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Naquin v. Elevating Boats, L.L.C. 744 F.3d 927 United States Court of Appeals for the Fifth Circuit (Decided March 10, 2014)

Michael G. Lewis, Class of 2015

INJURED LAND-BASED VESSEL REPAIRMAN AWARDED SEAMAN STATUS UNDER JONES ACT, BUT CANNOT RECOVER DAMAGES FOR EMOTIONAL DISTRESS CAUSED BY AWARENESS OF THE DEATH OF A RELATIVE IN THE SAME ACCIDENT

Naquin v. Elevating Boats, L.L.C.
744 F.3d 927
United States Court of Appeals for the Fifth Circuit
(Decided March 10, 2014)

United States Court of Appeals for the Fifth Circuit affirmed the judgment of the district court that evidence was sufficient to establish employee was a seaman entitled to Jones Act coverage and that employer was negligent, but vacated judgment that employee's emotional damages arising from the death of employee's relative in the same accident that injured employee were compensable under the Jones Act, and remanded on damages issue.

Elevating Boats, L.L.C. ("EBI") produces, operates, and maintains a fleet of lift-boats[1] and marine cranes in several Louisiana port Facilities.[2] EBI employed Larry Naquin, Sr. ("Naquin") as a vessel repair supervisor, primarily tasked with the maintenance and repair of EBI's lift-boats, which ordinarily required him to work aboard the lift-boats while they were moored, jacked up, or docked in the shipyard canal.[3] Naquin would work while the vessel was being moved within the canal, and occasionally on a vessel that was operating on open water.[4] Naquin spent 70 percent of his total time working aboard these vessels, spending the remaining 30 percent of his time working on land.[5]

On November 17, 2009, Naquin was operating the shipyard's land-based crane to move a heavy iron weight that was within the crane's lifting capacity.[6] The crane suddenly failed, and toppled over onto a nearby building.[7] Naquin jumped from the crane house as it fell, but not without injury.[8] Naquin's cousin's husband, who had been working in the nearby building, was crushed to death by the crane.[9]

Naquin brought a Jones Act suit in the District Court for the Eastern District of Louisiana, alleging that EBI was negligent in their "construction and/or maintenance of the [] land-based crane."[10] The jury concluded that Naquin qualified as a Jones Act seaman and that he was injured as a result of EBI's negligence.[11] The jury awarded Naquin damages including past and future mental pain and suffering.[12] EBI appealed, contending: (i) that Naquin was not a Jones Act Seaman; (ii) that the

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[1] "A lift-boat is a self-propelled, self-elevating, offshore supply vessel. Although it functions and navigates much like any other supply vessel, a typical lift-boat is equipped with three column-like legs that can be quickly lowered to the seafloor to raise the vessel out of the water and stabilize it for marine operations." Naquin v. Elevating Boats, L.L.C., 744 F.3d 927, 930 n.1 (2014).

[2] *Id.* at 930.

[3] *Id.*

[4] *Id.* at 930-31.

[5] *Id.* at 931.

[6] *Id.*

[7] *Id.*

[8] *Id.* Naquin suffered two broken feet and a lower abdominal hernia, requiring surgery and physical therapy. *Id.*

[9] *Id.* Naquin learned of his relative's death the next day in the hospital. *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* The jury awarded $400,000 for future lost wages, $1,000,000 for past and future physical pain and suffering, and $1,000,000 for past and future mental pain and suffering. *Id.*

evidence was insufficient to establish negligence; and (iii) that the district court erred by admitting evidence to support Naquin's emotional damages claim.[13]

On appeal, EBI first argued that the jury erred in finding Naquin was a seaman entitled to Jones Act coverage because Naquin was a land-based ship-repairman with no adequate connection to vessels in navigation to qualify him as a seaman.[14] EBI argued that Naquin's duties classified him as a land-based worker, thereby invoking the protections of the Longshore and Harbor Worker's Compensation Act and precluding coverage under the Jones Act.[15] To determine whether Naquin qualified as a seaman, the Fifth Circuit applied the two-prong test set forth by the Supreme Court: "First, 'an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission.' Second, 'a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both duration and nature.' "[16] The court summarized the relevant inquiry as "whether, in the course of his current job, [Naquin] substantially contribute[d] to the vessels' functions and maintain[ed] a substantial connection with the fleet."[17]

The court found that the first prong of the test was easily satisfied, as Naquin did the ship's work and contributed to the function of EBI's vessels.[18] In addressing the second prong of the test, the court noted that the purpose of the substantial connection requirement is to separate sea-based maritime employees entitled to Jones Act protection from land-based employees that " 'only have a temporary or sporadic connection to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea.' "[19] The court applied the Supreme Court's "rule of thumb[] '[that] [a] worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.' "[20] Accordingly, because Naquin spent 70 percent of his time working on EBI's fleet of lift-boats, the court held that the evidence supported the jury's finding that Naquin had a substantial temporal connection to the EBI fleet.[21]

In response to EBI's argument that Naquin was not "regularly exposed to the perils of the sea," the court held that workers who spend time aboard vessels near the shore "still remain exposed to the perils of a maritime work environment."[22] The court analogized Naquin to the plaintiff in *In re Endeavor Marine*[23].[24] There, a crane operator, working exclusively on a stationary barge used to load and unload cargo at a Mississippi River dock facility, was found to be exposed to the perils of the sea.[25] The court found similarly, Naquin's primary duties exposed him to "precisely the same type and degree of maritime perils."[26] Accordingly, the court found that Naquin "contribute[d] to the function of a discrete fleet of vessels and ha[d] a connection with the fleet that [wa]s substantial in terms of both

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[13] *Id.* at 932.
[14] *Id.*
[15] *Id.* The court rejected this argument noting that in *Southwest Marine, Inc. v. Gizoni*, the Supreme Court clarified that the "Jones Act covers any worker who qualifies as a 'seaman,' without regard to whether a worker may also qualify for coverage under the LHWCA." *Id.* (quoting Southwest Marine, Inc. v. Gizoni, 502 U.S. 81, 87-88 (1991)).
[16] *Id.* at 933 (quoting Becker v. Tidewater, Inc., 335 F.3d 376, 387 (5th Cir. 2003)).
[17] *Id.*
[18] *Id.* The court noted that "EBI concede[d], Naquin spent the majority of his time repairing, cleaning, painting, and maintaining the 26-30 lift-boat vessels that EBI operated out of the [] shipyard." *Id.* Additionally, the remainder was spent aboard the lift-boats operating marine cranes and securing the decks for voyage. *Id.* Therefore, the court held "such tasks are necessary to the function and operation of any vessel." *Id.*
[19] *Id.*
[20] *Id.* at 934 (quoting Chandris v. Latsis, 515 U.S. 347, 371(1995)).
[21] *Id.*
[22] *Id.*
[23] 234 F.3d 287 (5th Cir. 2000).
[24] *Naquin*, 744 F.3d at 934-35.
[25] *Endeavor Marine*, 234 F.3d at 289.
[26] *Naquin*, 744 F.3d at 935.

duration and nature."[27] The court thereby held the evidence supported the jury's findings that Naquin's connection to the EBI fleet was substantial in both nature and duration, and that Naquin was a seaman under the Jones Act.[28]

In addressing EBI's second argument, that the evidence was insufficient to support the jury's finding of negligence, the court stated it is clear that "[e]very employer has a duty to provide its employees with a reasonably safe work environment and work equipment."[29] Testimony at trial established that the crane, manufactured by EBI, fell after a weld failed.[30] Although Naquin could not prove precisely why the weld failed, it was not disputed that EBI was the party responsible for the design and integrity of the crane, and the jury relied on this circumstantial evidence to determine EBI was negligent.[31] EBI further argued that the exclusive reliance upon circumstantial evidence equated to a dependence on the doctrine of *res ipsa loquitur*, and that because *res ipsa* was not pled or asserted, it was waived by Naquin, and could not be the basis for establishing negligence.[32] The court rejected this theory[33], noting that EBI was the only party responsible for the "indisputably defective" weld that secured the crane to its base.[34] As such, it was the direct cause of Naquin's injuries and, although circumstantial, the court held such evidence was sufficient to support the jury's finding that EBI was negligent.[35]

EBI's third argument on appeal related to the admission of evidence concerning the death of Naquin's cousin's husband, because it argued such evidence was not relevant to Naquin's claim for emotional damages.[36] The court began its inquiry by noting that the "Jones Act does not indiscriminately permit compensation for emotional damages resulting from the death of another person."[37] The court continued by acknowledging that in *Consolidated Rail Corp. v. Gottshall*[38], the Supreme Court held the "appropriate test for awarding emotional damages under the FELA—and by extension, the Jones Act—is whether the plaintiff was in the 'zone of danger.' "[39] The court found that, unquestionably, Naquin was in the zone of danger and eligible for damages relating to his emotional harm.[40] However, the court noted that there was no case law to support Naquin's argument that a Jones Act plaintiff, "once physically injured and entitled to emotional damages, is entitled to the full spectrum of emotional damages, including those arising from an injury to someone else."[41] The court cited to the Supreme Court's discussion in *Gottshall*, finding that the Court's explicit rejection of the relative bystander test's applicability under the Jones Act was instructive for determining whether Naquin could assert a claim for emotional harm arising from an injury to his relative.[42] The court also noted "the Jones Act only extended an action to recover for the death of a seaman to his immediate

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[27] *Id.*
[28] *Id.*
[29] *Id.* at 936.
[30] *Id.*
[31] *Id.* at 936-37.
[32] *Id.* at 937.
[33] The court noted it had already considered and rejected this argument, referencing its opinion in *Watz v. Zapata Off-Shore Co.*, 431 F.2d 100 (5th Cir. 1970). *Id.* There, the court rejected the theory stating "[w]e simply apply a rule of circumstantial evidence, not changing the burden of proof or casting presumptions against the defendant." *Id.* at 119.
[34] *Naquin*, 744 F.3d at 937.
[35] *Id.*
[36] *Id.* at 938. The district court denied EBI's motion to exclude any references to the relative's death, concluding that although prejudicial the evidence was relevant to Naquin's emotional damages claim. *Id.*
[37] *Id.*
[38] 512 U.S. 532 (1994).
[39] *Naquin*, 744 F.3d at 938 (quoting *Gottshall*, 512 U.S. at 555-556).
[40] *Id.*
[41] *Id.* at 939.
[42] *Id.* at 938-39.

family."[43] The court therefore found it would be inconsistent with the wrongful death provisions of the Jones Act if anyone other than immediate family were allowed to recover for the negligent death of a coworker.[44] Lastly, the court referenced its prior decision in *Gaston v. Flowers Transportation*[45].[46] There, the court rejected an emotional damage claim by a Jones Act plaintiff who watched his half-brother get crushed to death but was not injured himself.[47] There, the court concluded that there was no merit in "allowing mere crewmen-bystanders to recover for witnessing the misfortune of another."[48]

Accordingly, here, the court held that its prior decision in *Gaston* and the Supreme Court's decision in *Gottshall* compel its conclusion "that emotional damages resulting purely from another person's injury, and not a fear of injury to one's self, are not compensable under the Jones Act."[49] The court held this to be true even when the plaintiff has also been injured.[50] To extend damages for the observations of a "bad sight," even when a family member is involved, would contravene the zone of danger test's intention to only compensate for physical dangers.[51] Therefore, the court held that Naquin was not entitled to emotional damages arising from the death of his relative under the Jones Act, and that any evidence regarding such damages should have been excluded at trial.[52] However, the court, unable to discern the amount of damages the jury awarded for the non-compensable harm caused by the relative's death, found the jury's award to be too tainted, and ordered the award to be vacated.[53]

The Fifth Circuit thereby affirmed the judgment of the district court relating to seaman's status and liability, but vacated the judgment relating to damages and remanded for further proceedings on the issue of damages.[54]

Michael G. Lewis
Class of 2015

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[43] *Id.* at 939.
[44] *Id.*
[45] 866 F.2d 816 (5th Cir. 1989).
[46] *Naquin*, 744 F.3d at 939.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 939-40.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.* at 940-41.
[54] *Id.* at 941.