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Matheny v. Tennessee Valley Authority United States Court of Appeals for the Sixth Circuit 557 F.3d 311 (Decided February 19, 2009)

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THE "PRIVITY OR KNOWLEDGE" ELEMENT OF THE LIMITATION OF LIABILITY ACT DOES NOT NECESSITATE AN OWNER ANTICIPATE ALL POSSIBLE RISKS WHEN HIS VESSEL IS ENTRUSTED TO A COMPETENT CAPTAIN.

The United States District Court for the Middle District of Tennessee erred in declaring that the limitation of liability act did not apply to the owner of the *Patricia H,* a tugboat whose excessive wake capsized a fishing boat and drowned one man. The district court also erred in declaring that the owner was liable for "negligent supervision." The Court of Appeals held that negligence was on part of the Captain, who had previously shown competence, and not within the domain of the defendant.

Matheny v. Tennessee Valley Authority
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On a fairly ordinary day in Tennessee, a rather unusual set of circumstances led to the death of one fisherman and the injury of another. Captain Ralls, the helmsman of a tugboat owned by the Tennessee Valley Authority ("TVA"), was engaged in towing barges to and from a coal power plant located on the Cumberland River in Stewart County, Tennessee. Ralls captained the *Patricia H*, one of many TVA tugboats, valued at $420,000.

In the 1970's the TVA excavated a second channel in the Cumberland River, and created an island between the two channels. The old channel was frequently used by recreational fisherman, a practice the TVA was well aware of. At approximately 5:30 pm on June 5, 2005, Thomas Lawrence and his cousin, Ronald Matheny, were fishing in Lawrence's fourteen foot Phantom boat in the old channel. Lawrence frequently fished the area and even testified that he returned often after the terrible events of this day, finding it a perfectly safe locale.

At 7:00 pm, Captain Ralls and his crew started their shift on the *Patricia H.* Ralls piloted the *Patricia H* from a coal barge unloader downstream to pick up a barge, passing Lawrence's boat without incident. He passed it again on his way back upstream without event. On his third pass however, circumstances changed. At approximately 7:50 pm, as Ralls was piloting back downriver to retrieve a loaded barge, he kicked up a large wake that covered Lawrence's boat with water. The boat was swamped and both men were tossed overboard. The *Patricia H's* crew scrambled to help and were able to save Lawrence, but Matheny was not so fortunate. Matheny, a 49 year-old heart attack survivor, drowned. He was not employed at the time of his death but was drawing disability from work and had applied for disability benefits from Social Security.

Captain Ralls' immediate supervisor was David Duke, a coal haul foreman at the power plant responsible for ensuring his employees obeyed safety rules. He testified that the TVA had no yearly training for tugboat operators, that the TVA did not train pilots in "The Rules of the Road" and that there was no specific policy regarding tugboat speeds. Duke also testified however, that he was not aware of any prior incidents with Captain Ralls. Matheny's wife Becky brought suit, individually and as surviving spouse, in the district court for the Middle District of Tennessee against TVA.

During a bench trial, the court awarded damages to Matheny. The court found that Captain Ralls was an accomplished and experienced tugboat captain, and had been "perfectly competent" up to the time of the accident. The district court also found, however, that Ralls violated Rules 2(b) and 6 of the Inland Rules of Navigation (due regard should be had to all dangers of navigation and collision, and that vessels should always proceed with safe speed to avoid collision, respectively) by operating the *Patricia H* at an excessive speed when it passed the fishing boat, and that the resulting wake was "100%

responsible for the capsize of the fishing boat and the death of Mr. Matheny."[46] The district court held that the Limitation of Liability Act did not apply to limit TVA's liability to the value of the *Patricia H* because "TVA had privity or knowledge of the risks posed by Captain Ralls."[47] As a separate basis for liability without limitation, the district court found that TVA negligently supervised Ralls, "by failing to specifically instruct him to maintain a low speed or a low wake in the presence of small fishing vessels."[48] Conversely however, they also note that TVA did not commit negligent entrustment, because there was no reason to question the overall competency of Captain Ralls.[49] Matheny was awarded $3,324,352, which represented $124,352 for lost future earnings and household services, and $3.2 million for consortium losses of Mrs. Matheny and Matheny's three children. This was calculated taking into account his life expectancy of 8 years. TVA appealed from this judgment.

The Court of Appeals for the Sixth Circuit, reviewing factual findings for clear error and matters of law *de novo*, took a closer look at the Limitation of Liability Act. The relevant part of the act states, "[T]he liability of an owner of a vessel for any claim... or liability described in subsection (b) shall not exceed the value of the vessel and pending freight."[50] Subsection (b) holds, "claims... liabilities subject to limitation under subsection (a) are those arising from... any loss, damage, or injury by collision, or any act ... done, occasioned, or incurred, without the privity or knowledge of the owner."[51] The function of this act is to limit the ship owner's liability for any injuries caused by the negligence of the captain unless the owner himself had "privity or knowledge."[52] Limitation of Liability includes two questions: (1) negligence or unseaworthiness, and (2) knowledge or privity of the vessel owner.[53]

The TVA conceded liability for Captain Ralls' negligence, but claimed entitlement to the Limitation of Liability Act because it lacked privity or knowledge of the negligent act. Privity or knowledge is measured against the specific negligent acts or unseaworthy conditions that caused or contributed to the accident, not every fact regarding the accident.[54] While the district court held that the act did not apply because TVA had knowledge of *risks* posed by Ralls' negligent operation, the Court of Appeals held this to be a misinterpretation. Of relevant concern are *acts,* not *risks.* The court found there was no evidence to show that the TVA had specific knowledge of the action that led to the accident. Barges and fisherman on the Cumberland had "peacefully coexisted" for years, and there had only been two similar accidents prior to this one. The court therefore ruled that the TVA was justified in assuming the area was safe for both barges and fishing boats.

The Court also found that the TVA was safe in other assumptions, and under the Limitation of Liability Act an "owner may rely on the navigational expertise of a competent ship's master."[55] Ralls was a proven Captain, tested in the "Rules of the Road" and collision avoidance, and had no prior citations. The district court even proclaimed that Ralls appeared to be the most qualified captain employed by TVA at the time of the accident.[56] On review, the court ruled that a captain such as Ralls did not need to be explicitly instructed to avoid creating an excessive wake near small fishing boats; the TVA was entitled to rely on a competent captains' navigational knowledge. It was not negligent in failing to inform him or others not to create excessive wakes near recreational boats.

In an analogous case in the Sixth Circuit, *The Longfellow*, the court found that "faults of the navigation of the boat could not be imputed to the owners, as having occurred without their "privity or

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[46] 523 F.Supp.2d at 730.
[47] *Id.* at 721.
[48] *Id.* at 725.
[49] *Id.* at 726.
[50] 46 U.S.C. § 30505(a) (2007).
[51] 46 U.S.C. § 30505(b) (2007).
[52] *In re City of New York,* 522 F.3d 279, 283 (2d Cir.2008).
[53] *In re Muer,* 146 F.3d 410, 415 (6th Cir.1998).
[54] *Suzuki of Orange Park, Inc. v. Shubert,* 86 F.3d 1060, 1064 (11th Cir.1996).
[55] *In re Kristie Leigh Enters.,* 72 F.3d 479, 481-482 (5th Cir.1996).
[56] 523 F.Supp.2d at 722.

knowledge."[57] Ralls was a skilled pilot who should have exercised his own judgment in slowing down; the accident was caused by his navigational decisions. "The privity or knowledge standard does not require a vessel owner to take every possible precaution; it only obliges the owner to select a competent master and remedy deficiencies which he can discover through reasonable diligence."[58]

The district court appeared to rely heavily on *The Linseed King*, where a ferry boat crashed into ice and sank.[59] In this case, the Supreme Court found privity or knowledge and denied limitation of liability because the ship was "admittedly unfit to run through ice"[60] In *Linseed* though, this fact was *known* to the owner who permitted the ship to go through ice anyway. The Court of Appeals found this as incorrect analogy to this case, because the emergency that occurred here was in the sole providence of the captain; no consultation was possible with the owner. In such cases, the owner must rely upon the master's obeying the rules and using reasonable judgment. The court found that the accident was caused by Captain Ralls' navigational decisions as captain of his ship. His acts cannot be imputed to TVA because there was no evidence that TVA had privity or knowledge of the acts that led to the injuries here.

The judge also reversed the district courts finding of "negligent supervision" on the grounds that no legal duty is placed on a vessel owner to specifically instruct a licensed captain to follow rules of speed prior to a voyage. The owner fulfills his duty by properly equipping the vessel and selecting a competent crew of people.[61] For limitation purposes, an owner may rely on the navigational expertise of a competent ship master.[62] Since the TVA did just that, there was no duty to remind Ralls to follow the rules.

The TVA also took issue with the consortium award for damages. Though these are allowed by Tennessee's wrongful death statute,[63] the court issued instruction for the district court to reconsider these in accordance with limitation of liability finding. Because the basis of analysis by the district court was incorrect, the case was reversed in part and remanded.

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[57] 104 F. 360 (6th Cir.1900).
[58] *In re Omega Protein, Inc.,* 548 F.3d 361, 374 (5th Cir.2008).
[59] 285 U.S. 510 (1932).
[60] *Id.*
[61] *In re MO Barge Lines, Inc.,* 360 F.3d 885, 891 (8th Cir.2004).
[62] *Kristie Leigh,* 72 F.3d at 482.
[63] Tenn.Code. Ann. § 20-5-113 (19943).