


**NOT DESIGNATED FOR PUBLICATION**



STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 2218

FRANK BILLIOT, JR.

VERSUS

MARQUETTE TRANSPORTATION COMPANY OFFSHORE, L.L.C.  
AND INTERNATIONAL OFFSHORE SERVICES, L.L.C.

Judgment Rendered: JUN 06 2014

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Appealed from the  
17<sup>th</sup> Judicial District Court  
In and for the Parish of Lafourche, Louisiana  
Trial Court Number 120699

Honorable A. Bruce Simpson, Judge

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**BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.**

**WELCH, J.**

Frank Billiot, Jr. appeals a judgment granting the motion for summary judgment filed by International Offshore Services, L.L.C. (“IOS”) and dismissing his claims against IOS. We affirm the judgment and issue this memorandum opinion in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.B.

On April 23, 2009, Marquette Transportation Company Offshore (“Marquette”) and International Marine, LLC (an affiliated company of IOS and collectively referred to as “International”) entered into a Brokerage Agreement whereby Marquette, as “vessel operator,” agreed to provide vessels to International when requested. The Brokerage Agreement expressly stated that Marquette was an “independent contractor,” that International had “no control over or responsibility for the manning, navigation, operation, maintenance, repair, or seaworthiness of any vessels provided” by Marquette, and that Marquette’s “employees, masters, and crews [we]re not servants, agents, or employees of International.”

Pursuant to this Brokerage Agreement, Marquette provided the M/V GLORIA G. CHERAMIE (the “GLORIA”) to assist the barge IOS 800 during operations in the Gulf of Mexico, off the coast of Texas. On September 18, 2010, due to weather and wave conditions caused by Hurricane Karl, a Yokohama fender (the “bumper”<sup>1</sup>) became separated from the IOS 800 and the GLORIA’s assistance was requested to retrieve it. The GLORIA, under the control of Captain Michael James, proceeded to retrieve the bumper.

Mr. Billiot, an employee of Marquette,<sup>2</sup> was a deckhand on board the GLORIA on September 18, 2010. At the direction of Captain James, Mr. Billiot and a fellow deckhand, Roger Mousseau, retrieved the bumper and tied it to the

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<sup>1</sup> A Yokohama fender is essentially a large bumper that is used to protect the hull of a vessel, such as the IOS 800.

<sup>2</sup> There was no dispute that Marquette was Mr. Billiot’s employer as the record reveals that Mr. Billiot submitted his job application to Marquette, his personnel file was maintained by Marquette, and he received all of his orders from Marquette.

GLORIA without incident. At the time, Mr. Billiot and Mr. Mousseau were both wearing their rain gear, which included a jacket and rubber boots.

Following the successful retrieval of the bumper, Mr. Mousseau proceeded inside the GLORIA, removed his rain gear, and fixed himself a snack in the galley. Pursuant to Captain James's instructions, Mr. Billiot ascended the GLORIA's interior stairs to report the successful retrieval of the bumper to Captain James in the wheelhouse; however, he did not remove his rain gear.

After reporting to Captain James, Mr. Billiot began descending the same set of interior stairs. He claimed that the GLORIA shifted briefly and that he slipped, fell down the stairs, and was injured. Mr. Billiot reported his injuries to Captain James. Mr. Billiot received medical care for his injuries approximately two days after the incident.

On July 16, 2012, Mr. Billiot filed a seaman's complaint against Marquette (his employer) and IOS asserting claims for negligence under the Jones Act<sup>3</sup> and general maritime law, unseaworthiness under general maritime law, and failure to provide maintenance and cure. On July 19, 2013, IOS filed a motion for summary judgment seeking the dismissal of Mr. Billiot's claims against IOS, claiming that as a matter of law, Mr. Billiot could not assert a claim against IOS for Jones Act negligence, unseaworthiness under general maritime law, and maintenance and cure because IOS was not Mr. Billiot's employer. In addition, IOS claimed that there was no genuine issue of fact as to the lack of a claim against IOS for general maritime negligence. Therefore, IOS contended that it was entitled to summary judgment dismissing Mr. Billiot's claims against it. After a hearing, the trial court granted the motion for summary judgment. A judgment in accordance with the trial court's ruling was signed on November 4, 2013, and it is from this judgment

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<sup>3</sup> See 46 U.S.C. § 30104, *et seq.*

that Mr. Billiot has appealed, assigning error to the trial court's dismissal of his claims against IOS for general maritime negligence.<sup>4</sup>

Essentially, Mr. Billiot claims that IOS was negligent in ordering the GLORIA to recapture the bumper in extreme weather conditions. In addition, he claims that following his injury, IOS was negligent in not ordering the GLORIA to attempt to transfer him to the IOS 800 for medical care, not ordering the GLORIA to port so that he could get medical care, and not calling the United States Coast Guard to report the incident.

In support of IOS's motion for summary judgment, it relied on the deposition testimony of Captain James, Mr. Mousseau, Mr. Billiot, and Captain Quinsen Matherne, the GLORIA's relief captain. According to Captain James, the IOS 800 was not involved directly with the GLORIA's operation and had no input with respect to the crew of the GLORIA (including no control over hiring and firing) and the driving of or the repairs to the vessel. According to Captain James, such decisions rested solely with him, as the captain of the GLORIA, and Marquette. With regard to the request by the IOS 800 to retrieve the bumper, Captain James stated that he would not have undertaken the retrieval of the bumper had it not been safe to do so. According to Captain Matherne, it was common for the GLORIA to perform operations under those weather conditions and the request to retrieve the bumper was not unusual.

According to Mr. Mousseau, Mr. Billiot's injury occurred approximately twenty to thirty minutes after he and Mr. Billiot had retrieved the bumper and returned to the GLORIA's cabin. According to Mr. Billiot, the incident in which he was injured occurred because the interior stairs were wet, because there was

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<sup>4</sup> On appeal, Mr. Billiot does not challenge the dismissal of his claims against IOS for negligence under the Jones Act, for unseaworthiness under general maritime law, and for maintenance and cure.

only one handrail for the stairway, and because of the polished metal plating on the steps.

Captain James testified that immediately following Mr. Billiot's injury, the IOS 800 informed him that it was not safe to transport Mr. Billiot off the GLORIA to the IOS 800 (where there was a medic) because of the weather conditions. Captain James testified that he agreed with the IOS's position on this issue. In addition, he testified that due to the weather and because Mr. Billiot's injuries were not life-threatening, he did not contact the Coast Guard for a "Medevac." When the weather conditions were more favorable, approximately two days later, Mr. Billiot was transported for medical care.

In opposition to the motion for summary judgment, Mr. Billiot relied on the testimony of Captain Matherne wherein he indicated that it would have been possible to transport Mr. Billiot to the IOS 800 if the GLORIA had approached the IOS 800 on the leeward side and that the steps of the interior stairwell of the GLORIA were slippery, even when the stairs were not wet.

Based on our *de novo* review of the record, we find that Mr. Billiot failed to offer any evidence in opposition to the motion for summary judgment sufficient to establish that IOS breached a duty to exercise reasonable care or that the breach of any duty owed by it caused Mr. Billiot's injuries. Therefore, the trial court properly granted IOS's motion for summary judgment and dismissed Mr. Billiot's claims against IOS for general maritime negligence.

Accordingly, the November 4, 2013 judgment of the trial court is affirmed. All costs of this appeal are assessed to the plaintiff/appellant, Frank Billiot, Jr.

**AFFIRMED.**