

Bertucci Contracting Corp. v. M/V ANTWERPEN United States Court of Appeals for the 5th Circuit 465 F.3d 254 (Decided Sept. 19, 2006)

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**THE "CLEARLY ERRONEOUS STANDARD" AND ITS APPLICATION TO THE
ISSUES OF NEGLIGENCE AND CAUSATION IN ADMIRALTY CASES.**

The Court of Appeals for the Fifth Circuit affirmed the District Court's judgment holding that based on the "clearly erroneous" standard for reversal of a lower court's decision, there was no error in the District Court's factual findings on negligence and causation or in its legal conclusions based on applicable navigation rules. This decision precluded the Appellee from the burden of proving that her navigation was not a contributory, proximate cause of a third party allision based on the District Court's findings of fact that there was no negligence, causation or violation of the navigation rules on the part of the Appellee.

Bertucci Contracting Corp. v. M/V ANTWERPEN
United States Court of Appeals for the 5th Circuit
465 F.3d 254
(Decided Sept. 19, 2006)

At approximately 2:00am on the morning of January 19, 2003, Appellant Marvita Shipping Company Ltd.'s ("Marvita") vessel, the M/V ANTWERPEN ("the Antwerpen"), was headed upbound on the Mississippi River ("the river") through the Carrollton Bend ("the Bend") just north of the City of New Orleans. Also proceeding up the river at that time was the M/V ALICE HOOKER. At the same time, Appellee M/V LADY JEANETTE ("the Lady Jeanette") was proceeding downbound through the Bend along with the M/V BAYOU BLACK and the M/V BEVERLY ANDERSON.

In response to the traffic present at the Bend, Captain Kenneth Ayars of the Lady Jeanette radioed to pilot Teal M. Grue of the Antwerpen to discuss an agreement whereby both ships could safely navigate the Bend amidst the presence of multiple vessels. Pilot Grue and Captain Ayars settled that their vessels would pass each other on their port sides and that the Lady Jeanette would navigate close to the right descending bank of the river. The two vessels passed each other without incident, however, after passing the Lady Jeanette, the Antwerpen crashed into a group of stationary barges located on the left descending bank of the river. The Appellant maintains that the Lady Jeanette violated the passing agreement by failing to stay to the right bank and instead proceeded straight towards the Antwerpen, causing the vessel to navigate too close to the left bank to avoid a collision with the Lady Jeanette, and thereby striking the group of stationary vessels.

The United States District Court for the Eastern District of Louisiana held that the Lady Jeanette complied with the passing agreement and all applicable navigation rules and that the Antwerpen's collision with the stationary barges was caused by her Pilot's failure to decrease speed so as to maintain proper steerageway while navigating the Bend. The District Court entered judgment for the Lady Jeanette, its owner Sandbar III, Inc., and its operator F&L Marine Management, Inc. The Antwerpen appeals the District Court's ruling and requests that this court vacate the judgment and remand for a new trial.

Appellant contends that the Lady Jeanette did not comply with the passing agreement to navigate towards the right bank and created a risk of collision by failing to do so. Appellant

further contends that the Lady Jeanette did not comply with Inland Navigation Rules 7, 8, 9 and 14 by failing to turn to starboard once the risk of collision was present, thereby creating a "near-miss" situation with the Antwerpen. Marvita argues that in failing to determine that a risk of collision existed and that the Lady Jeanette had violated the navigation rules, the District Court precluded the Lady Jeanette from having to prove that her navigation was a contributory and proximate cause of the allision.

The United States Court of Appeals for the Fifth Circuit reviewed the District Court's factual findings for clear error. If a district court's finding is plausible in light of the record when viewed as a whole, the Court of Appeals cannot reverse the lower court's decision, even if it would have weighed the evidence in a different fashion. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985). A finding is only clearly erroneous when the appellate court when viewing the evidence in its entirety determines definitively that a mistake has been made. *Walker v. Braus*, 995 F.2d 77, 80 (5th Cir. 1993). The facts of this case are subject to this standard.

The court held that while there was evidence to support the Appellant's claim that the Lady Jeanette violated both the passing agreement and navigation rules, that they were not "left with the definite and firm conviction that a mistake had been committed" after a thorough review of the evidence. *Id.* at 80. The court held that Captain Ayers' testimony that the Antwerpen's lights were constantly changing proved that Captain Ayers was not navigating directly towards the vessel. The court also recognized Captain Ayers' testimony that the Lady Jeanette complied with the passing agreement as he navigated close to the right bank initially and only headed towards the left bank once he realized that the Lady Jeanette would be able to safely clear the Antwerpen's stern. Furthermore, neither vessel recorded any incident in their deck logs, nor did Pilot Grue sound the danger signal or radio to the Lady Jeanette that he needed more room to navigate the Bend safely or without incident. The evidence showed that just prior to the collision with the barges, Captain Ayers' radioed that he was "all right and that the Antwerpen had plenty of room." *Bertucci Contracting Corp. v. M/V Antwerpen*, 465 F.3d 254, 261 (5th Cir. 2006). In addition, the court agreed with expert testimony that the Antwerpen failed to proceed at a speed necessary to maneuver the vessel through the Bend, and therefore was caught in the current and pushed towards the stationary barges.

In affirming the decision of the District Court, the United States Court of Appeals for the Fifth Circuit agreed that the Lady Jeanette complied with the passing agreement and did not violate any applicable navigation rules, that there was no imminent risk of collision between the Antwerpen and the Lady Jeanette, and that the Antwerpen's allision was caused solely by her failure to maintain proper steerageway through the Bend. The court entered judgment affirming the holding of the District Court in favor of the Lady Jeanette, F&L Marine Management, and Sandbar III, Inc., noting that they were not left with "definite and firm conviction" that the lower court erred in its ruling.

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