts had a duty to discover the defect in the galley step. Washington

appeals that order. Wood Group cross-appeals the district court's order rescinding its earlier grant of summary judgment.

II.

We review summary-judgment orders de novo. *Magee v. Reed*, 912 F.3d 820, 822 (5th Cir. 2019). Summary judgment is appropriate "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). "A genuine issue of material fact exists if a reasonable jury could enter a verdict for the non-moving party." *Am. Family Life Assurance Co. of Columbus v. Biles*, 714 F.3d 887, 896 (5th Cir. 2013).

OCSLA grants exclusive federal jurisdiction over the Outer Continental Shelf "and all installations and other devices permanently or temporarily attached to the seabed . . . for the purpose of exploring for, developing, or producing resources therefrom." *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 213 (5th Cir. 2013) (omission in original) (quoting 43 U.S.C. § 1333(a)(1)). But in extending federal law to the Outer Continental Shelf, OCSLA "borrows adjacent state law as a gap-filler." *Texaco Expl. & Prod., Inc. v. AmClyde Engineered Prods. Co.*, 448 F.3d 760, 772 (5th Cir.), *amended on reh'g*, 453 F.3d 652 (5th Cir. 2006). Thus, OCSLA applies the substantive law of the adjacent state to a platform on the Outer Continental Shelf to the extent state law is "applicable and not inconsistent" with federal law. § 1333(a)(2)(A). The parties here agree that, under OCSLA, Louisiana tort law governs the merits of Washington's negligence claim.

To succeed on a negligence claim under Louisiana law, a plaintiff must prove each of the following elements:

> (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) the defendant's substandard conduct was a cause in fact of the

> plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) the actual damages (the damages element).

Lemann v. Essen Lane Daiquiris, Inc., 923 So. 2d 627, 633 (La. 2006) (citing La. Civ. Code Ann. art. 2315). The parties' arguments on appeal focus on the first and second of these elements: Washington argues that Roberts breached a duty owed to him by failing to discover and repair the defective galley step. Thus, for Washington's argument to succeed, he must first show that Roberts owed him a duty to proactively inspect the step.

"As between two independent contractors who work on the same premises, . . . each owes to the employees of the other the same duty of exercising ordinary care as they owe to the public generally." *Lafont v. Chevron, U.S.A., Inc.*, 593 So. 2d 416, 420 (La. App. 1 Cir. 1991) (quoting 65 Corpus Juris Secundum § 63 (1966)). Therefore, under Louisiana law, an independent contractor has "at most the duty to refrain from creating an unreasonable risk of harm or a hazardous condition." *Id.* But a contractor has no duty to "eliminate [an] unsafe condition" it did not create unless the condition is under the contractor's control. *Id.* Washington does not argue—and there is nothing in the record to suggest—that Roberts created the defect in the galley step. Thus, whether Roberts had a duty to proactively inspect and maintain the galley step depends on whether he exercised control over it.

Washington argues that Roberts exercised control over the galley step because inspecting and maintaining steps was among his job duties. Washington points to Roberts's deposition testimony in support of this argument. Roberts testified that at some point prior to Washington's fall, he noticed a similar step was loose elsewhere on the platform, so he fixed it. When

counsel pressed him about whether fixing steps was part of his job, Roberts explained:

> Well, I wouldn't say that it wasn't my job. I mean, because part of my responsibility is to make sure everything works on the platform. But that is not something that I would normally do. If that makes any sense. But if something is going wrong, where it could affect the health of somebody, you know, we would take care of it.

More generally, Roberts testified his job was to "maintain the equipment" on the platform.

We agree with the district court that this evidence does not create a genuine factual dispute over whether proactively inspecting the galley step was among Roberts's job duties. Drawing all reasonable inferences in Washington's favor, Roberts's testimony shows at most that it was his job to repair defective steps once the defects were brought to his attention. But nothing in Roberts's testimony suggests that his job duties involved proactively inspecting steps and discovering defects. On the contrary, Roberts answered "no sir" when asked whether "inspecting the structural aspects of the platform" was part of his "regular duties." Likewise, James Pena, Fieldwood's "person in charge" of the platform, confirmed as much in a declaration, stating that "Roberts was not obligated or instructed specifically to inspect the galley steps for security as part of his routine job duties." In light of this specific evidence, Roberts's general reference to maintaining the equipment on the platform and "mak[ing] sure everything works" would not allow a reasonable jury to infer he was responsible for proactively inspecting structural aspects of the platform like the galley step. Accordingly, no reasonable jury could conclude that Roberts exercised control of the galley steps as part of his job duties.

Alternatively, Washington argues that even if Roberts's formal job duties did not require him to maintain the galley step, he voluntarily assumed a duty

to do so by previously repairing a defective step. *See Bujol v. Entergy Servs., Inc.*, 922 So. 2d 1113, 1129 (La. 2004) ("[U]nder Louisiana jurisprudence, parties who voluntarily assume certain duties for workplace safety must perform those duties in a reasonable and prudent manner."). A defendant voluntarily assumes such a duty when he "(1) undertakes to render services, (2) to another, (3) which the defendant should recognize as necessary for the protection of a third person." *Id.* This argument suffers the same evidentiary deficiency as Washington's lead argument: the evidence shows, at most, that Roberts assumed a duty to repair steps known to be defective. Nothing in the summary-judgment record suggests that Roberts ever undertook to proactively discover defects; thus, he assumed no duty to do so.

In sum, we agree with the district court that Washington fails to show Roberts had a duty to discover the defect in the galley step. Accordingly, Roberts breached no duty to Washington by failing to do so, and the district court properly granted summary judgment to Wood Group. Finally, because Wood Group was properly dismissed from this case, its cross-appeal is moot.

III.

For the foregoing reasons, we AFFIRM the judgment of the district court and DISMISS Wood Group's cross-appeal as moot.