

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2206

RANDY SOLET

VERSUS

MELISSA WILLIAMS
AND MISS REDEMPTION, L.L.C.

Judgment Rendered: May 8, 2009

APPEALED FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT,
IN AND FOR THE PARISH OF TERREBONNE
DOCKET NUMBER 143,339
STATE OF LOUISIANA

THE HONORABLE DAVID W. ARCENEUX, JUDGE

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BEFORE: PETTIGREW, McDONALD, HUGHES, JJ.

JJ ~~Pettigrew, McDonald~~
Hughes, J., concurs.

McDONALD, J.

The plaintiff in this case, Randy Solet, was the captain of a shrimp boat, the Miss Redemption, L.L.C., owned by Melissa Williams. He notified Ms. Williams of an oil leak on the boat but it wasn't fixed. Thereafter, in December of 2003, Mr. Solet was preparing the boat for a trip and carrying some batteries by the engine room when he slipped on some oil from the leak and injured his back. He notified Ms. Williams of the accident, but she did not return his phone calls.

He filed suit against Ms. Williams and Miss Redemption, L.L.C. (the defendants), on October 8, 2004. No answer was filed, and a preliminary default judgment was entered on April 11, 2005. Thereafter, a confirmation of default hearing was held, and after extensive testimony by Mr. Solet, which included questioning by his attorney and by the judge, a judgment was rendered in favor of Mr. Solet and against the defendants in the amount of \$150,000.00 on December 13, 2007. The defendants filed a motion for new trial, which was denied.

The defendants have appealed, asserting three assignments of error. Defendants assert that the trial court erred in not declining subject matter jurisdiction, that there was insufficient evidence to support the judgment, and that the trial court erred in not applying an assumption of the risk defense.

First, the defendants argue that the trial court did not have subject matter jurisdiction because this was a workers' compensation case. Mr. Solet filed his action under the Jones Act, 46 U.S.C. §30104 (formerly 46 U.S.C. §688), and pursuant to the saving to suitors clause, 28 U.S.C. §1333. An injured seaman is allowed to join a claim for unseaworthiness, for maintenance, cure and wages, with a Jones Act suit. Seamen are allowed to bring their Jones Act claims in state court pursuant to the saving to suitor clause of the Judiciary Act of 1789. In matters involving admiralty and maritime jurisdiction, the "saving to suitors" clause permits state courts to have concurrent jurisdiction with the federal district courts.

Foster v. Destin Trading Corp., 96-0803, p. 4 (La. 5/30/97) 700 So.2d 199, 202.

Mr. Solet was the captain of a vessel at the time of his injury, and the injury occurred in the course of his employment. This assignment of error has no merit.

Second, defendants argue that there was insufficient evidence to support the judgment. Mr. Solet was questioned at length and testified concerning his wages, the facts surrounding the accident, the injury to his back, and the medical treatment he received from various doctors. While Mr. Solet did not present documentary evidence to back up his claims, the defendants failed to present any proof to contradict Mr. Solet's account despite a three-year time period between the filing of suit and the confirmation of default judgment against them. We find that under these circumstances, the testimony of Mr. Solet was sufficient to prove the facts surrounding the accident and his resulting injury. This assignment of error has no merit.

Third, defendants argue that the trial court failed to apply assumption of the risk to this case. Contributory negligence and assumption of the risk are not defenses that bar recovery by a seaman in a Jones Act case. Rather, a comparative negligence standard applies. **Johannessen v. Gulf Trading & Transp. Co.**, 633 F.2d 653, 655 (2d Cir. N.Y. 1980). See also Federal Employees' Liability Act, 45 U.S.C. §54.

Mr. Solet slipped in some oil aboard the vessel. The employer's fundamental duty under the Jones Act is to provide the seaman with a reasonably safe place to work. Mr. Solet also pursued an action pursuant to the general maritime law doctrine of seaworthiness. To prevail on an unseaworthiness claim, a seaman must only prove that an unseaworthy condition was the proximate cause of his injury. An owner's absolute duty to provide a seaworthy vessel may not be delegated to anyone. Thus, if the owner does not provide a seaworthy vessel, then no amount of prudence will excuse him, whether he knew or should have known of

the unseaworthy condition. A slippery condition on a vessel can constitute an unseaworthy condition and form the basis of liability. **Cooper v. Diamond Offshore Drilling, Inc.**, 96-924, p. 2 (La. App. 5 Cir. 3/25/97), 692 So.2d 1213, 1214, citing **Mitchell v. Trawler Racer, Inc.**, 362 U.S. 539, 80 S. Ct. 926, 4 L.Ed.2d 941 (1960) and **Daugherty v. Cross Marine, Inc.**, 598 So.2d 595 (La. App. 4 Cir. 1992). The trial court found that the vessel was unseaworthy and that the defendants were negligent.

After a thorough review of the record, we find no manifest error of fact and no error of law, and we affirm the trial court judgment. Costs are assessed against the defendants. This memorandum opinion is issued in compliance with the Uniform Rules-Courts of Appeal, Rule 2-16.1.B.

AFFIRMED.