

NOT DESIGNATED FOR PUBLICATION

STERLING PITTMAN

*

NO. 2010-CA-1684

VERSUS

*

COURT OF APPEAL

THE OFFSHORE DRILLING
COMPANY, F/K/A R&B

*

FOURTH CIRCUIT

FALCON DRILLING USA,
INC., TRANSOCEAN

*

STATE OF LOUISIANA

OFFSHORE DEEP WATER

DRILLING, INC., F/K/A

TRANSOCEAN SEDCO

FOREX, PXP GULF COAST,

INC., F/K/A 3TEC ENERGY

CORPORATION, ABC

INSURANCE COMPANY AND

XYZ INSURANCE COMPANY

APPEAL FROM

25TH JDC, PARISH OF PLAQUEMINES

NO. 50-288, DIVISION "B"

Honorable Joy Cossich Lobrano, Judge

Judge Daniel L. Dysart

(Court composed of Judge Charles R. Jones, Judge Paul A. Bonin, Judge Daniel L. Dysart)

Richard H. Barker IV

228 St. Charles Avenue

Suite 501

New Orleans, LA 70130

COUNSEL FOR PLAINTIFF/APPELLANT

Michael R. C. Riess

Charles B. Colvin

KINGSMILL RIESS, L.L.C.

201 St. Charles Avenue

Suite 3300

New Orleans, LA 70170-3300

COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED; ANSWER TO APPEAL DENIED

OCTOBER 5, 2011

In this appeal, plaintiff avers that the trial court and jury erred in finding that he did not have an accident. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

Sterling Pittman alleged that sometime in October, 2001, he injured his neck when he hit his head on an overhead pipe, after exiting from a mud shack on Rig 55, owned and operated by defendants. Pittman was a floor hand at the time. Plaintiff filed suit seeking damages.

After a trial, the jury found in favor of the defendants, concluding that the accident alleged by the plaintiff did not occur. The first jury interrogatory asked, “Do you find by a preponderance of the evidence that the plaintiff, Sterling Pittman, had an accident in which he struck his head on a pipe and suffered an injury...” The jurors answered, “No.” Plaintiff filed motions for JNOV or new trial, which were denied. This appeal followed.

DISCUSSION

A jury's factual finding/ verdict may not be reversed or set aside if there is reasonable evidentiary support in the record for the finding. *Detraz v. Lee*, 2005-1263 (La. 1/17/07), 950 So.2d 557. Moreover, where there are two permissible views of the evidence, the jury's choice, and its credibility determinations, may not be disturbed. *Rosell v. ESCO*, 549 So.2d 840 (1989). Instead, credibility determination based upon reasonable evidence "can virtually never be manifestly erroneous or clearly wrong." *S.J. v. Lafayette Parish School Bd.*, 2009-2195 (La. 7/6/10), 41 So.3d 1119.

At trial, Pittman acknowledged that it is a standard rule in the offshore industry that all accidents should be reported, no matter how insignificant. However, he never reported this accident. He did fill out an accident report on October 16, 2001, complaining of shoulder pain and a sore throat, but said nothing about the accident alleged herein or any neck injury. Because he filled out an accident report, even though it did not mention the accident in question here, he was contacted by an adjuster to make sure medical treatment was rendered. He provided a recorded statement to that adjuster on October 17, 2001, and made no mention of the accident at issue here.

Pittman was required each day to sign off on an IADC report, indicating whether or not he had an accident. For each day, he signed off "no." The rig utilized disclaimer forms, which Pittman signed, acknowledging that he had no accidents. The first documented evidence of the alleged accident was six weeks

after it supposedly occurred, to an orthopedic surgeon, to whom he reported a neck injury, although he was sent to him for treatment of this shoulder.

Furthermore, the physical layout of the site was such that the accident could not have occurred as alleged. Pittman stated that he came out the door of a mud shack, located on a cantilever deck jutting out from the rig, and almost immediately struck his head on the overhead pipe. However, the evidence showed that while mud shacks change from job to job, they are all approximately the same size and must be oriented in the same way because of the way the cantilever was constructed. There was no overhead pipe upon which Pittman could have hit his head, because they are physically too high for him to do so. Moreover, Pittman described pipe arrangements that were nowhere in that area, and the pipes that were in that area were inconsistent with Pittman's description.

Pittman assigns as error the trial court's ruling prohibiting the questioning of the plaintiff's coworkers regarding striking or almost striking their heads on the pipe. However, Pittman was unable to identify the pipe at trial, and at least one witness, Paul Gatlin, testified that the pipe was low enough that he hit his head on it.¹ Obviously, the jury chose to disregard Gatlin's testimony.

The jury, based upon the above-mentioned evidence, concluded that Pittman's alleged accident did not occur. In light of the testimony and evidence introduced at trial, we cannot say that this finding of fact was manifestly erroneous.

¹ See trial transcript, page 1290, lines 9-13.

ANSWER TO APPEAL

Defendants have answered the appeal, arguing that the appeal filed by plaintiff is frivolous, and seeking damages. We find no merit to this argument, and deny the relief sought by defendants.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED; ANSWER TO APPEAL DENIED