

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH MICHAEL HILL, SR.,
Appellant,
vs.
CHAPARRAL BOATS, INC.,
Respondent.

No. 54368

FILED

OCT 18 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a district court judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Joseph Hill, Sr. was injured following a boating accident on Lake Mead. Hill alleged that his injuries were caused by a defective engine throttle assembly in his newly acquired boat and commenced an action against the seller of the boat, the boat's manufacturer, the manufacturer of the boat's engine, and the manufacturer of the boat's throttle assembly. He asserted claims for negligence, strict liability, breach of implied warranties and failure to warn. All of the defendants, except the manufacturer of the boat, respondent Chaparral Boats Inc., settled with Hill. The action proceeded to a jury trial and the jury returned a verdict in favor of Chaparral.

Hill presents three issues on appeal, only one of which we address in detail in this order: whether federal maritime law and

comparative fault should have been applied.¹ We conclude that the district court did not err in holding that federal maritime law and comparative fault apply, and we affirm the district court's entry of judgment for Chaparral.

Facts and Procedural History

In July 2000, Hill was operating his new Chaparral boat on Lake Mead. While operating the boat, the throttle assembly malfunctioned causing the boat to be unable to shift into reverse, the only means Hill had for braking or slowing the boat. After he discovered that he was unable to shift the throttle into reverse, Hill drove the boat approximately 15 miles to Hemenway Harbor without calling for help. When he arrived at Hemenway Harbor, the harbor was very busy. However, Hill found a spot on the right side of the dock that he believed he could get into and attempted to dock the boat. He had planned to jump onto the dock and grab onto the boat to gain control of it. Hill shifted the boat into neutral as he approached the spot and left the helm to sit on the bow of the boat. Unfortunately, due to the malfunctioning throttle assembly, the boat was stuck in the forward gear. Consequently, when he jumped off the boat, Hill was struck by the boat before he could turn around and grab it. As a result of the incident, Hill underwent a global fusion to his back.

¹Hill also argues that the district court erred in (1) refusing to strike Chaparral's answer or affirmative defenses for discovery abuses; and (2) denying his motion for a new trial due to improper closing arguments. We conclude that his contentions are without merit.

Chaparral made a motion seeking the application of federal maritime law and the doctrine of pure comparative negligence. The district court granted the motion and the action proceeded to a jury trial. The jury returned a verdict for Chaparral and Hill now appeals.

Discussion

Hill contends that the district court erred in holding that maritime law and the doctrine of comparative fault applied in this strict products liability action. He argues that (1) federal maritime law should not apply, and (2) even if maritime law is applicable, comparative fault should not apply.²

²Hill also argues on appeal that Chaparral should be judicially estopped from asserting the application of maritime law and comparative fault. He asserts that Chaparral took inconsistent positions because Chaparral did not oppose Volvo's, the engine manufacturer, motion for determination of good faith settlement, but later sought the application of the proportionate share rule and maritime law. Hill, however, cites no authority for the proposition that a mere failure to oppose a motion by another party in the action constitutes "taking a position."

Judicial estoppel applies to protect the judiciary's integrity and prevents a party from taking inconsistent positions by "intentional wrongdoing or an attempt to obtain an unfair advantage" NOLM, LLC v. County of Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (quotations omitted). In this case, there is no evidence that Chaparral engaged in intentional wrongdoing or attempted to obtain an unfair advantage. Furthermore, a party does not take a position merely because it failed to oppose a motion brought by a co-defendant when

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Federal maritime law applies

In Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995), the United States Supreme Court set forth a two prong test for determining when the exercise of federal maritime jurisdiction over a tort claim is appropriate: “location” and “connection.” Grubart, 513 U.S. at 534. The “location” prong requires the tort to have occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water. Id. Here, the location prong is satisfied because the accident occurred on Lake Mead. Lewis v. Sea Ray Boats, Inc., 119 Nev. 100, 109, 65 P.3d 245, 250-51 (2003) (holding that the location prong of Grubart was satisfied where a tort occurred on Lake Mead).

The “connection prong” requires the court to examine two separate questions: (1) “whether the general features of the incident causing the injury indicate the incident had a ‘potentially disruptive impact on maritime commerce.’”; and (2) “whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.” Houseboat Vacations Inc. v. Hernandez, 103 F.3d 914, 916-17 n.3 (9th Cir. 1996) (quoting Grubart, 513 U.S. at 534).

The United States Supreme Court has instructed that courts must describe the incident causing the injury at “an

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no duty exists requiring it to act. Therefore, judicial estoppel is not applicable in this case.

intermediate level of possible generality” when considering whether there is a potential disruptive impact. H2O Houseboat Vacations, 103 F.3d at 916 (quoting Grubart, 513 U.S. at 538). Although it is possible to speculate as to how any incident could have posed a hazard to maritime commerce, such speculation is not warranted and we do not ignore the actual incident. Grubart, 513 U.S. at 539 (asking “whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping”); H2O Houseboat Vacations, 103 F.3d at 916-17.

In this case, it is possible to characterize the incident broadly as a product defect causing personal injury. Alternatively, a narrow characterization could be a defectively assembled throttle assembly that caused a boat to strike a passenger while docking the vessel. We conclude that the best description is a product defect that caused the loss of the ability to control a boat while approaching a harbor and while docking on a navigable waterway. This description is neither as broad nor as narrow as the possible extremes illustrated above. Moreover, this approach is consistent with the United States Supreme Court’s teaching that asks “whether the incident could be seen within a class of incidents that posed more than a fanciful risk to commercial shipping.” Grubart, 513 U.S. at 539.

Applying this intermediate level of generality description, it is plain that the incident had a potentially disruptive impact on maritime commerce. Hill’s boat could have damaged the dock or collided with other vessels in the harbor. Although the dock was not damaged and the parties disagree on whether Hill had collided with any other vessels, no actual impact on commerce is required.

Christensen v. Georgia-Pacific Corp., 279 F.3d 807, 815 n.31 (9th Cir. 2002). We, therefore, conclude that the incident causing the injury had the potential to disrupt maritime commerce.

Finally, docking of a boat and navigation in a navigable waterway is of “the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.” Grubart, 513 U.S. at 539. It is inconceivable that there is any activity that goes to the core of traditional maritime activity more than the docking and navigation of a boat.

Because both the location and connection prong of Grubart are satisfied, the application of maritime law is required. Therefore, we conclude that the district court did not err in applying maritime law in this case.

Substantive maritime law requires the application of the doctrine of comparative fault

“With admiralty jurisdiction comes the application of substantive admiralty law.” East River S.S. Corp. v. Transamerica Delaval, 476 U.S. 858, 864 (1986). Absent a specific statute, the general maritime law applies. Id. The application of admiralty jurisdiction and substantive law, however, do not automatically displace otherwise applicable state law. Yamaha Motors v. Calhoun, 516 U.S. 199, 206 (1996). Although state laws are not automatically displaced, the United States Supreme Court has held that state laws regarded as “inconsonant with the substance of federal maritime law” will generally not be given effect. Id. at 207.

The doctrine of comparative fault is not new to admiralty law. Pan-Alaska, Etc. v. Marine Const. & Design Co., 565 F.2d 1129,

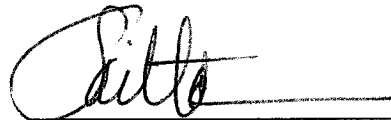
1138 (9th Cir. 1977). Admiralty courts have applied comparative fault in unseaworthiness cases, a specie of strict liability, and in personal injury actions under the Jones Act, 46 U.S.C. § 30104, and in actions brought under the Death on the High Seas Act, 46 U.S.C. §§ 761, 766. Id. In short, “[t]he admiralty rule in personal injury cases is, in effect, one of comparative negligence.” Lewis v. Timco, Inc., 716 F.2d 1425, 1428 (5th Cir. 1983) (quoting G. Gilmore & C. Black, The Law of Admiralty 500 n.70 (2d ed. 1975)).

Furthermore, comparative fault concepts can be applied in admiralty law to strict products liability. Saratoga Fishing Co. v. Marco Seattle, Inc., 69 F.3d 1432, 1439 (9th Cir. 1995), reversed on other grounds by Saratoga Fishing Co. v. J.M. Martinac & Co., 520 U.S. 875 (1997); Lewis, 716 F.2d at 1427-28; Pan-Alaska, 565 F.2d at 1138. The Lewis court highlights that disparate outcomes would result if comparative fault is not applied in strict product liability cases. 716 F.2d at 1428-29. It noted that “comparative fault has long been the accepted risk-allocating principle under the maritime law, a conceptual body whose cardinal mark is uniformity.” Id. at 1428.

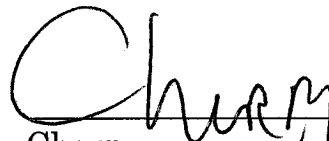
Although Hill asserts that there is a multifactor test for determining whether state law is preempted by admiralty law, there is no authority to suggest that state law may apply when applicable maritime law exists as in this action. In fact, “courts applying maritime law have repeatedly rejected choice of law notions that would reference state tort doctrines.” Lewis, 716 F.2d at 1428.


Therefore, because we conclude that the doctrine of comparative fault is a part of substantive maritime law, application of comparative fault is required. Accordingly, we


ORDER the judgment of the district court AFFIRMED.

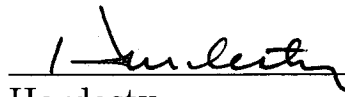

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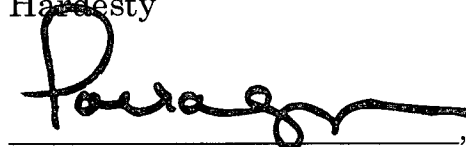

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Carolyn Worrell, Settlement Judge
Wm. Kerry Skaggs
Lewis & Roca, LLP/Las Vegas
Lincoln, Gustafson & Cercos
Eighth District Court Clerk